



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	497 of 2023
Date of filing:	03.03.2023
Date of first hearing:	04.05.2023
Date of decision:	24.08.2023

Vikas Satija

B-33, Bijli Apartment, Block-B,
Gujrawala Town, Delhi- 110009

...Complainant

Versus

M/s Parsvnath Developers Ltd.
Parsvnath Tower Near Shahdara Metro Station,
Shahdara, Delhi, East Delhi: 110032

...Respondent

CORAM:

Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Present: -

Mr. Chaitanya Singhal, Counsel for the complainant
through video conference

Ms. Rupali Verma, counsel for the respondent through
VC.

ORDER (Dr. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated has been filed by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for

short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the unit booked by complainant, the details of sale consideration, the amount paid by the complainant and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Present and Future projects; Location: Sonapat, Haryana.
2.	Name of promoter	Parsvnath Developers Ltd.
3.	Date of booking	23.06.2004
4.	Unit area	Not mentioned
5.	Date of allotment	Allotment not made
6.	Date of builder buyer agreement	Not executed
7.	Basic Sale Price	Not mentioned

8.	Amount paid by complainant	₹ 5,62,775/-
9.	Due date of possession	Cannot be ascertained
9.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT

3. That the respondent is leading real estate company in India, with various projects in Delhi NCR and other parts of India. That through public advertisement, the respondent company boasted that it is its' endeavour to meet the expectations of the buyers, enticing them to invest their hard earned money in their projects and made tall claims and promises of high quality production and timely possession. Further it claimed that the said project is inspired by the dreams of the consumers and driven by its commitment to deliver the finest quality and set new benchmarks in the industry.
4. That on being lured and deceived by such representations and tall claims of the respondent on 23.06.2004 the original allottee had booked a residential plot measuring 300 sq. yards @ rate of Rupees 5,250/- per sq. yards in respondent's township named Parsvnath City Sonipat under "Present & Future scheme" scheme launched by the respondent company at Sonipat, Haryana.
5. That in lieu of the above said booking the original allottee had paid a sum of Rs. 1,50,000/- to the respondent via cash on 23.06.2004 which

was duly honored and thereafter respondent had issued payments receipt for the same. Thereafter on 10.02.2006 the original allottee further paid a sum of Rs. 3,75,000/- to the Respondent.

6. That on 20.05.2010 the plot booking was transferred in the name of second allottee, i.e, Mr. Anmol Singh Bhatia & Mrs. Paramjeet Kaur from the original allottee (Sh. Krishna Goel). The Respondent issued endorsement letter for the same.
7. That further on 23.07.2012 the plot booking was transferred in the name of the complainant Mr. Vikas Satija. The Respondent gave endorsement letter for the same. The respondent demanded Rs. 37,500/- towards transfer charges which was duly paid by the complainant.
8. That the respondent failed to give allotment of plot to the complainant in spite of receiving a sum of Rs. 5,25,000/- as advance. That no Builder Buyer agreement is executed between the complainant and the respondent till date. The complainant was legally entitled for the allotment and possession of booked plot. The respondent has allotted plots on premium to other buyers by ignoring the rightful claim of the complainant and had done illegal sale.
9. That as per the payment receipts and statement of accounts the complainant has paid a total sum of Rs. 5, 25,000/- in the year 2004 itself and the respondent had neither refunded the money paid by the



complainant nor given allotment of plot to the complainant. The Respondent is arbitrarily withholding the money of complainant since the year 2004.

10. That the complainant had repeatedly visited respondents' office for more than 50 times to enquire the status of his allotment but all his visits and phone calls went in vein. Every time the respondent assured the complainant that it will allot the plot within 6 months. The respondent has deliberately and intentionally not given possession nor issued any refund. This is an attempt to cheat and dupe with a malafide and dishonest intention to cause undue gain to respondent itself and undue losses to the Complainant.

11. That the facts and issues of the present complaint are entirely the same as has been held by Hon'ble RERA Authority, Panchkula in **Complaint no. 1198 of 2021 in "Mohinder Singh Aggarwal Vs Parsvnath Developers** wherein the Authority had ordered the respondent Parsvnath developers to give refund and along with interest to the complainant in Parsvnath City Sonipat.

12. That due to non-delivery of plot the cause of action is in favor of complainant and against the respondent is a continuing cause of action and still subsisting one since the respondent failed to give allotment and possession of plot to the complainant till date.



13. That no other complaint against the respondent company is pending in any other court/forum in India.

14. That this Hon'ble Real Estate Regulatory Authority has jurisdiction to try and decide this complaint since the project which was to be developed was in project and is within the jurisdiction of the Hon'ble Authority.

DETAILS OF THE AMOUNT PAID BY THE COMPLAINANT TO THE RESPONDENT ARE AS FOLLOWS:-

Sl. No.	Date of Payment	Cheque No.	Receipt No.	Amount Paid
1.	23.06.2004	Cash	00003556	1,50,000/-
2.	10.02.2006	081968	PC003364	3,75,000/-
3.	25.06.2012	Cash (Transfer charges)	23929	37,500/-
TOTAL AMT. PAID				Rs.5,62,500/-

C. RELIEF SOUGHT

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

- (i) To refund the principle amount of Rs.5,62,500/- along with interest as per RULE 15 OF HRERA Rules from the date amounts were paid till date.



- (ii) To levy penal interest of 14% on the respondent on account of wrongly keeping the money of the complainant from year 2004 till today.
- (iii) Any other relief(s) as the Hon'ble Authority may deem fit and proper in light of the facts and circumstances of the above case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 08.05.2023 pleading therein:-

- 16. 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.
- 17. That as per section 2(d) of The Real Estate(Regulation and Development) Act, 2016. The definition of allottee is reproduced hereinafter for ease of this Hon'ble Authority.

“Section 2(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.”

- 18. 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 SCC online SC 249, the Hon'ble Apex Court has been pleased to observe that mere representations does not extend the period of limitation and the aggrieved person has to approach the court expeditiously and within reasonable time. In the present case the complainant is guilty of delay and laches, therefore, his claim should be dismissed.

19. 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.
20. 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.
21. That in the respectful submission of respondent, it is stated that in similar circumstances, in the matter of "Savita Khaturia v. M/s Parsunath 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


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Hon ble Tribunal had directed the complainant to accept refund of the deposited amount.

22. That the complainant has failed to plead cause of action in accordance with law.
23. That on 23.06.2004, Mrs. Krishna Goel expressed her interest in the registration/ booking of a plot in any of the upcoming/new project of the respondent company and paid Rs. 1,50,000/- towards the registration.
24. 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 he shall accept the refund of the amount deposited by him 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 at a price which is Rs. 500/- (Rupees Five Hundred Only) per square yard 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.

A copy of the application form dated 23.06.2004, which was duly signed and executed by the original applicant is annexed herewith as Annexure R-1.

25. 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 her favour and she 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.

26. That on 20.05.2010, the original applicant transferred/endorsed his interest in favour of Mr. Anmol Singh Bhatia & Mrs. Paramjit Kaur (second allottees). On 23.07.2012. the subsequent purchasers have transferred/endorsed their interest in favour of Mr. Vikas Satija. A copy of endorsement/nomination letter dated 23.07.2012, is annexed herewith as Annexure R-2.

27. That on 03.07.2012, 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, he shall accept refund of the deposited amount with 9% 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 @ 9 % per annum from the date of acceptance of our nomination by the company"

28. That it is submitted that till date an amount of Rs. 5,62,775/- had been paid to the respondent company out of which Rs., 5,25,275/- paid by the original applicant in the year 2004 and 2006 and rest by



the complainant. Further, it is submitted that complainant had not paid any amount towards the registration. A copy of the ledger dated 18.03.2023, is annexed herewith as Annexure R-4. That it is a matter of record that no demand was ever raised by the respondent company from the original applicant or subsequent purchasers as well as from the complainant after the year 2006, which establishes the fact that no project was allotted to the complainant or to his predecessor in interest and the registration was merely an expression of interest towards the upcoming project of the respondent company.

29. That it is pertinent to state that in absence of any agreement to sale, the complainants are strictly bound by the terms & conditions of the application form and affidavit-cum-undertaking & indemnity which is duly signed & executed by the Complainant.
30. That the money receipts would show that necessary ingredients of an agreement much less a valid contract is conspicuously missing. In the 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. 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 himself in filing the above captioned complaint before this Hon'ble HRERA, Panchkula as the relief (s) claimed by the complainants do not even fall deserves and outright dismissal on this ground alone. Further, the Complaint is barred by limitation and no cause of action has arisen in favour of the complainant to file the present complaint.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

31. During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for complainant submitted that complainant is willing to accept refund of the amount deposited by him along with interest. Learned counsel for respondent also stated that respondent does not have any plot available with them to be offered to complainant, but is ready to refund the amount.

F. ISSUES FOR ADJUDICATION

32. Whether the complainant is entitled to refund of amount deposited by him along with interest in terms of Section 18 of Act of 2016?

G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

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

(i) It is an admitted fact that the original allottee Mrs. Krishna Goel made advance registration for a plot in the present and future project of the respondent M/s Parsvnath Developers Ltd. on 23.06.2004 and paid an amount of Rs. 1,50,000/- towards sales consideration. It is also admitted by the respondent promoter that the advance registration was endorsed in favour of the subsequent allottees i.e. Mr. Anmol Singh Bhatia and Mrs. Paramjit Kaur and the same was finally endorsed in the name of complainant on 23.07.2012. 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 an admitted fact that even after a lapse of 9 years, no allotment of plot has been made by the respondent and Id. 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. 5,25,000/- way back in the year 2004-2006 has been in custody of the money paid for allotment of the plots and has been enjoying benefits out of it. Facts of this case are identical to the facts of the case in complaint no. **1198 of 2021 titled as Mohinder Singh Aggarwal vs Parsvnath Developers Ltd.** So, the present case is being disposed of in the same terms of the said case.



(ii) As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub. sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%: Provided that in case the State Bank of India marginal cost of lending rate (NCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public”.

(iii) Complainant has claimed in his complaint interest @ 14%. The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

(iv) Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the marginal cost of lending rate (in short MCLR) as on date i.e. 24.08.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.

(v) The definition of term ‘interest’ is defined under Section 2(za) of the Act which is as under:



(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainant the paid amount of ₹5,62,775/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.75% (8.75% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 10.75% till the date of this order and said amount works out to ₹ 10,62,080/- as per detail given in the table below:



S.No.	Principal Amount	Date of payment	Interest Accrued till 24.08.2023
1.	150000	6/23/2004	309335
2.	375000	2/10/2006	707402
3.	275	5/20/2010	392
4.	37500	7/3/2012	44951
Total	5,62,775/-		10,62,080/-

H. DIRECTIONS OF THE AUTHORITY

34. 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 refund the entire amount of ₹ 16,24,855/- to the complainant.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.



35. **Disposed of.** File be consigned to record room and order be uploaded on the website of the Authority.



.....
NADIM AKHTAR
[MEMBER]



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