HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**234 of 2022**
Date of filing:	**28.02.2022**
Date of first hearing:	**05.04.2022**
Date of decision:	**01.08.2023**

Neeraj Agarwal,

R/o F-23, 3rd floor, Lajpat Nagar-1,

New Delhi - 110024

....COMPLAINANT(S)

VERSUS

Parsvnath Developers Ltd.

Parsvnath Tower, Near Shahdara Metro Station,

Shahdara, Delhi, 110032

....RESPONDENT(S)

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

Present: - Mr. Neeraj Agarwal, complainant through video conference

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

ORDER (Dr. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated 28.02.2022 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 him and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Parsvnath Preston, Sonepat, Haryana
2.	Name of the promoter	Parsvnath Developers Ltd.
3.	Date of booking by complainant	16.01.2008
4.	Unit no. and area	T9-304, 1900 sq.ft.
6.	Date of builder buyer agreement	08.02.2008
7.	Date of EMI agreement	24.04.2008

8.	Basic sale price	₹40,27,550/-
9.	Amount paid by complainant	₹38,26,172.50/-
10.	Due date of possession	08.02.2011 Clause 10(a) The construction of the flat is likely to be completed within a period of thirty six months from the date of start of foundation of the particular tower in which flat is located with a grace period of 6 months, on receipt of sanction of building plans/revised building plans and approvals of all concerned authorities.
11.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT

3. Facts of the complainant's case are that in the year 2008 complainant booked a flat bearing no. T9-304 admeasuring 1900 sq.ft. along with covered parking in a project named 'Parsvnath Preston, Sonepat' being developed by respondent Parsvnath Pvt. Ltd. As per clause 10(a) of flat buyer agreement executed between the parties on 08.02.2008, respondent was under an obligation to hand over possession of the flat within a period of 36 months from the date of start of foundation of particular tower along with grace period of 6 months, but respondent has failed to fulfil its promises.

4. The unit was booked as per EMI subvention scheme of the builder wherein down payment of ₹ 19,26,172.50/- was made by the complainants and a bank loan of ₹19,00,000/- was got disbursed from Axis Bank Ltd. to builder in April 2008 itself. Thus, a total amount of ₹38,26,172.50/- was paid to the respondent till April 2008 out of the basic sale price of the unit amounting to ₹40,27,550/-. As per EMI agreement dated 24.04.2008 (copy annexed as Annexure P-1 with the complaint), respondent was supposed to pay the EMI's in respect of bank loan till the date of offer of possession of the flat was made to the complainant. The respondent paid EMI's only till October 2010. Cheques from November 2010 to January 2011 were not issued by respondent. An email was written to respondent on 12.07.2011 regarding this but respondent did not issue the cheques. Cheques from 03.08.2011 to 03.11.2011 got bounced back. Thereafter respondent has stopped making payment of EMI, since then, as a result, burden of paying EMI has fallen on the complainant and he had paid entire EMIs thereafter. It has been submitted that 132 cheques of ₹31,092/- in lieu of EMI are pending till date and hence total amount pending with respondent against EMI is ₹41,04,145/-. On 29.04.2017, respondent informed the complainant that his unit has been changed from T9-304 to T1-304 due to certain modifications in plans and with a view to achieve early completion. It has been contended that full

amount of loan has been refunded back to Axis Bank and 'NOC' was obtained from said bank. Hence, no loan amount is pending against this property.

5. Neither any possession has been offered till date nor, allegedly, the construction has started at the site of the project nor have even EMIs been reimbursed after October 2010. There has been lapse of more than 14 years from the date of booking, so the complainant has lost faith in respondent and has no hope of getting the flat. Hence, present complaint has been filed.

C. RELIEF SOUGHT

6. The complainant in his original complaint has not sought any specific relief, however on perusal of last para of the complaint it could be inferred that the complainant has sought the following reliefs:

(i) Payment of pending amount of ₹41,04,145/- (Rupees Forty One Lakhs Four Thousand One Hundred Forty Five only) along with 12% rate of interest against 132 nos. EMI.

(iii) Interest @12% also payable on this amount i.e. ₹53,65,965/- (Rupees Fifty Three Lakh Sixty Five Thousand Nine Hundred Sixty Five only). Hence total amount payable is ₹94,70,110/- (Rupees Ninety Four Lakhs Seventy Thousand One Hundred Ten only).

However, the complainant in its replication dated 02.05.2022 has removed the ambiguity and had prayed that either flat possession may be provided or complainant's money i,e. ₹38,26,172/- (paid in the year 2008) along with interest may be refunded by the respondent.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 08.04.2022 pleading therein:-

7. Present complaint pertains to unregistered project of respondent company. Further, Hon'ble Supreme Court in the matter titled Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others has ruled that the RERA does not have jurisdiction to entertain complaints relating to un-registered projects.

8. 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.

9. The complainant has approached the Authority with multiple reliefs, thus Authority does not have jurisdiction to entertain the claim of complainant.

10. The provisions of RERA Act, 2016 cannot be applied retrospectively.

11. On 16.01.2008, complainants booked a flat bearing no. T9-304, 9th floor, admeasuring 1900 sq.ft. in the project named 'Parsvnath Preston, Sonepat'. Complainants proceeded with the booking after conducting proper due diligence and being aware about the status of the project.

12. On 08.02.2008, flat buyer agreement was executed between the parties as per which basic selling price of the flat was fixed at ₹40,27,550/- and the complainants had opted to make further payment as per the EMI Subvention Scheme Plan.

13. It has been contended that project is being developed in terms of statutory approvals granted by competent authority. It has been submitted that licence no. 1205-1206 of 2006 dated 06.10.2006 had been duly issued by Town & Country Planning Department and respondent has applied for its renewal for the period from 06.10.2019 to 05.10.2024.

14. It has also been submitted that EDC, IDC, conversion charges etc have been paid in full to the Competent Authority.

15. It has been admitted that complainant had paid ₹38,26,172.50/- to the respondent company.

16. There is no intentional delay on the part of respondent and the project got delayed for reasons beyond control of respondent company. The project could not achieve pace as the customers/allottees did not make timely payments an even started opting out of the project. All such factors played vital role in causing damage to the project and hence development and construction of the project could not take place as per the agreed schedule. However, respondent company is putting its best efforts to complete the construction work at the project site.

17. It has been submitted that time is not of essence of contract. It has also been contended that till date a sum of ₹15,23,508/- has been paid to complainants on account of EMIs paid by them to the bank.

18. That, the respondent has prayed that the complaint may kindly be dismissed in view of above said submissions

E. REJOINDER FILED BY COMPLAINANT

19. Complainant filed rejoinder on 02.05.2022 reiterating the facts of complaint and disputing the facts alleged by respondent. It has been specifically denied that respondent had reimbursed the complainant an amount of ₹15,23,508/- towards EMI paid by him to the bank. Further,

complainant has prayed that he may awarded possession of the flat or in alternative refund be allowed in his favour along with interest.

F. ARGUMENTS OF COMPLAINANT AND LEARNED COUNSEL FOR THE RESPONDENT

20. During oral arguments both parties reiterated their arguments as were submitted in writing. Ld. Counsel for the complainant argued that the complainant wants to withdraw from the project and the amount deposited by him may be refunded along with interest and respondent be directed reimburse the EMIs which have not been paid by him along with interest. Learned counsel for respondent also submitted that project was being developed in terms of statutory approvals granted by competent authority. She further stated that respondent is determined to give possession of booked flat to the complainants, and if deposited amount of the complainants are refunded to them, then entire project will be halted

G. ISSUES FOR ADJUDICATION

21. Whether the complainant is entitled to refund of amount deposited by him and reimbursement of EMIs paid by him to bank, along with interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

22. Case was heard at length on 05.08.2022. The issue of applicability of RERA Act to an unregistered project has been deliberated at length in

the third hearing of this case dated 05.08.2022. Relevant part of order dated 05.08.2022 is reproduced below for reference:-

> *"Learned counsel for respondent further argued that the apartment of the complainant is located in an un-registered project of the respondent company. Further, Hon'ble Supreme Court in the matter titled Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others has ruled that the RERA does not have jurisdiction to entertain complaints relating to un-registered projects. Learned counsel while arguing on the application, drew attention of the Authority towards Para-54 of the judgement of Hon'ble Supreme Court as reproduced below:-*
>
> *"54. From the scheme of the Act, 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016." (emphasis supplied).*
>
> *6 Learned counsel also drew attention of the Authority towards similar view taken by learned RERA Punjab that un-registered projects do not fall within jurisdiction and purview of the Authority.*
>
> *7. In regard to applicability of Para 54 of the judgment of Hon'ble Supreme Court in Newtech matter, Authority observes that respondents are not understanding the order of Hon'ble Supreme Court in correct perspective. Authority observes that entire orders especially Paras 32, 33, 34, 40, 53 and 87 should be read with Para 54. Said Paras are reproduced below for reference:*

"32. The issue concerns the retroactive application of the provisions of the Act 2016 particularly, with reference to the ongoing projects. If we take note of the objects and reasons and the scheme of the Act, it manifests that the Parliament in its wisdom after holding extensive deliberation on the subject thought it necessary to have a central legislation in the paramount interest for effective consumer protection, uniformity and standardisation of business practices and transactions in the real estate sector, to ensure greater accountability towards consumers, to overcome frauds and delays and also the higher transaction costs, and accordingly intended to balance the interests of consumers and promoters by imposing certain duties and responsibilities on both. The deliberation on the subject was going on since 2013 but finally the Act was enacted in the year 2016 with effect from 25th March, 2016.

33. Under Chapter II of the Act 2016, registration of real estate projects became mandatory and to make the statute applicable and to take its place under subSection (1) of Section 3, it was made statutory that without registering the real estate project with a real estate regulatory authority established under the Act, no promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner a plot, apartment or building, as the case may be in any real estate project but with the aid of proviso to Section 3(1), it was mandated that such of the projects which are ongoing on the date of commencement of the Act and more specifically the projects to which the completion certificate has not been issued, such promoters shall be under obligation to make an application to the authority for registration of the said project within a period of three months from the date of commencement of the Act. With certain exemptions being granted to such of the projects covered by subsection (2) of Section 3 of the Act, as a consequence, all such home buyers agreements which has

been executed by the parties inter se has to abide the legislative mandate in completion of their ongoing running projects.

34. The term "ongoing project" has not been so defined under the Act while the expression "real estate project" is defined under Section 2(zn) of the Act which reads as under: "2(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;"

"40. Learned counsel further submits that the key word, i.e., "ongoing on the date of the commencement of this Act" by necessary implication, exfacie and without any ambiguity, means and includes those projects which were ongoing and in cases where only issuance of completion certificate remained pending, legislature intended that even those projects have to be registered under the Act. Therefore, the ambit of Act is to bring all projects under its fold, provided that completion certificate has not been issued. The case of the appellant is based on "occupancy certificate" and not of "completion certificate". In this context, learned counsel submits that the said proviso ought to be read with Section 3(2)(b), which specifically excludes projects where completion certificate has been received prior to the commencement of the Act. Thus, those projects under Section 3(2) need not be registered under the Act and, therefore, the intent of the Act hinges on whether or not a project has received a completion certificate on the date of commencement of the Act."

"53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection."

"87. It is the specific stand of the respondent Authority of the State of Uttar Pradesh that the power has been delegated under Section 81 to the single member of the authority only for hearing complaints under Section 31 of the Act. To meet out the exigency, the authority in its meeting held on 14 th August 2018, had earlier decided to delegate the hearing of complaints to the benches comprising of two members each but later looking into the volume of complaints which were filed by the home buyers which rose to about 36,826 complaints, the authority in its later meeting held on 5th December, 2018 empowered the single member to hear the complaints relating to refund of the amount filed under Section 31 of the Act."

8. *To answer the questions posed by the learned counsel for the respondents, reference is also drawn to Section-79 and Section-89 of the RERA Act as reproduced below:*

*"**Section 79: Bar of jurisdiction** - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or*

under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

*"**Section 89: Act to have overriding effect** - The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force."*

9. *Conjoint reading of Paras referred to above and Sections 79 and 89 of the RERA Act leads to unmistakable conclusion that the provision of this Act will have over riding effect notwithstanding anything inconsistent therewith contained in any other law. Further after coming into force of RERA Act, exclusive jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority is empowered under this Act to determine shall be that of the RERA only and not of any other court.*

10. *Question that arises herein is that numerous complaints are filed before this Authority by allottees who have booked/purchased apartments in all kinds of projects including compleed projects, under construction projects, registered projects as well as unregistered projects. An unregistered project can be a completed project which has not received Occupation Certificate or an ongoing project which has not been registered by the promoter in gross violation of Section 3 of the RERA Act. Further, allottees of incomplete or completed, as well as registered and unregistered projects have variety of grievances against the promoters. Such grievances includes the grievances like excess money demanded by promoters over and above agreed sale consideration; common facilities not being provided; deficiencies in construction due to which the apartments are inhabitable; change of plans made at the level of the promoters thus adversely*

Ratnee

affecting rights of the allottees; apartments having been delivered after delay of 5-10 years and promoters refusing to pay to the allottees interest/compensation admissible as per law; even though possession is handed over but conveyance deeds not being executed, etc.etc. These are but only a few illustrations of the grievances of the allottees against the promoters. Such grievances relate to registered as well as unregistered projects, and in fact even relates to completed projects.

11. A considered view of this Authority is that two distinct kinds of jurisdictions have been conferred upon the Authority by the RERA Act, 2016. The first jurisdiction is in relation to registration of the projects. Section 3 of the Act mandates that all new projects shall be registered with the Authority before an advertisement for booking of plots/apartments is issued. Further, all those projects which are ongoing and have not received a completion certificate from the competent authorities shall be registered within a period of 3 months. Section 4 of the Act provides for a long list of disclosures to be made by promoters for getting the project registered. The purpose and intention of the law in this regard is to bring about transparency in the functioning of real estate promoters. They are bound to disclose full details of ownership of the land of the project; details regarding development plans got approved from competent authorities; the timelines within which project is proposed to be completed; specifications of the apartments to be constructed, etc. Further, the process of registration mandates that 70% of money collected from allottees shall be spent only on development of the project. In the event of violation of provisions of law and stipulations made by Authority, registration of the project can be cancelled. A consequence of cancellation of registration is that alternate mode for getting the project completed can be explored, including by handing it over to association of allottees.

12. The process of registration, therefore, is meant to bring in transparency, and to bring full facts about the project as well as its promoters in public domain to enable prospective allottees to make informed decision of making investment of their hard earned money for their future homes. Sections 3 and 4 read with certain provisions relating to respective obligations of promoters and allottees are meant to provide level playing field for both sides.

13. In the above context it is relevant here to briefly discuss the concept of completion/occupation certificate. What is a completed project or a project fit to be granted occupation certificate has not been defined anywhere in the RERA Act, 2016. These concepts have been somewhat defined in relevant laws of different states of the country. The completion certificates and occupation certificates are granted by the State Government authorities as per their own laws and policies. Grant of completion/occupation certificate by State Government authorities only signifies that relevant project has fulfilled certain requirements stipulated by certain laws enacted by State Government. It does not signify that the promoter has fulfilled its obligations towards allottees in terms of builder buyer agreements.

14. The agreements executed by promoters of real estate projects with home buyers-allottees stipulates many more obligations then provided for in the relevant laws regulating the subjects of grant of completion/occupation certificates. It is reiterated that grant of completion and occupation certificate only mean that certain parameters of laying infrastructure facilities under set laws of the State Government have been complied with by the promoters. They do not in any manner certify that the promoters have fulfilled their obligation towards allottees. The obligation towards the allottees as enlisted in the builder-buyer agreements relate to numerous additional subjects like the

consideration to be exchanged; specifications of the apartments; timeline within which the project would be completed; obligation to execute conveyance deeds; obligation to hand over the completed project to the association of allottees; laying of infrastructure facilities and handing them over to the association of allottees in the manner prescribed etc.etc. The promoters of completed as well as unregistered projects could be defaulting in respect of such obligations. If a promoter illegally and unjustifiably demands additional amount over and above the agreed sales consideration, dispute will have to be settled by some court of law. After coming into force of this Act and in view of the provisions of Section 79 and 89, RERA and Consumer Court only will have jurisdiction to deal with such disputes.

15. Authority is of the considered view that respondents are completely misreading provisions of the Act and Para-54 of the judgement of the Hon'ble Supreme Court passed in Newtech Promoters' matter. The question as to which forum will redress the grievances of the kinds listed above of allottees pertaining to ongoing or completed or registered or unregistered projects was not before the Hon'ble Supreme Court in Newtech Matter. In considered view of this Authority operative part in para-54 of the judgement of the Hon'ble Supreme Court is that "....therefore, vested or accrued rights, if any, in no manner are affected". Such vested or accrued rights could pertain to new projects, ongoing projects, completed projects, registered projects or unregistered projects. In considered view of this Authority, genuine grievances of the allottees in any kind of project have to be redressed. Therefore, there has to be a forum for this purpose. Such forum is RERA in terms of provisions of the Act, especially Section 79 and Section 89 of the Act. In this regard relevant portion of the judgment dated 09.08.2019 of Hon'ble Supreme Court passed in Writ Petition (Civil) no. 43 of 2019 titled as Pioneer Urban

land & Infrastructure Ltd. & Anr. versus Union of India & Ors is reproduced below:

"86(ii). The RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over the RERA. Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code."

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

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

getting their incomplete project registered. Protection of defaulter promoters is not the intent of RERA Act. It is meant to hold them accountable. The interpretation sought to be given by learned counsel for respondent will lead to perverse outcome.

18. For the foregoing reasons, Authority rejects the arguments put forth by learned counsel for respondent company"

23. Respondent has also taken objection that complaint is grossly barred by limitation. In this regard, Authority has referred to the judgement of Apex court **Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise**.

"A number of decisions have established that the Limitation Act applies only to courts and not to Tribunals. The distinction between courts and quasi-judicial decisions is succinctly brought out in Bharat Bank Ltd. v. Employees of Bharat Bank Ltd., 1950 SCR 459. This root authority has been followed in a catena of judgments. This judgment refers to a decision of the King's Bench in Cooper v. Wilson. The relevant quotation from the said judgment is as follows:- "A true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisites: (1) The presentation (not 18 Page 19 necessarily orally) of their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal argument by the parties, and (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and application of the law of the land to the facts so found, including where required a ruling upon any disputed

question of law. A quasi-judicial decision equally presupposes an existing dispute between two or more parties and involves (1) and (2), but does not necessarily involve (3) and never involves (4). The place of (4) is in fact taken by administrative action, the character of which is determined by the Minister's free choice." 18. Under our constitutional scheme of things, the judiciary is dealt with in Chapter IV of Part V and Chapter V of Part VI. Chapter IV of Part V deals with the Supreme Court and Chapter V of Part VI deals with the High Courts and courts subordinate thereto. When the Constitution uses the expression "court", it refers to this Court system. As opposed to this court system is a system of quasi-judicial bodies called Tribunals. Thus, Articles 136 and 227 refer to "courts" as distinct from "tribunals". The question in this case is whether the Limitation Act extends 19 Page 20 beyond the court system mentioned above and embraces within its scope quasi-judicial bodies as well. 19. A series of decisions of this Court have clearly held that the Limitation Act applies only to courts and does not apply to quasi-judicial bodies. Thus, in Town Municipal Council, Athani v. Presiding Officer, Labour Court, (1969) 1 SCC 873, a question arose as to what applications are covered under Article 137 of the Schedule to the Limitation Act. It was argued that an application made under the Industrial Disputes Act to a Labour Court was covered by the said Article. This Court negatived the said plea in the following terms:- "12. This point, in our opinion, may be looked at from another angle also. When this Court earlier held that all the articles in the third division to the schedule, including Article 181 of the Limitation Act of 1908, governed applications under the Code of Civil Procedure only, it clearly implied that the applications must be presented to a court governed by the Code of Civil Procedure. Even the applications under the Arbitration Act that were included within the third division by amendment of Articles 158 and 178 were to be presented to courts whose proceedings were governed by the Code of Civil Procedure. As best, the

further amendment now made enlarges the scope of the third division of the schedule so as also to include some applications presented to courts governed by the Code of Criminal Procedure. One factor at least 20 Page 21 remains constant and that is that the applications must be to courts to be governed by the articles in this division. The scope of the various articles in this division cannot be held to have been so enlarged as to include within them applications to bodies other than courts, such as a quasi judicial tribunal, or even an executive authority. An Industrial Tribunal or a Labour Court dealing with applications or references under the Act are not courts and they are in no way governed either by the Code of Civil Procedure or the Code of Criminal Procedure. We cannot, therefore, accept the submission made that this article will apply even to applications made to an Industrial Tribunal or a Labour Court. The alterations made in the article and in the new Act cannot, in our opinion, justify the interpretation that even applications presented to bodies, other than courts, are now to be governed for purposes of limitation by Article 137." Similarly, in Nityananda, M. Joshi & Ors. v. Life Insurance Corporation & Ors., (1969) 2 SCC 199, this Court followed the judgment in Athani's case and turned down a plea that an application made to a Labour Court would be covered under Article 137 of the Limitation Act. This Court emphatically stated that Article 137 only contemplates applications to courts in the following terms: "3. In our view Article 137 only contemplates applications to Courts. In the Third Division of the Schedule to the Limitation Act, 1963 all the other applications mentioned in the various articles are 21 Page 22 applications filed in a court. Further Section 4 of the Limitation Act, 1963, provides for the contingency when the prescribed period for any application expires on a holiday and the only contingency contemplated is "when the court is closed." Again under Section 5 it is only a court which is enabled to admit an application after the prescribed period has expired if the court is satisfied that

the applicant had sufficient cause for not preferring the application. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963.'" 20. In Kerala State Electricity Board v. T.P

The promoter has till date failed to fulfil his obligations because of which the cause of action is re-occurring. RERA is a special enactment with particular aim and object covering certain issues and violations relating to real estate 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.

24. Another objection taken by the respondent is that the provisions of RERA Act, 2016 cannot be applied retrospectively. Reference can be made to the 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 purposiveinterpretation 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)*

Rattree

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." "45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest." "53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the

Authority under the provisions of the Act which is completely misplaced and deserves rejection. 54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."

The 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 were in the process of the completion though the contract/ agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

25. Respondent has also taken an objection that complainant has approached the Authority with multiple reliefs and Authority does not have jurisdiction to entertain the claim of complainant. In this regard it is observed that complainant in this case has sought only refund along with interest and has not sought multiple reliefs.

26. In the present complaint there is no dispute regarding the fact that the complainant booked a flat bearing no. T9-304, 9th floor, admeasuring 1900 sq. in the project named 'Parsvnath Preston, Sonepat. Flat buyer agreement was executed between the parties on 08.02.2008. Basic selling price of the flat was fixed at ₹40,27,550/- and the complainants had opted to make further payment as per the EMI Subvention Scheme Plan and complainant had paid ₹38,26,172.50/- to the respondent company. On perusal of record it is observed that the present complaint filed on 28.02.2022 initially did not specifically/ clearly mentioned the relief sought against the respondent. However, from perusal of the last paragraph of the complaint it could vaguely be inferred that the complainant had sought payment of pending amount of ₹41,04,145/- along with 12 % rate of interest against 132 number of EMI's. The complainant has also sought payment of interest @ 12 % on this amount i.e, ₹53,65,965/-. Nevertheless the complainant in its replication dated 02.05.2022 made its intent clear and prayed that either the possession of the flat may be provided or the complainant's money be refunded along with interest. The issue whether a fit case is made out for offer of possession or refund was dealt with and decided by the Authority vide its interim order dated 05.08.2022. Relevant part of the said order is being reproduced below:

"Further, after hearing the contentions of both parties and going through documents on record, Authority observes that due date of offering possession was 2011. Already delay of approximately 11 years has taken place. After such inordinate delay, Authority could consider continuation of the allottees in the project only if the project was completed or an application for grant of occupation certificate had been filed. On the contrary, in this case, project is not complete, nor there is any plan of action for completing it. For these reasons, a case is clearly made out to allow relief of refund as sought by complainant. So, Authority is of the view that refund deserves to be granted as prayed for."

Further, there remains no dispute with respect to the upfront payment of 19,26,172.50/- made by the complainant at his own end. The only limited issue that remained pending for adjudication was regarding exact amount to be reimbursed towards the payment of EMI's that were paid by the complainant as the complainant claims that the respondent had reimbursed ₹9,32,760/- whereas the respondent claims that it has reimbursed an amount of ₹ 15,23,508/- towards the EMI's.

In order to determine the total amount payable to complainant and complainant was directed to place on record evidence in the form of bank statement to prove that he had paid the EMIs to bank and respondent has not yet reimbursed the same to him and shall submit the calculations for the same. Respondent was also directed to submit proof of payment of ₹15,23,508/- to the complainant.

27. In compliance to above mentioned directions, complainants submitted certain documents on 27.09.2022. As per account statement issued by bank annexed as Annexure A-1 with said documents, complainant had paid an amount of ₹24,89,161/- (₹19,00,000/- principal + ₹5,89,161/- interest) to bank till date whereas respondent had only reimbursed an amount of ₹9,32,760/- (from May 2008 to October 2010) and not ₹15,23,508/- as being claimed by respondent. He further submitted that after October 2010 either cheques were not issued by respondent or bounced back due to insufficient balance.

28. On 21.12.2022, respondent also submitted its self-maintained sheet showing payment of ₹15,23,508/- made to the complainant. It has been submitted in said sheet that a sum of ₹36,68,856/- remains pending towards EMI to be reimbursed to the complainant as on 21.12.2022. The matter was then heard on 25.01.2023, wherein the respondent submitted an application dated 05.01.2023 in Court under Section 151 of Code of Civil Procedure, 1908 seeking permission to place on record a true copy of bank statement and copies of cheques which clearly depicted that an amount of ₹15,23,508/- had been paid to the complainant and respondent was directed to supply copy of same to the complainant.

29. However, on perusal of statement annexed with said application, it was revealed that the documents submitted are not true copy of bank

Rattan

statement as stated by respondent in its application; rather it is customer ledger of respondent relating to unit of complainant. Said customer ledger is a document maintained by respondent company and cannot be solely relied upon to determine the amount paid/credited by it to the complainant as reimbursement of EMIs. Thus, the Authority vide its interim order dated 26.04.2023 directed both parties to submit certified bank statements to prove or rebut the payments made by respondent. Thereafter, the case was heard on 18.07.2023 wherein complainant submitted that he is unable to submit certified bank statements as payments were made out of 2-3 bank accounts. As the respondent did not place on record reliable documents to prove the payments made by it to the complainant, Authority directed the complainant to file an affidavit with respect to amounts admitted to have been paid by the respondent.

30. In compliance of the aforesaid directions, complainant submitted an affidavit dated 24.07.2023 wherein he submitted that an amount of Rs. 9,32,760/- only has been received by him against the loan payment and in case respondent proves that they have paid in excess of said amount he will refund such excess amount. Respondent has not submitted bank statements even after availing numerous opportunities. In such circumstances where respondent was not able to prove their contention of having been reimbursed an amount of ₹15,23,508 even

after availing numerous opportunities it can safely be made out that an amount of ₹9,32,760/- was reimbursed by the respondent. Further, in light of the affidavit submitted by the complainant, respondent is at liberty to prove his case to complainant and demand refund of the amount in excess of ₹9,32,760/- proved by them.

Hon'ble Supreme Court in the matter of "**Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others**" has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

> "25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.

Since, no other issue remains which need to be adjudicated, Authority decides to confirm the decision already taken vide its order dated 05.08.2022, which shall form part of this order and allows the complaint filed by complainant. For these reasons, a case is clearly made out to allow relief of refund as sought by complainants. Therefore, as per provisions of Section 18 of the Act, relief of refund as sought by the complainants deserves to be granted 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 amounts.

I DIRECTIONS OF THE AUTHORITY

31. Complainants in the present case has made down payment of ₹19,26,172.50/- and a bank loan of ₹19,00,000/- was got disbursed from Axis bank to respondent. 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) To refund the complainants an amount of ₹ 19,26,172.50/- 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 its actual realization. Accordingly, total amount along with interest calculated at the rate of 10.75% works out to ₹31,93,915/– as per detail given in the table below:

S.No.	Principal Amount paid by complainants	Date of payment	Interest Accrued till 01.08.2023
1.	13,22,040/-	18.03.2008	21,86,301/-
2.	2,01,377/-	16.01.2008	3,36,701/-
3.	4,02,755.5	06.02.2008	6,70,913/-
Total	19,26,172.5		31,93,915/-

(ii) To refund the complainants amount of EMIs paid by them to bank from their own pocket and were not reimbursed by respondent (as per terms of EMI agreement executed between

them), which as per complainants worked out to ₹15,56,401 (24,89,161-9,32,760)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 the amounts became due till date of its payment.

Complainants will make demand for payment of these amounts duly supported by bank statements in respect of outstanding loan amount as well as amounts of EMIs paid by him to bank which were not reimbursed. The interest on EMIs paid be also calculated and certified by an accountant.

(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.

32. Complaint is, accordingly, **disposed of.** File be consigned to the record room after uploading the order on the website of the Authority.

.....
NADIM AKHTAR
[MEMBER]

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