



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>1059 of 2023</b>
<b>Date of filing:</b>	<b>03.05.2023</b>
<b>Date of first hearing:</b>	<b>12.07.2023</b>
<b>Date of decision:</b>	<b>19.10.2023</b>

Alok Mehta and Atul Mehta

Both s/o Sh. Basant Kumar Mehta

Both R/o D 253, Ashok Vihar, Phase-I,

New Delhi- 110052

....COMPLAINANT

VERSUS

Parsvnath Developers Ltd.

Office: Parsvnath Tower, Near Shahdara Metro Station,

Shahdara, Delhi- 110001

....RESPONDENT

**CORAM:**

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

**Member**  
**Member**

**Present: -**

Mr. Ramesh Malik, 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 03.05.2023 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 application by complainants	Not mentioned
3.	Plot no, and area	B-3412, Block B, 250 sq. mtrs.
4.	Date of booking	14.02.2005
4.	Date of allotment	Not mentioned
5.	Date of plot buyer agreement	22.07.2010



6.	Basic sale price	₹ 16,44,500/-
7.	Amount paid by complainants	₹ 20,93,000/-
8.	Offer of possession	Not made

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

3. The complainant has made the following submissions in his complaint:

(i) That on 14.02.2005 complainant was allotted a residential plot bearing no. B-3412, having area of 250 sq. mtrs. in the respondent's project namely "Parsvnath City" Sonipat. Plot buyer agreement was executed between the parties on 22.07.2010.

(ii) That as per the plot buyer agreement the basic sales price of the plot was Rs. 16,44,500/- against which an amount of Rs. 20,93,000/- allegedly stands paid by the complainant or his predecessors. Copies of payment receipts have been annexed with the complaint as Annexure C-3.

(iii) That respondent has acted contrary to clause 8(a) of the plot buyer agreement in accordance with which the promoter shall not withhold the plot beyond reasonable period and shall be granted after payment of administrative charges. There is unreasonable delay in offering possession of the plot in question.

(iv) That respondent has acted contrary to clause 11(a) of the plot buyer agreement in accordance with which it was agreed between the parties that the respondent would execute conveyance deed of plot and register the same in favor of the complainants within a reasonable time after the plot has been finally demarcated at site.

(v) 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.

(vi) 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.

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

**C. RELIEF SOUGHT**

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



- (i) To direct the respondent company to offer actual physical possession of the Plot in question i.e, Plot B-3412, Block B, Parsvnath City, Sonipat;
- (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-3412, Block-B, Parsvnath City
- (iv) To direct the respondent -Company 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 the order dated 13.10.2021
- (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**

5. Learned counsel for the respondent filed detailed reply on 30.05.2023 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.

(iii) 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.

(iv) 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.

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

(vi) That on 22.07.2010, an agreement was entered between Mr. Alok Mehta and Mr. Atul Mehta and the respondent company for allotment of a residential plot bearing no. B-3412 area admeasuring 299 sq. yd. in the township Parsvnath City Sonipat. Basic sales price of said plot was Rs. 16,44,500/- and further complainants opted to make further payment as per payment plan ALT plan. Various reminders were sent to the complainants regarding non-payment of instalments.

(vii) That the brief fact as regards to the project is that on 10.07.2010, respondent company applied LOI for the Land admeasuring 51 acres. However, the same was rejected by the competent authority (DTCP) vide letter dated 19.02.2013. Pursuant to that on 19.09.2019, one of the association Company of the respondent company applied for license for the land as measuring 25.344 acres falling under in the revenue village Rajpura, Sector 10 & 11, District- Sonapat, Haryana to



develop a residential plotted colony.

(viii) That the inability of the respondent company to develop the project is primarily the encroachments by the local farmers on the 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.

(ix) 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 should not be issued to the landowner/ developer/its associate companies etc. till the clearance of all the outstanding EDC. Hence despite making all sincere steps, the respondent company is not able to get the LOI of the said project land.

(x) 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.

(xi) 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 caused the abandoning of the project.





(xii) 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. 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.

(xiii) 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 clause 5 (b) of the buyer's agreement applicable from the date of endorsement. 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 a plausible solution.

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

6. 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

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case **complaint case no. 865 of 2020 titled Deepak Gupta 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.

7. 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. 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**

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8. 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**

9. 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 complainant was allotted a residential plot bearing no. B-3412 having area of 250 sq. mtrs in the respondent's project namely "Parsvnath City" Sonipat vide plot buyer agreement dated 19.07.2010; Basic sales price of the plot was Rs. 16,44,500/- against which an amount of Rs. 20,93,000/- stands paid by the complainant; even after lapse of 13 years, possession of the plot has not been offered by the respondent.
- (ii) However respondent has raised an objection regarding maintainability of the complaint on the ground that 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

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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.

- (iii) Further, the respondent has taken a stand that the complainants are speculative buyers who have invested in the project for monetary returns and taking undue advantage of RERA Act 2016 as a weapon during the present downside conditions of the real estate market and therefore not entitled to the protection of the Act of 2016. In this regard, Authority observes that "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 as the case may be. In the present case, the complainants are aggrieved persons who have 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;

In view of the above-mentioned definition of "allottee" as well as upon careful perusal of builder buyer agreement dated 22.07.2010, it is clear that complainants are an "allottee" as plot bearing no. 3412, Block B measuring 250 sq. mtrs in the real estate project "Parsvnath City", Sonipat was allotted to them by the respondent promoter. 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. 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. The Maharashtra Real Estate Appellate 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.

- (iv) Respondent has also taken objection that complaint is grossly barred by limitation. Reference in this regard is made to the judgement of

  
J. Rathee

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 Courts. Further, the promoter has till date failed to fulfil his obligations because of which the cause of action is re-occurring.

- (v) Further, the respondent has objected that the provisions of RERA Act, 2016 cannot be applied retrospectively. This has been already decided by the Hon'ble Supreme Court in case **titled M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. (supra)**, wherein the Hon Apex Court has held as under:-

*“41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections*



*13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case."*

In view of the aforementioned judgement it is now settled that provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the Rules applicable to the acts or transactions, which are in the process of the completion though the contract/ agreement might have been entered into before the Act and the Rules became applicable. Hence, this objection raised by the respondent is negated.

- (vi) Respondent in the present complaint has also stated that various reminders were sent to the complainants regarding non-payment of instalments. On perusal of the said reminder letters, it has been revealed that reminders were sent from January 2010 to June 2010. It is pertinent to mention here that complainant has made the last payment in July 2010 i.e, post the last reminder letter, which shows that all the demands have been duly paid by the complainant. Further,





complainants have already paid an amount of ₹20,93,000/- against the basic sales price of Rs. 16,44,500/-. Respondent has also not disputed the said payment meaning thereby, delay due to non-payment of instalments cannot be attributed to the complainant.

- (vii) The complainant in the present case has pleaded that the facts of the case are identical to that of the facts in complaint no. 865 of 2020 titled as Deepak Gupta vs Parsvnath Developers Ltd. The complainants in the present case have purchased a plot bearing no. B-3412 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-3412, 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. 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.**



(viii) In the present case, plot buyer agreement has been executed between the parties on 22.07.2010 however the agreement does not stipulate any time frame for handing over possession. 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. It has been observed that period of 3 years is reasonable time by Hon'ble Apex Court in 2018 STPL 4215 SC titled as **M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr.** Therefore, deemed date of possession works out to be 22.07.2013.

(ix) 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 along 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. 3412, Block B, 250 sq. mtrs 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-3 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%).

- (x) 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 19.10.2023	Further monthly interest
₹20,93,000/-	₹23,06,687/-	₹18,493/-



- (xi) 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.
- (xii) With respect to relief no. ii, the same is neither part of the pleadings nor was argued/pressed by Id. Counsel for the complainant, thus the same is not allowed.

#### **H. DIRECTIONS OF THE AUTHORITY**

10. 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 ₹23,06,687/-. Respondent's liability for paying monthly interest of ₹18,493/- as shown in above table will commence w.e.f. 20.11.2023 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 with respect to payment of interest amount, as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.
- (iii) Respondent is further directed to get the conveyance deed registered in favour of the complainant within 90 days of valid offer of possession.

11. **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]