



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2438 of 2022
Date of filing:	15.09.2022
Date of first hearing:	07.02.2023
Date of decision:	19.07.2023

Santosh Kumari , W/o Sh. Satish Kumar
R/o # 154/18, Old DC road, Brham colony
Sonipat, Haryana, 131001

....COMPLAINANT

VERSUS

Parsvnath Developers Ltd.
Office: Parsvnath Tower, Near Shahdara Metro Station,
Shahdara, Delhi- 110001

....RESPONDENT

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

Present: - Mr. Ramesh Malik, learned counsel for the complainant
 through video conference.

Ms. Rupali S. Verma, learned counsel for the respondent.

ORDER (Dr. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed on 15.09.2022 by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to 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	Parsvnath City, Sonapat
2.	Date of application by complainant	22.09.2009
3.	Plot no, and area	B-3069, Block B, 299 sq. yds.
4.	Date of allotment	22.09.2009
5.	Date of plot buyer agreement	Not executed
6.	Basic sale price	Not mentioned



7.	Amount paid by complainants	₹ 20,29,463/-
8.	Offer of possession	Not made
9.	Date of endorsement in favour of the present complainant	08.04.2021.

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

3. Brief facts of the case of the complaint are that on 22.09.2009, M/s Geeta Leasing & Housing Ltd. (original allottee) was allotted plot bearing no. B-3069 admeasuring 299 sq. yds in the respondent's project "Parsvnath City", Sonipat. Thereafter, on 11.03.2021 said plot was transferred in the name of Mr. Arun Gupta (second allottee). Complainant (third allottee) purchased the said plot on 22.03.2021 and plot was transferred in her name on 08.04.2021.
4. That plot buyer agreement has not been executed between the parties, as per the version of complainant the basic sales price of the plot was Rs. 20,29,463/- and he has paid the whole amount.. Copies of payment receipts have been annexed with the complaint as annexure C-3.
5. That the conduct of non-delivery of residential plot by respondent company to the complainant even after lapse of so many years suggests that there is absolutely no intention by respondent company to fulfill contractual obligations entered with the complainant.

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6. That the complainant is entitled for receiving interest @ SBI MLCR+2%.

on the amount paid to the respondent as per Rule 15 of Haryana Real Estate(Regulation and Development) Rules, 2017.

7. That after physically inspecting the site of the project it is transpired that there is no scope of handing over possession of residential plot in question as the development at project area is very limited. Respondent has also not taken requisite approvals from the concerned authorities which strengthens the belief of the complainant that respondent has committed fraud on public, at large.

8. That complainant has made reference of complaint no. 723 of 2019 titled as Nishant Bansal v/s Parsvnath Developers Ltd, Complaint no. 1307 of 2019 titled as Mrs. Suman and anr. v/s Parsvnath Developers Ltd and Complaint no. 865 of 2020 titled as Deepak Gupta v/s Parsvnath Developers Ltd wherein respondents were directed to handover possession along with upfront delay interest and monthly interest.

9. That complainant has approached the respondent several times but respondent failed to do the needful. Hence present complaint has been filed.

C. RELIEF SOUGHT

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

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- (i) To direct the respondent company to offer actual physical possession of the booked Plot in question i.e, Plot B-3069, Block-B, Parsvnath City, Sonipat, Haryana ;
- (ii) To direct the respondent -Company to obtain license from Haryana Town & Country Planning, Haryana of the project Parsvnath City, Sonipat, Haryana:
- (iii) To direct the respondent -Company to get conveyance deed executed within a time bound manner qua plot no. B-3069, Block-B, Parsvnath City, Sonipat, Haryana;
- (iv) To direct the respondent to pay interest on delayed possession for more than 8 years as per Rule 15 of Haryana Real Estate (Regulation And Development) Rules, 2017 to the complainant;
- (v) To direct the respondent to pay Rs.10,00,000/- as part of damages to the complainant on account of mental agony, torture and harassment;
- (vi) To direct the respondents to pay upfront interest and also monthly interest in pursuance of order dated 13.10.2021 C-4.
- (vii) To direct the respondent company to refund of all legal cost of Rs. 1,00,000/- incurred by the complainants;
- (viii) Any other relief- remedy which is deemed fit by this Hon'ble Authority in the present facts and legal proposition of the case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT



11. Learned counsel for the respondent filed detailed reply on 26.04.2023 wherein it is pleaded as under:-

(i) That the present complaint is not maintainable before this Hon'ble Authority, as this Hon'ble Authority does not have the jurisdiction to entertain the present complaint.

(ii) That the Complainant before this Hon'ble Authority had made a speculative investment in the project of the respondent-company, wherein Complainant invested knowingly and willingly that there was no offer of possession in favour of his predecessor-in-interest since 2004.

(iii) That without prejudice, it is stated that the project in which the complainant is seeking possession is not registered with this Hon'ble Authority and therefore, this Hon'ble Authority does not have jurisdiction to entertain the present complaint.

(iv) That the complainant is misdirected and is misleading this Hon'ble Authority by drawing parity with the order dated 13.10.2021 passed by this Hon ble Authority in complaint No.865 of 2022, wherein the facts were completely distinguishable and therefore, the observations of the said judgment cannot be made applicable to the present case.

(v) That without prejudice, the present Complaint is barred by limitation and this Hon'ble Court does not have jurisdiction to

entertain a time barred claim. Moreover, in absence of any pleadings regarding condonation of delay, this Hon'ble Court could not have entertained the Complaint in the present form. In recent judgment by the Hon'ble Supreme Court in the case of Surjeet Singh Sahni us, State of U.P and others, 2022 SC online SC 249, the Honble 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.

(vi) That the provisions of Real Estate (Regulation and Development) Act, 2016 cannot be applied retrospectively.

(vii) That on 22.09.2009, M/s Geeta Leasing & Housing Ltd. ("The Original allottee) was allotted residential plot bearing no. B-3069 having area admeasuring 299 sq. yards in the project namely "Parsvnath City at Sonapat" provisionally. It is pertinent to mention that the basic selling price (BSP) of said plot was fixed at Rs. 15,69,750/- excluding other compulsory charges.

(viii) That on 13.12.2009, a letter along with copy of plot buyer agreement was sent to the the original allottee" with a request to affix two recent passport size photographs and duly signed and witness. But, these documents were never returned by the the original allottee.

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A copy of letter dated 13.12.2009, is annexed herewith as annexure R-1.

(ix) That on 11.03.2021, the plot was transferred on the request of the original allottee in favour of Mr. Arun Gupta ("The Subsequent Purchaser"). Further, it is pertinent to mention that "The Subsequent Purchaser" had purchased the said plot from open or secondary market voluntarily after conducting proper due-diligence and being aware about the status of the project/ plot.

(x) That on 22.03.2021, the plot in question had been transferred in favour of Mrs. Santosh Kumari ("The Complainant"). It is pertinent to mention that the Mrs. Santosh Kumari had purchased the said plot from open or secondary market voluntarily conducting proper due-diligence and being aware about the status of the Project/Plot.

(xi) That on 22.01.2021 complainant signed an affidavit-cum undertaking which is annexed herewith as Annexure R-2 and copy of the ledger is annexed annexure R-3. Original allottee had deposited Rs. 20,29,463/- including BSP,EDC and IDC till date to the respondent company.

(xii) That it is a matter of record that on 10.07.2010, respondent company applied LOI for the land admeasuring 51 acres. However, the same was rejected by the competent authority (TCP) vide letter dated 19.02.2013. Copy of the letter issued by the DTCP, Haryana

stating the reasons for rejection is being annexed as Annexure R-4.

(xiii) That pursuant to that on 19.09.2019, one of the associate company of the respondent company applied for license for the land measuring 25.344 acres falling under in the revenue Village Rajpura, Sector 10 & 11, District- Sonapat, Haryana to develop a residential plotted colony.

(xiv) That the inability of the respondent company to develop the project is primarily the encroachments by the local farmers on part of project land for which they have already been paid the sale consideration. It is submitted that despite all sincere efforts to get the Project land vacated, the local farmers have failed to agree and rather they are coercing the respondent company to agree to their unreasonable demands.

(xv) That further, with effect from 11.01.2022, Government of Haryana has taken a policy decision that where the outstanding dues against the statutory dues in the nature of EDC etc. are more than 20 Crore, fresh licence would not be issued to the landowner/ developer/its associate companies etc. till the clearance of all the outstanding EDC. Hence despite taking all sincere steps, the respondent company is not able to get the LOI of the said project land.

(xvi) That it is further submitted that an application has been submitted for grant of licence for 25 acres through Generous Builders



Private Limited, which was rejected by this Hon 'ble Authority.

(xvii) That it is submitted that despite all the efforts made by the respondent company towards the completion of the said project as well as for getting the LOI, the Project could not be regularized and this has ultimately caused the abandoning of the project.

(xviii) That complainant knowingly invested in the project, therefore, the present complaint is not maintainable because of the reason that the complainant knowingly and willingly invested for his own gain.

(xix) That it is a matter of record that the respondent-company has not demanded any payment since the complainant purchased the said plot from the original buyer, which itself establishes the fact that there is no development at site and the project is abandoned by the Respondent-Company.

(xx) That the relief of possession in these circumstances is not applicable in the present case as the respondent company is not developing the project and under no provision of law the respondent-company can be asked to develop and deliver the project which has otherwise become impossible and hence, unviable.

(xxi) That be as it may, the right of the complainant would accrue from the date of the endorsement and not from the date the original applicant booked the present unit. This is a settled principle of law and also, is being followed by Hon'ble Tribunal and other courts.

(xxii) That for the reasons beyond the control of the respondent company, it could not develop the land in question and it is ready and willing to refund the amount received from the complainant(s) in terms of Affidavit cum undertaking which is duly signed by the complainant. Without prejudice, it is further stated that the project cannot be delivered due to the unforeseen circumstances and therefore in terms of Section 18(1), the relief of refund is only plausible solution.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

12. During oral arguments, learned counsel for the complainant reiterated the arguments as were submitted in writing. He argued that the decision already taken by the Authority in bunch of cases with lead case **complaint case no. 865 of 2020 titled Deepak Gupta versus Parsvnath Developers Ltd.** squarely covers the controversy involved in the above-mentioned complaint. He further argued that the complainant signed the undertaking dated 22.03.2021 because complainant was not in the position to bargain with the respondent builder as it was in a dominant position. He referred to Supreme Court judgement in **Pioneer Urban Land & Infrastructure Ltd** wherein Supreme Court has categorically held that the court will not enforce and will when called upon to do so, strike down an unfair and

unreasonable clause contract entered into between the parties who are not equal in bargaining power. He requested that this complaint be disposed of in the same manner as complaint case no. 865 of 2020 titled Deepak Gupta versus Parsvnath Developers Ltd.

13. On the other hand, learned counsel for the respondent argued that facts of the present complaint are not similar to complaint case no. 865 of 2020 titled Deepak Gupta versus Parsvnath Developers Ltd. She argued that present case may not be disposed of in terms of Deepak Gupta for the reason that at the time of passing of final order in complaint case no. 865 of 2020, respondent was in the process of getting LoI for the project, however situation is not the same today. Respondent has not received LoI for the project and is not in a position to develop the project and offer the possession of plot booked by the complainants. She also stated that none of the allottees have been given possession by respondent in project in question. Further, she stated that in the present case the endorsement was made in favor of the complainant in 2021, even if deemed date of possession be considered as 3 years from the date of allotment i.e. 22.09.2009 it works out to be 22.09.2012, complainant was endorsed said plot in his favor on 08.04.2021 i.e. approx. 9 years after the due date of possession was passed. Complainant was very well aware of the condition of the said project while purchasing the plot in question and

A handwritten signature in blue ink, appearing to read 'Rathee', with a horizontal line underneath it.

now she cannot be awarded delay interest from the due date of possession (22.09.2012) as she got rights endorsed in his favor on 08.04.2021. Rights of the complainant must accrue from date of endorsement and not from the due date of possession. She also stated that in the present case complainant has signed an undertaking dated 22.03.2021 in which complainant has accepted that she will not be entitled to receive any delay penalty for the period of delay prior to date of endorsement in her favor which in present case is 08.04.2021. In terms of the undertaking signed by her, complainant is not entitled to any delayed possession interest before the date of endorsement in her favor. Further she stated that in a situation where respondent is unable to develop the project and offer possession to the allottees, the only relief admissible is refund with interest. Therefore, she requested that refund be allowed instead of awarding possession with delay interest.

F. ISSUES FOR ADJUDICATION

14. Whether the complainant is entitled to relief of possession of plot booked by him along with interest for delay in handing over the possession in terms of Section 18 of Act of 2016?

G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

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15. 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:-

- (i) Respondent has adopted a plea that the Authority does not have jurisdiction to decide the complaint. In this regard it is stated that Authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E.1 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 Sonapat district. Therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

E.2 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) The respondent in its reply has contended that the complainant is a “speculative buyer” who has invested in the project for monetary returns and taking undue advantage of RERA Act, 2016 as a weapon during the present down side conditions in the real estate market and therefore he is not entitled to the protection of the Act of 2016. In this regard, Authority observes that as per section 31 of RERA Act, 2016 “any aggrieved person” can file a complaint against a promoter if the promoter contravenes the provisions of the RERA Act, 2016 or the Rules or Regulations. In the present case, the complainant is an aggrieved person who has filed a complaint under Section

31 of the RERA Act, 2016 against the promoter for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here, it is important to emphasize upon the definition of term allottee under the RERA Act of 2016, reproduced below: -

Section 2(d) of the RERA Act:

(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;

(iii) In view of the above-mentioned definition of "allottee" as well as upon careful perusal of provisional allotment letter dated 22.09.2009 it is clear that complainant is a "Subsequent allottee" as plot bearing no. B-3069, Block B, 299 sq. yds in the real estate project "Parsvnath City", Sonipat was allotted to original allottee by the respondent promoter on payment of ₹ 20,29,463/- which was subsequently transferred to Mr. Arun Gupta on 11.03.2021 and then to the complainant. The terms allottee and subsequent allottees are interchangeably used, as the RERA Act, 2016 does not differentiate between an allottee and subsequent allottee. The concept/definition of investor is not provided or referred to in the RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there will be "promoter" and "allottee" and there cannot be a party having a status of an investor. The Maharashtra Real Estate Appellate

Attorney

Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as **M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. And Anr.** had also held that the concept of investors not defined or referred to in the Act. Thus, the contention of promoter that allottees being investor are not entitled to protection of this Act also stands rejected. Further, the definition of “allottee” as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose.

(iv) Further, respondent has raised an objection of the respondent that the project in which the complainant is seeking possession is not registered with this Hon'ble Authority and therefore this Honble Authority does not have jurisdiction to entertain the present complaint. This issue that whether this Authority has jurisdiction entertain the present complaint as the project is not registered has been dealt and decided by the Authority in **complaint no. 191 of 2020 titled as Mrs. Rajni and Mr. Ranbir Singh vs Parsvnath Developers Ltd.** Relevant part of said order is being reproduced below:

“Looked at from another angle, promoter of a project which should be registered but the promoter is refusing to get it registered despite the project being incomplete should be treated as a double defaulter, i.e. defaulter towards allottees as well as violator of Sector 3 of the Act. The argument being put forwarded by learned counsel for respondent amounts to saying that promoters who violate the law by not getting their ongoing/incomplete projects registered shall enjoy special undeserved protection of law because their allottees cannot avail benefit of summary procedure provided under the

RERA Act for redressal of their grievances. It is a classic argument in which violator of law seeks protection of law by misinterpreting the provisions to his own liking.

14. *The Authority cannot accept such interpretation of law as has been sought to be put forwarded by learned counsel of respondent. RERA is a regulatory and protective legislation. It is meant to regulate the sector in overall interest of the sector, and economy of the country, and is also meant to protect rights of individual allottee vis-a-vis all powerful promoters. The promoters and allottees are usually placed at a highly uneven bargaining position. If the argument of learned counsel for respondent is to be accepted, defaulter promoters will simply get away from discharging their obligations towards allottee by not getting their incomplete project registered. Protection of defaulter promoters is not the intent of RERA Act. It is meant to hold them accountable. The interpretation sought to be given by learned counsel for respondent will lead to perverse outcome.*

15. *For the foregoing reasons, Authority rejects the arguments of respondent company. The application filed by respondent promoter is accordingly rejected."*

(v) Respondent has further objected that captioned complaint is 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 plot in its project, the cause of action is re-occurring, accordingly ground that complaint is barred by limitation stands rejected.

(vi) 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:-*

"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.

54. From the scheme of the Act 2016, its application is retroactive in character”

(vii) In the present case respondent company transferred booking rights in favour of complainant vide endorsement on 08.04.2021. The principal argument of the respondent is with regards to the rights of the subsequent allottee i.e the complainant who purchased a unit after being aware of the fact that the due date of possession has already expired and that the possession of the unit is delayed. Plot was transferred in the name of the complainant after expiry of due date of possession i.e 22.09.2012 (3 years from the date of allotment) and after coming into force of the RERA Act.

Rathee

First and foremost, it is worthwhile to understand the term allottee as per the RERA Act and whether subsequent allottee is also an allottee as per provisions of the Act?

The RERA Act 2016, provides the definition of the term "allottee" in Section 2 (d). The definition of the allottee as provided in the Act is reproduced as under:

"2

In this Act, unless the context otherwise requires-(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".

The term "allottee" as defined in the Act also includes and means the subsequent allottee. An original allottee is a person to whom an apartment, plot or building has been allotted or sold by the promoter. Thereafter, a person who acquires the said allotment of apartment, plot or building through sale, transfer or other wise and in whose name the transfer of rights has been endorsed by the promoter, becomes a subsequent allottee.

From a bare perusal of the definition, it is clear that the transferee of an apartment, plot or building who acquires it by any mode is an allottee. This may include (i) allotment; (ii) sale; (iii) transfer; (iv) as consideration of

services; (v) by exchange of development rights; or (vi) by any other similar means. It can be safely reached to the only logical conclusion that the act does not differentiate between the original allottee and the subsequent allottee and once the unit, plot, apartment or building, as the case may be, has been re-allotted in the name of the subsequent purchaser by the promoter, the subsequent allottee enters into the shoes of the original allottee for all intents and purposes and he shall be bound by all the terms and conditions contained in the builder buyer's agreement including the rights and liabilities of the original allottee. Thus, as soon as the unit is re-allotted in his name, he will become the allottee and nomenclature "subsequent allottee" shall only remain for identification/ use by the promoter. Therefore, the Authority does not draw any difference between the allottee and subsequent allottee per se. Therefore, subsequent allottee is entitled to all rights conferred upon him by original allottee, as per the buyer agreement.

(viii) Respondent has raised an objection that in the present complaint, the complainant has signed an affidavit cum undertaking dated 22.03.2021 wherein the complainant has accepted that she will not be entitled to receive any delay penalty for the period of delay prior to date of endorsement in her favor which in present case is 08.04.2021. To said objection, ld. Counsel for the complainant has rebutted by saying that complainant was not in the position to bargain with the respondent builder at the time of execution of



undertaking as builder was in a dominant position. He has referred to **Pioneer Urban Land & Infrastructure Ltd v/s Govindan Raghavan (Civil Appeal no. 12238 of 2018)** wherein Supreme Court has categorically held that the court will not enforce and will when called upon to do so, strike down an unfair and unreasonable clause contract entered into between the parties who are not equal in bargaining power.

In order to deal with this objection reference is being made to Hon'ble Apex Court's judgement in **Pioneer Urban Land & Infrastructure Ltd. v/s Govindan Raghavan (Civil Appeal no. 12238 of 2018)**. Operative part of said judgement is being reproduced below:

“Section 2 (r) of the Consumer Protection Act, 1986 defines ‘unfair trade practices’ in the following words : “‘unfair trade practice’ means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice ...”, and includes any of the practices enumerated therein. The provision is illustrative, and not exhaustive. In Central Inland Water Transport Corporation Limited and Ors. v. Brojo Nath Ganguly and Ors.,⁴ this Court held that : “89. ... Our judges are bound by their oath to ‘uphold the Constitution and the laws’. The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality



before the law and equal protection of the laws. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. These cases can neither be enumerated nor fully illustrated. The court must judge each

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case on its own facts and circumstances.” (emphasis supplied) 6.7. A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the Agreement dated 08.05.2012 are ex-facie one-sided, unfair, and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2 (r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the Builder”

In light of the said judgement, Authority observes that affidavit cum undertaking dated 22.03.2021 cannot be relied upon as the builder was in a dominant position and complainant had no option except to sign on dotted lines to get the plot endorsed in her favour. Otherwise also the said undertaking is vague, one sided and heavily loaded in favour of the builder.

At the time of execution of said undertaking builder had knowledge that statutory right of delayed possession interest has accrued in favour of the complainant and respondent got an undertaking executed which clearly made complainant forego her statutory right of delayed possession interest. Such undertaking cannot be accepted and objection of the respondent is hereby rejected.

(ix) The complainants in the present case have purchased a plot bearing no. B-3069 in the project of the respondent. The complainant in complaint case

no. 865 of 2020 was allotted plot bearing no. B- 3305, Block B, Parsvnath City, Sonapat and complainants in present case have been allotted plot bearing no. B 3352, Block B, Parvsnath City, Sonapat. Meaning thereby, the booking of plots made by complainants in both the complaints was made in “B Block” of same project i.e. Parsvnath City, Sonapat. So, it is observed that the factual matrix of present case is similar to bunch of cases with lead case no. **865 of 2020 titled as Deepak Gupta versus Parsvnath Developers Ltd.** except the fact that in the present complaint, complainant is a subsequent allottee. Accordingly, Authority is satisfied that issues and controversies involved in present complaints are of similar nature as complaint case no. 865 of 2020. Therefore, captioned complaint is disposed of in terms of the orders passed by the Authority in **Complaint no. 865 of 2020 titled as Deepak Gupta versus Parsvnath Developers Ltd.**

(x) The issue in hand in the present case is regarding subsequent allottee. Respondent has argued that the rights have been endorsed in favor of the complainant on 08.04.2021 so legal obligations, if any starts from the date of endorsement in her favor and not from the due date of possession. In the present case, original allottee was allotted plot in respondent’s project on 22.09.2009. Now with regards to deemed date of possession, Authority observes that in absence of plot buyer agreement it cannot rightly ascertain as to when the possession of said plot was due to be given to the

complainant. Reference is made to observation of Hon'ble Apex Court in **2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr.** in which it has been observed that period of 3 years is reasonable time. In present complaint, the plot was allotted in favor of the original allottee on 22.09.2009 and taking a period of 3 years from the date of allotment i.e 22.09.2009 as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 22.09.2012 . Although the endorsement rights were transferred by the respondent in the favour of the complainant on 08.04.2021 but since the complainant has stepped into the shoes of original buyer, therefore the deemed date of possession shall be considered from the date of allotment in favor of original buyer itself. In this way, the possession of the unit should have been handed over to the complainant by 22.09.2012.

Further, at the time of such endorsement dated 08.04.2021, RERA Act, 2017 already came into force and the respondent was aware of the statutory right of the complainant with respect to delay interest. All the rights and obligations of the predecessor got transferred to the subsequent allottee at the time of endorsement and right of delay interest also gets transferred along with other rights. Mere endorsement does not change the timeline stipulated in the agreement for sale for handing over of possession, specially in view of the fact that RERA Act of 2016 does not differentiate between

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allottee and subsequent allottee. Therefore, the Authority is of the view that when the subsequent allottee has stepped into shoes of the predecessor after the statutory right of delayed possession interest has accrued in favour of the original allottee after coming into force of the RERA Act 2016 then, he shall be entitled to the same right of delayed possession interest, even though the allotment was pre-RERA.

(xi) In complaint case no. 865 of 2020, it was revealed that respondent neither had license to develop the project nor even LoI was obtained by him for the same. In that eventuality, since complainants were not interested to withdraw from the project and wanted to continue with the project, respondent was directed to pay the complainant upfront interest on the amount paid by him from deemed date of possession till date of the order and also future interest for every month of delay occurring thereafter till the handing over of possession of the plot. Further respondent was prohibited from alienating the land of the project in question for any purposes except for completion of the project.

In the present complaint also the complainant wishes to continue in the project and in his complaint, he has prayed for directions to the respondent to hand over the possession of the plot no. 3069, Block B, 299 sq. yds. in Parsvnath City along with interest on the amount paid from the date of payment till the date of possession of plot as per HRERA Rule 15. It is



further observed that though the learned counsel for respondent has orally argued that the respondent has not received the LoI for the project and is not in a position to develop the same and offer possession of the booked plot to the complainant, however no document issued by competent authority has been placed on record or relied upon by the respondent to prove that it has surrendered/abandoned the project. Reference is also made to para 3 of the letter dated 19.02.2013 written by DTCP, Haryana to the respondent (annexure R-4 of the reply). Relevant part of said letter is being reproduced.

“Since, you did not attend the personal hearings on two occasions, therefore, it can be concluded that you are making lame excuse as the application for renewal of original license is yet to be filed and license for an additional area can be considered only if the main license is valid. It is, therefore regretted that the grant of license for an additional area measuring 51.50 acres is hereby refused due to the reason mentioned above”

Perusal of this para shows that respondent had no intention of honouring his obligations and complainant cannot be made to suffer because of the repeated and deliberate defaults on the part of the respondent. Therefore, the complainant U/s 18(1) of the RERA Act is entitled to the relief of interest on account of delayed possession.

Accordingly, complainant in the present case is also entitled to upfront interest on the amount paid by him from deemed date of possession till today along with future interest for every month of delay occurring thereafter till

the handing over of possession at the rate prescribed in Rule 15 of the HRERA Rules, 2017 i.e. SBI MCLR+2% which as on date works out to be 10.75% (8.75%+2%).

(xii) Authority has got delay interest calculated from its account branch in terms of the observations made by Hon'ble Haryana Real Estate Appellate Tribunal vide its order dated 10.01.2023 in appeal no. 619 of 2021 titled as Parminder Singh Sohal versus BPTP Ltd. The details of amounts paid by the complainant and delay interest calculated on amount are shown in the following table: -

Amount paid by complainants	Upfront delay interest calculated by Authority till 19.07.2023	Further monthly interest
₹ 20,29,463/-	₹ 23,62,781/-	₹ 18,529/-

(xiii) 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 Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra), has held that an allottee is entitled to claim compensation 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.

(xiv) Ld. Counsel for the complainant has not pressed upon relief no. (ii) and (vii).

(xv) With respect to relief no (iii) it is observed that complainant is aware of the factual position, even then he has chosen to stay with the project,

H. DIRECTIONS OF THE AUTHORITY

16. 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 pay the complainant upfront amount of ₹ 23,62,781/-. Respondent's liability for paying monthly interest of ₹ 18,529/- as shown in above table will commence w.e.f. 19.08.2023 and it shall be paid on monthly basis till valid offer of possession is made to complainants.
- (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.

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



.....
NADIM AKHTAR
[MEMBER]



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