



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>3359 of 2022</b>
<b>Date of filing:</b>	<b>28.12.2022</b>
<b>Date of first hearing:</b>	<b>28.02.2023</b>
<b>Date of decision:</b>	<b>17.10.2023</b>

Smt. Chander Kanta Chadha  
R/o G-19, Pocket II, SFS Flats,  
Naraina Vihar,  
New Delhi- 110028

....COMPLAINANT

VERSUS

Parsvnath Developers Ltd.  
Office: Parsvnath Metro Tower, Near Shahdara Metro Station,  
Shahdara, Delhi- 110032

....RESPONDENT

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

**Present: -**                Mr. Chaitanya Singhal, learned counsel for the complainant through video conference.

Mr. Narender, learned counsel for the respondent.

**ORDER (NADIM AKHTAR - MEMBER)**

1. Present complaint has been filed on 28.12.2022 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 complainants and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Parsvnath City, Sonapat
2.	Date of booking	21.02.2005
3.	Plot no, and area	Plot no. mot mentioned 400 sq. yds.
4.	Date of allotment	Not mentioned
5.	Date of Plot buyer agreement	Not executed
6.	Basic sale price	₹ 23,00,000/- (5750/- per sq.)



		yd.
7.	Amount paid by complainants	₹ 11,50,000 /-
8.	Offer of possession	Not made
9.	Date of endorsement in favour of the present complainant	01.09.2018

**B. FACTS OF THE CASE AS STATED IN THE COMPLAINT**

3. Brief facts of the case of the complainant are that on 21.02.2005 original allottee Mr. Yash Dev Chadha had booked a plot in present and future project of respondent by paying ₹ 5,75,000/-. As per the terms and conditions of the registration form the respondent had to allot a plot to the complainant within a time period of 6 months. Said plot was transferred in the name of complainant Ms. Chander Kant Chadha on 01.09.2018. Copy of endorsement letter is annexed at page 17 of the complaint.
4. That no plot buyer agreement has been executed between the parties. Complainant has paid an amount of ₹ 11,50,000/- to the respondent against the basic sales price of Rs. 23,00,00/- for the plot in question.
5. That the complainant has visited the office of the respondent for more than 100 times to enquire about the status of allotment but in vain. Complainant had repeatedly written e-mails also in this regard.



Respondent has deliberately and intentionally not given possession nor issued any refund.

6. That facts of complainant's case are similar to **complaint no. 723 of 2019 titled as Nishant Bansal 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
7. That complainant has approached the respondent several times but respondent failed to do the needful. Hence present complaint has been filed.

**C. RELIEF SOUGHT**

8. The complainant in his complaint has sought following reliefs:
  - (i) To give allotment and possession of the plot to the complainant.
  - (ii) Any other relief- as the Hon'ble Authority may deem fit and proper in light of the facts and circumstances of the above case.
9. Complainant has also filed an application dated 26.06.2023 stating that earlier the complainant forgot to pray for relief of seeking delayed possession interest in her prayer/relief sought in the main complaint and has prayed that the present application may be allowed for amending the prayer of the complainant in order to add relief of seeking delayed possession interest along with possession of the plot.



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

10. Learned counsel for the respondent filed detailed reply on 27.07.2023 wherein it is pleaded as under:-

- (i) That the present complaint is not maintainable for the reason that the complainant herself has stated that builder buyer agreement has not been executed between the parties, therefore, there is no agreement to sale which can be enforced. Thus, relief sought under section 18 of the RERA Act, 2016 is not maintainable. Further respondent has submitted that complainant is not even an allottee of the respondent company and registration is merely an expression of interest towards the upcoming project of the respondent.
- (ii) That the present complaint is grossly 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 present form. In recent judgment by the Hon'ble Supreme Court in the case of **Surjeet Singh Sahni vs. State of U.P and others, 2022 SC online SC 249**, the Hon"ble Apex Court has been pleased to observe that merely 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 laches; therefore, his claim should be dismissed.



(iii) That there is no contravention of the Real Estate (Regulation and Development) Act, 2016 on behalf of the Respondent, hence the present complaint is not maintainable.

(iv) That in a similar case titled as "**Savita Khaturia v. M/s Parsvnath Developers (P) Limited Appeal No.193 of 2019**", the Hon'ble Tribunal had been pleased to accept the contentions of the respondent-company to the extent that in the absence of any agreement to sell or any other agreement for possession, the relief of possession is not tenable and therefore, in the above-stated appeal the Hon 'ble Tribunal had directed the complainant to accept refund of the deposited amount.

(v) That the relief sought is not admissible as there is no allottee-promoter relationship between the complainant and the respondent. The Complainant has misdirected himself by seeking relief of possession against 'expression of interest'.

(vi) That on 21.02.2005, Mr. Yash Dev Chadha (original applicant) expressed his interest in the registration/ booking of a plot in any of the upcoming project of the respondent company and paid Rs. 5,75,000.00 towards registration for present and future project of the Respondent.

(vii) That it is pertinent to mention that Mr. Yash Dev Chadha (original applicant) was very well aware with the fact that neither any location nor any site of the project was confirmed at the time of registration. Further in this regard, the Mr. Yash Dev Chadha (original applicant) while filling for



the application form gave undertaking that in case no allotment is made, then he shall accept the refund of the amount deposited by him towards this registration. The relevant clauses of the application form are mentioned hereunder:

*(a) That you offer me/us a residential plot which you may promote in the near future within a period of six months.*

*(b) That the said advance would be adjusted against the booking amount payable by me/us as and when a residential plot is allotted in my/our name.*

*(c) That in the event the residential plot is allotted after nine months, simple interest @10% per annum shall be paid to me/us for the period delayed beyond nine months on the amount paid by me/us as advance till such time I/We am/are allotted a residential plot or adjusted against the price of the plot to be allotted to me/us.*

*(d) In case the Company fails to allot a plot within a period of one year from the date of making payment, then I/We would have the option to withdraw the money by giving one-month notice.*

*(e) That it is understood that the Company shall allot me a residential plot at the launch price.*

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

(viii) That Clause F of the Application Form which clearly states that while proceeding ahead with the purchase, "The Original Applicant" has clearly understood that no allotment was made in his favour and he has further given the undertaking that in case no allotment is possible in future, then he would



accept refund with simple interest at the rate of 10% per annum.

(ix) That it is a matter of record that no demand was ever raised by the Respondent Company from the Complainant after the year 2006, which establishes the fact that no project was allotted to the Complainant and registration was merely expression of interest towards the upcoming project of the Respondent.

(x) That it is a matter of record that till date respondent company had received an amount of Rs. 11,50,000/- from the complainant towards its registration. Complainant was well aware of the understanding between her and the respondent-company, whereby, it was undertaken that in case of no allotment, the refund of the amount will be admissible. Therefore, at this stage, claiming possession against the money receipt is not tenable in law. Hence, the present complaint is liable to be dismissed.

(xi) That it is pertinent to state that in absence of any agreement to sale, the complainant is bound by the terms and conditions of the application form which is duly signed & executed by the original allottee. The Real Estate Development and Regulation Act, 2016 stipulates provision to execute builder buyer's agreement, however, in this particular case there is no agreement to sell, which is enforceable in law and hence, the present complaint is liable to be dismissed on this ground alone. The money receipts being relied upon by the Complainant nowhere, finds mention of any plot number or location of the allotment. Therefore, the receipt cannot be read to





be issued against the allotment rather they are merely deposits made for expression of interest in future project of the respondent.

(xii) That the present complaint filed by the complainant before this Hon'ble Authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainant has misdirected herself in filing the above captioned Complaint before this Hon'ble H-RERA, Panchkula as the relief (s) claimed by the complainant does not even fall within the realm of jurisdiction of this Hon'ble Authority, Panchkula as there is neither any allotment nor any agreement to sale which can be adjudicated by this Hon'ble Authority.

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

11. 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. 723 of 2019 titled Nishant Bansal versus Parsvnath Developers Ltd.** squarely covers the controversy involved in the above-mentioned complaint. Therefore, he requested that this complaint be disposed of in the same manner.
12. On the other hand, learned counsel for the respondent argued that facts of the present complaint are not similar to **complaint case no. 723 of 2019 titled Nishant Bansal versus Parsvnath Developers Ltd.** She



argued that complainant has failed to prove that there was any allotment in her favor. She also stated that complainant is seeking specific performance of something which was never agreed upon between the parties as plot was never allotted to her. Complainant was very well aware of the condition of the said project while purchasing the plot in question. She further 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**

13. 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**

14. 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) These are admitted facts that the on 21.02.2005 original allottee Mr. Yash Dev Chadha had booked a plot in present and future project of respondent by paying ₹ 5,75,000/-; No plot buyer agreement has been executed between the parties; An amount of ₹ 11,50,000/- to the



respondent against the basic sales price of Rs. 23,00,000/- for the plot in question; Said plot was transferred in the name of complainant Ms. Chander Kant Chadha by way of endorsement on 01.09.2018. No specific plot was allotted to the predecessor in interest of the complainant. Thus, in view of the foregoing facts the respondent who has accepted an amount of Rs. 11,50,000/- till 2006 has been in custody of the money paid for allotment of the plots and has been enjoying benefits out of it. The issue which needs adjudication in this complaint is whether complainant is entitled to the relief of possession of plot booked by him along with interest for delay in handing over the possession in absence of builder buyer agreement and allotment.

(ii) However, respondent has taken a stand that present complaint is not maintainable for the reason that the respondent company has not allotted any plot to the original applicant and complainant also knew that there is no possibility of allotment in near future and therefore complainant is not an allottee. Upon careful perusal of documents on record, it is revealed that original applicant had paid a sum of ₹11,50,000/- for purchasing a plot in present and future project of respondent and it was agreed between the parties that respondent shall allot a residential plot to applicant and in case he fails to do so for any reason whatsoever, advance money paid by applicant shall be refunded to him with 10% interest per annum. The fact that the



respondent had accepted multiple payments from the predecessor of the complainant and had issued receipts for the same clearly shows that respondent had recognised the original applicant as his allottee. Finally on 01.09.2018 the plot was transferred in the name of complainant by way of endorsement. Acceptance of multiple payments towards allotment of the plot and subsequent transfer by way of endorsement in favour of the complainant shows that the respondent has recognised the complainant as its subsequent allottee and same is covered within the definition of allottee as provided under Section 2(d) of the RERA Act of 2016.

Further in the present case respondent company transferred booking rights in favour of complainant vide endorsement on 01.09.2018. 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. Here first and foremost, it is worthwhile to understand the term allottee as per the RERA Act and secondly 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".*

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 original allottee and 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, subsequent allottee is entitled to all rights conferred upon him by original allottee, as per the buyer agreement.

(iii) Respondent has also taken objection that complaint is grossly barred by limitation. Reference in this regard is made to the judgement of Apex court *Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise* wherein the Hon'ble Apex Court had held that Indian Limitation Act applies only to the courts and not to the Tribunals. RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not a Court. The promoter has till date failed to fulfil its obligations because of which the cause of action is re-occurring.

(iv) Another objection of respondent is that there is no proof that booking was made for 'Parsvnath City, Sonapat' and there is no agreement between the parties which can be executed by the Authority. Said argument of respondent is rejected in the same terms



as has been dealt in detail and decided in **complaint no. 723 of 2019** titled as **Nishant Bansal v/s Parsvnath Developers Ltd.** Relevant paras of the said order are being reproduced below:

*“Admittedly, the respondent had already endorsed the transfer rights in favour of the complainants. If the respondent was keen to refund the amount and was not in a position to allot the plots, he should have exercised such option of refunding the already paid amount alongwith interest to the complainants when they had applied for transfer of booking rights. The respondent did not exercise such option and continued to withhold the already paid amount. This would imply that he had agreed to allot plots to the complainants instead of acting upon the clause which entitled him to refund the money alongwith interest. That being so, it does not now lie in the mouth of the respondent to claim at this stage that he does not have plots for allotment to the complainants or that the complainants are entitled only for refund alongwith interest.*

11. *Needless to mention that the respondent was under obligation to first allot the plots to those persons from whom he had received the advance money and without satisfying them, he was not permitted to sell the plots to subsequent purchasers. Allotment of plots without adopting a criteria of first come first served has put the complainants to dis-advantage inasmuch as they have been deprived of the money which they could have earned due to escalation of prices. So, the complainants deserve to be held entitled for allotment and possession of the plots they had booked.*

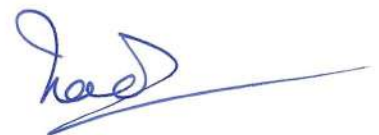
12. *Now the only question requiring determination is whether or not the complainants are entitled to have plots in the project Parsvnath City, Sonipat. The complainant's case in lead case is that the respondent launched a township named Parsvnath City*



under "Present and Future Scheme" at Sonipat to sell plots and a plot booked by Mr. Santosh Bansal to whom respondent had provided customer code no. PS/S0274, was subsequently purchased by Mr. Gopi Chand and then was purchased by him from said Gopi Chand. The respondent's averment on this point is that he had not launched a township named Parsvnath City under 'Present and Future Scheme' at Sonipat, Haryana.

13. In order to ascertain whether or not any project was in fact launched at Sonipat with the name Parsvnath City, this Authority has enquired the matter from the project section of the Authority. Thereupon, it was revealed that such project indeed was launched by the respondent promoter at Sonipat bearing license no. 878-894 of 2006 dated 25.04.2006. Interestingly, the payments from the original applicants were collected prior to the year 2006. This will manifest that the complainants and their predecessors-in-interest had booked plots in pursuant to the advertisement floated in or around the year 2006. Some of the receipts issued to the complainants conspicuously reflect the name of the project as Parsvnath City, Sonipat. Reference in this regard can be made to the receipts available at page no. 13-14 of complaint no. 1115 of 2019 titled Sunita Jain Versus M/S Parsvnath Developers Ltd. and page no. 35 of complaint no. 1680 of 2019 titled Rekha Talwar & Ors. Versus M/S Parsvnath Developers Ltd.

14. In the backdrop of these circumstances, it can be easily deciphered that the complainants and their predecessors-in-interest had booked plots in the project named Parsvnath City, Sonipat. Such an inference stands further fortified from the fact that respondent has not been able to produce any material on record to indicate that some project other than Parsvnath City, Sonipat was launched at Sonipat in or around the year 2006. The Authority, in these circumstances has no hesitation to





*conclude that complainants are entitled to have plots in the project named Parsvnath City, Sonipat”*

(v) In view of above and on perusal of the documents placed on record, Authority observes that complainant has booked plot in present and future project of respondent, paid Rs. 11,50,000/- of total sale price, neither allotment letter was issued nor any builder buyer agreement was executed between the parties and complainant is seeking possession of the plot booked by her. It is observed that the factual matrix of present case are similar to bunch of cases with lead case complaint no. 723 of 2019 titled as **“Nishant Bansal versus Parsvnath Developers Ltd.”** Accordingly, Authority is satisfied that issues and controversies involved in present complaints are of similar nature as complaint case no. 723 of 2019. Therefore, captioned complaint is disposed of in terms of the orders passed by the Authority in **Complaint no. 723 of 2019 titled as Nishant Bansal versus Parsvnath Developers Ltd.** Therefore, complainant will be entitled to interest for delay in handing over the possession as per Rule 15 Haryana Real Estate (Regulation & Development) Rules, 2017 till the handing over of possession.

15. In the present case, in absence of any allotment letter or plot buyer agreement providing any specific date for handing over of possession it cannot rightly ascertain as to when the possession of said plot was



due to be given to the complainant. In such circumstances when a specific date for handing over of possession cannot be ascertained. Hon'ble Supreme Court in 2018 in a case titled as **M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr** observed that period of 3 years is reasonable time. Adhering to the ratio laid down in the aforementioned case Therefore, deemed date of possession works out to be 21.02.2008 (three years from the date of booking i.e, 21.02.2005), manifesting that there has been a delay of approximately 15 years in handing over possession, making the respondent liable to pay delayed interest charges as per section 18 of the RERA Act, 2016 along with possession.

16. 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 said amounts are shown in the following table: -

Amount paid by complainant	Upfront delay interest calculated by Authority till 17.10.2023	Further monthly interest
₹11,50,000/-	₹19,36,679/-	₹10,161/-



**I. DIRECTIONS OF THE AUTHORITY**

17. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act incorporating the modifications made by Hon'ble Appellate Tribunal 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 allot and deliver the possession of booked plot to the complainant in the project 'Parsvnath City, Sonapat' on payment of balance sale consideration recoverable from him. In case, respondent promoter due to non-availability of plots is not able to allot and offer its possession to the complainant, he will be liable to make available to her a plot of the size, as booked, by purchasing it from open market at his own cost. Respondent promoter however will be entitled to recover from the complainant the balance amount payable by him as per the rate agreed by the parties at the time of booking of plot.

(ii) Respondent is directed to pay the complainants upfront amount of ₹19,36,679/-. Respondent's liability for paying monthly interest of 10,161/- as shown in above table will commence w.e.f. 18.11.2023 and it shall be paid on monthly basis till valid offer of possession is made to complainants.



(iii) Alternatively, if the allottee wish to purchase equivalent size plots of his own in resale of the colony of the promoter, or equivalent plots in any other project of the appellant in District Sonipat, he is at liberty to take refund of the amount paid along with prescribed rate of interest i.e. SBI highest marginal cost of lending rate (MCLR) +2% i.e. 10.75% per annum from the date of deposits till realisation and seek compensation of the excess amount paid in such purchase of plots, along with compensation for mental agony, harassment and legal expenses by way of filing separate complaints before the learned Adjudicating Officer.

(iv) 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.

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



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



.....  
NADIM AKHTAR  
[MEMBER]