HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**2796 of 2022**
Date of filing:	**19.10.2022**
Date of first hearing:	**21.12.2022**
Date of decision:	**05.09.2023**

Guncha Sachdeva

R/o 462/12, Near Angel field Public School, Krishna Colony

Gurgaon, Haryana 122001

....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. Vivek Sethi, learned counsel for the complainant through video conference.

Ms. Rupali S. Verma, learned counsel for the respondent through video conference.

ORDER (Dr. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed on 19.10.2022 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, Sonepat
2.	Date of application (by original allottee)	24.09.2004
3.	Plot no and area	Not mentioned
4.	Date of allotment	Not mentioned
5.	Date of Plot buyer agreement	Not executed

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6.	Basic sale price	Not mentioned
7.	Amount paid by complainants	₹ 5,82,000 /-
8.	Offer of possession	Not made
9.	Date of endorsement in favour of the present complainant	15.04.2010

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

3. Brief facts of the case of the complainant are that on 24.09.2004 original allottee Mrs. Savitri Devi had booked a plot in present and future project of respondent by paying ₹ 1,75,000/-. Another amount of Rs. 4,07,000/- was paid by the original allottee on 17.11.2006. Original allottee had paid total amount of Rs. 5,82,000/- Said plot was transferred in the name of complainant on 15.04.2010. Plot buyer agreement has not been executed between the parties.

4. That complainant at all times made payment against the demands of the respondent as per payment schedule of the agreement pertaining to his plot but despite receipt of all payments, the development work on the plot has not been started at all till date.

5. That despite lapse of more than 18 years from the date of making advance payment towards the residential plot, no plot number or size has been allotted.

6. 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.

7. 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.

8. 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.

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:

The complainant in his complaint has sought following reliefs:

(i) To direct the respondent company to offer actual physical possession of the 300 sq. yards plot in question in the project of respondents;

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(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 to get conveyance deed executed within a time bound manner qua the booked plot in Parsvnath City, Sonipat, Haryana.

(iv) To direct the respondent -company to pay interest on delayed possession for more than 18 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 respondent to pay Rs.10,00,000/- as compensation to the complainant as part of deficiency of service on your part.

(vii) To direct the respondent to refund of all legal cost of Rs. 1,00,000/- incurred by the complainant.

(viii) Grant any other relief as this Hon'ble Authority deems fit in the peculiar facts and circumstances of the present complaint

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

11. Learned counsel for the respondent filed detailed reply on 16.03.2023 wherein it is pleaded as under:-

(i) That the present complaint is not maintainable before this Hon'ble Authority for the reason that the complainant is not an allottee of the respondent company.

(ii) That as per section 2(d) of The Real Estate (Regulation & Development) Act, 2016, the definition of "Allottee" is reproduced hereinafter for ease of this Hon 'ble Authority;

> *"2 (d) Allottee in relation to real estate project, means the person to whom a plot, apartment or building, as the case may be, he has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and included the person who subsequently acquires the said allotment through sale, transfer or otherwise but doesn't include a person to whom such plot apartment or building, as the case may be; is given on rent."*

(iii) 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 us. 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.

(iv) That there is no 'agreement to sale' between the parties and therefore, relief sought under section 18 of the RERA Act, 2016 is not maintainable before this Hon 'ble Authority.

(v) 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.

(vi) That in the respectful submission of respondent, it is stated that in similar circumstances, in the matter of "**Savita Khaturia v. M/s Parsvnath Developers (P) Limited Appeal No.193 of 2019**, the Hon'ble Appellate 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 Appellate Tribunal had directed the complainant to accept refund of the deposited amount.

(vii) That the complainant has failed to plead cause of action in accordance with law.

(viii) That on 24.09.2004, Mrs. Savitri Devi expressed his interest in the registration/ booking of a plot in any of the upcoming project of the Respondent Company and paid Rs. 1,75,000/- towards the registration.

(ix) That it is pertinent to mention that the 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 original applicant while filling the application form gave undertaking that in case no allotment is made, then she shall accept the refund of the amount deposited by her towards its 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 Rs. 500/- per square yards less than 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 annum.*

(x) That Clause (f) of the application form clearly states that while proceeding ahead with the purchase, the original applicant had clearly understood that no allotment was made in her favour and she has further given the undertaking that in case no allotment is possible in future, then she would accept refund with simple interest at the rate of 10% per annum.

(xi) That on 15.04.2010, the original applicant transferred/endorsed his interest in favour of the complainant after submitting the necessary/relevant documents in the office of respondent company.

(xii) That the complainant before this Hon'ble Authority was well aware of the fact that even after expiry of 6 years from the date the original applicant applied for registration for upcoming project of the respondent company, the complainant wilfully moved ahead for the registration in his favour. In these circumstances and with this understanding, the complainant had signed & executed an affidavit-cum-undertaking and indemnity, the said affidavit-cum-undertaking and indemnity clearly stipulates that in case the Complainant is not allotted any plot in upcoming project of the respondent, she shall accept refund of the deposited amount with 10% simple interest per annum. For ease of appreciation clause 7 of the undertaking is reproduced hereunder as

> "*That I/We agree that if I/We are not allotted any plot in the Present & Future Projects, then I/We will accept the refund of the deposited money with the Company along with simple interest*

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@ 9 % per annum from the date of acceptance of our nomination by the Company."

(xiii) That till date respondent company had received an amount of Re. 5,82,500/- from the original applicant in the year 2006. Further, it is submitted that no amount had been deposited by the complainant towards it registration.

(xiv) That it is a matter of record that no demand was ever raised by the respondent company from the complainant after the year 2010, which establishes the fact that no project was ever allotted to the complainant and registration was merely an expression of interest towards the upcoming project of the respondent company.

(xv) That it is pertinent to state that in absence of any agreement to sale, the complainant is bound by the terms & conditions of the application form & affidavit cum undertaking & indemnity which is duly signed & executed by the complainant.

(xvi) That the money receipts clearly depicts that necessary ingredients of an agreement much less a valid contract is conspicuously missing in receipts, which have been have been annexed by the complainant in the present complaint, there is no plot number, no plot size and no specification of the project and rather, receipts specifically mention advance against present and future projects.

(xvii)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.

(xviii)That in view of the submissions made hereinabove it is submitted that no cause of action has arisen in favour of the Complainant to file the present Complaint. Further, the Complaint is barred by limitation and deserves and outright dismissal on this ground alone.

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. 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.

13. 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 his 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

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

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) It is an admitted fact that the original allottee made an advance registration for a plot in the present and future project of the respondent M/s Parsvnath Developers Ltd. on 24.09.2004 and paid

total amount of Rs. 5,82,000/- towards sales consideration. It is also admitted by the respondent promoter that the advance registration was endorsed in favour of the complainant on 15.04.2010. There is also no dispute with regard to the fact that no specific plot was allotted to the predecessor in interest of the complainant and that no builder buyer agreement was executed between the parties. It is also admitted by parties that even after a lapse of 18 years, no allotment of plot has been made by the respondent and ld. Counsel for respondent has stated even today respondent is not in a position to allot a plot to the complainant. Thus, the respondent who has accepted an amount of Rs. 5,82,000/- way back in the year 2004-2006 has been in custody of the money paid for allotment of the plot and 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 her along with interest for delay in handing over the possession in absence of builder buyer agreement and allotment.

(ii) Respondent has averred 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

₹1,75,000/- on 24.09.2004, ₹4,07,000/- on 17.11.2006 (Total sum of ₹5,82,000/-) 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 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 15.04.2010 the plot was transferred in the name of complainant. Acceptance of multiple payments 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 thus 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 15.04.2010. The principal argument of the respondent is with regards to the rights of the subsequent allottee to seek relief of possession along with delay interest i.e the complainant who purchased a unit even being well aware of the fact that the due date of possession has already expired and that the possession of the unit is delayed.

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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 and enjoys same rights as that of an original allottee.

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(d)

In this Act, unless the context otherwise requires-

"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.

(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.

The RERA Act, 2016 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. Moreover, the promoter has till date failed to fulfil its obligations because of which the cause of action is re-occurring. Thus, the complaint is maintainable as per RERA Act, 2016.

(iv) Further, respondent has averred that complainant had executed an affidavit-cum undertaking and indemnity, the said affidavit-cum-undertaking and indemnity clearly stipulates that in case he is not allotted any plot in upcoming project of the respondent company, then shall accept refund of the deposited amount with 9% simple interest per annum. To deal with this objection reference is made to **Civil Appeal no. 12238 of 2019 titled as Pioneer Urban Land & Infrastructure Ltd v/s Govindan Raghavan** wherein the Hon'ble Supreme Court has held that the principle that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable clause in a contract entered into between the parties who are not equal in bargaining power.

In the present case, respondent promoter and complainant were not having equal bargaining power and respondent promoter was in a dominant position. Complainant was bound to sign on dotted lines of undertaking to get the booking endorsed in his favor. Said undertaking is ex-facie one-sided, unfair, and unreasonable. Therefore said undertaking cannot bind the complainant with such one-sided terms.

(v) Another objection of respondent is that there is no proof that booking was made for 'Parsvnath City, Sonepat' and there is no agreement between the parties which can be executed by the Authority. Said argument of respondent is rejected in same terms as has been dealt in detail 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"

(vi) In view of above and after going through the record, Authority observes that complainant who is a subsequent allottee has endorsed in his favour plot in present and future project of respondent for which admittedly a total amount of Rs. 5,82,000/- out of total sale price has been paid, no allotment letter was issued nor any builder buyer agreement was executed between the parties and now complainant is seeking possession of the booked plot endorsed in her favor. It is observed that the factual matrix of present case is 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.

16. In the present case, there is neither any allotment letter nor any plot buyer agreement has been executed between the parties, thus exact/specific date for handing over possession is not provided. Authority observes that in absence of clause with respect to handing over of possession in the plot buyer agreement it cannot rightly ascertain as to when the possession of said plot was due to be given to the complainant. In such circumstances, to determine the due date of handing over of possession reference is made to the judgement of Hon'ble Apex Court in 2018 STPL 4215 SC titled **as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr** wherein the Hon'ble Apex Court has held period of 3 years to be a reasonable time. Therefore, deemed date of possession works out to be 24.09.2007 (three years from the date of booking i.e, 24.09.2004). In order to adjudicate upon the rights of subsequent allottee who has

stepped into the shoes of the original allottee after the deemed date of possession and before coming into force of the RERA Act, 2016 Authority has placed reliance upon the judgement of Apex Court in **Civil Appeal No. 7042 of 2019 titled as Laureate Buildwell Pvt. Ltd v/s Charanjeet Singh**. Relevant part of the said judgement is being reproduced below:

> *"The nature and extent of relief, to which a subsequent purchaser can be entitled to, would be fact dependent. However, it cannot be said that a subsequent purchaser who steps into the shoes of an original allottee of a housing project in which the builder has not honoured its commitment to deliver the flat within a stipulated time, cannot expect any – even reasonable time, for the performance of the builder's obligation. Such a conclusion would be arbitrary, given that there may be a large number- possibly thousands of flat buyers, waiting for their promised flats or residences; they surely would be entitled to all reliefs under the Act. In such case, a purchaser who no doubt enters the picture later surely belongs to the same class. Further, the purchaser agrees to buy the flat with a reasonable expectation that delivery of possession would be in accordance within the bounds of the delayed timeline that he has knowledge of, at the time of purchase of the flat. Therefore, in the event the purchaser claims refund, on an assessment that he too can (like the original allottee) no longer wait, and face intolerable burdens, the equities would have to be moulded. It would no doubt be fair to assume that the purchaser had knowledge of the delay. However, to attribute knowledge that such delay would continue indefinitely, based on an a priori assumption, would not be justified. The equities, in the opinion of this court, can properly*

be moulded by directing refund of the principal amounts, with interest @ 9% per annum from the date the builder acquired knowledge of the transfer, or acknowledged it"

Considering the above judgement, the Authority holds that in cases where subsequent allottee had stepped into the shoes of original allottee after the expiry of due date of handing over possession and before the coming into force of the Act, the subsequent allottee shall be entitled to delayed possession charges w.e.f. the date of entering into the shoes of original allottee i.e. nomination letter or date of endorsement on the builder buyer's agreement, whichever is earlier. Therefore, delay interest will be awarded to the complainant from the date of endorsement i,e. 15.04.2010 till the date of offering valid possession to the complainant.

17. 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 05.09.2023	Further monthly interest
₹5,82,000/-	₹8,38,542/-	₹5,142/-

18. Complainant is also seeking compensation and damages on account of acute frustration leading to extreme mental, financial and emotional harassment. It is observed that Hon'ble Supreme Court of lndia in Civil Appeal Nos. 6745-6749 of 2027 titled as *"M/s Newtech Promoters and Developers PvL 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 shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 44. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of damages and compensation.

19. With respect to relief no. ii, the same is neither part of the pleadings nor was argued/pressed by ld. Counsel for the complainant, thus the same is not allowed.

I. DIRECTIONS OF THE AUTHORITY

20. 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, Sonepat' 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 ₹8,38,542/- Respondent's liability for paying monthly interest of 5,142/- as shown in above table will commence w.e.f. 05.10.2023 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.

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

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NADIM AKHTAR
[MEMBER]

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