



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>2760 of 2022</b>
<b>Date of filing:</b>	<b>18.10.2022</b>
<b>Date of first hearing:</b>	<b>13.12.2022</b>
<b>Date of decision:</b>	<b>17.08.2023</b>

Rajbir Singh,  
S/o Sh. Nafe Singh,  
R/o House no. 713, Village Mandi, Tehsil Israna  
District Panipat – 132107

....COMPLAINANT(S)

VERSUS

Parsvnath Developers Ltd. through its Managing Director  
Office: Parsvnath Tower, Near Shahdara Metro Station,  
Shahdara, Delhi- 110032

....RESPONDENT(S)

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

**Present: -**            Mr. Akshat Mittal, counsel for the complainant.

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

**ORDER (DR. GEETA RATHEE SINGH - MEMBER)**

1. Present complaint dated 18.10.2022 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 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: Parsvnath City, Sonapat
2.	Date of application by original applicant	09.02.2005
3.	Unit area	300 sq yds.
4.	Date of endorsement in favour of complainant	29.10.2012
5.	Date of allotment	No specific date however



		ledger annexed at page 27 of the complaint clearly shows the plot no. as 0111.
6.	Date of builder buyer agreement	Not executed
7.	Total sale consideration	₹16,50,000/-
8.	Amount paid by complainant	₹8,70,000/-
9.	Due date of possession	09.02.2008
10.	Offer of possession	Not made

## B. FACTS OF THE COMPLAINT

3. Facts of complainant's case are that in February 2005, Mr. H S Cheema and Mr. Vinod Kapoor booked a plot in present and future project of respondent by paying booking amount of ₹4,12,500/-. Thereafter, plot was endorsed in favor of Mr. Ashok Kumar (second allottee) on 29.03.2006. Plot was further endorsed in favor of Mr. Prem Chand (third allottee) on 10.02.2012. On 29.10.2012, the plot was endorsed in favor of complainant Mr. Rajbir Singh. Copy of endorsement letter has been annexed as C-6 with the complaint. An amount of ₹ 8,70,000/- stood paid to the respondent by the year 2012 against basic cost of ₹16,50,000/-.
4. That respondent company allotted plot no. 0111 to the complainant and respondent assured that possession of the plot will be offered to

*[Handwritten Signature]*  
Patel

the complainant within 3 years of booking. Reference has been made to observation of the Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) and anr for reckoning the deemed date of possession 3 years from the date of booking.

5. That respondent has failed to deliver possession of the plot even after lapse of 17 and a half years.
6. That several telephonic calls were made to the respondent by the complainant regarding the status and timelines of the plot but respondent paid no heed to his enquiries.
7. That complainant issued several reminders and letters to the respondent dated 26.07.2019, 15.11.2019 and 02.09.2020. Said letters are annexed with the complaint as annexure C-8.
8. That all the payment demands of the respondent company have been duly and timely complied with by the complainant but still the respondent has not offered possession to the complainant.
9. That Hon'ble bench has decided similarly situated complaints against the same project and against the same respondent viz. complaint no. 723 of 2019, wherein the Hon'ble bench has granted similar relief as being sought by the complainant therein.

**C. RELIEF SOUGHT**

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



- (i) To direct the respondent to immediately hand over the physical possession of the plot in question i.e. plot no. 0111 to the complainant.
- (ii) To direct the respondent to pay the delayed possession charges to the complainant for the continuing delay in offer of possession of the plot in question, by paying interest as prescribed under the Real Estate (Regulation And Development) Act 2016 read with Haryana Real Estate (Regulation & Development) Rules, on the entire deposited amount which has been deposited against the plot in question so booked by the complainant.
- (iii) To direct the respondent to pay a sum of Rs. 50,00,000/- on account of acute frustration, leading to extreme mental, financial, emotional harassment to the complainant.
- (iv) The registration, if any, granted to the Respondent for the project namely, "Parsvnath City" situated in the revenue estates of Sonapat, Haryana, under RERA read with relevant Rules may kindly be revoked under Section 7 of the RERA for violating the provisions of the Act.
- (v) The complainant may be allowed with costs and litigation expenses of Rs. 1,50,000/-
- (vi) Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the instant complaint.



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

Learned counsel for the respondent filed detailed reply on 02.05.2023 pleading therein:-

11. That the present Complaint is not maintainable before this Hon'ble Authority for the reason that the Complainant is not an allottee of the Respondent Company.
12. That as per section 2(d) of The Real Estate (Regulation & Development) Act, 2016. The definition of "Allottee" is reproduced hereinafter for ease of this Hon 'ble Authority;

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

13. That the present Complaint is grossly barred by limitation and this Hon'ble Court does not have jurisdiction to entertain a time barred claim. Moreover, in absence of any pleadings regarding condonation of delay, this Hon'ble Court could not have entertained the complaint in present form. In recent judgment by the Hon'ble Supreme Court in the case of Surjeet Singh Sahni us, State of U.P and others, 2022 SC online SC 249, the Hon 'ble Apex Court has been pleased to observe



that 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

14. That there is no 'Agreement to Sell' between the parties and therefore, relief sought under section 18 of the RERA, Act, 2016 is not maintainable.
15. 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.
16. That in the respectful submission of Respondent, it is stated that in similar circumstances, in the matter of "Savita Khaturia v. M/s Parsvnath Developers (P) Limited Appeal No.193 of 2019", the Hon'ble Tribunal had been pleased to accept the contentions of the Respondent-Company to the extent that in the absence of any agreement to sell or any other agreement for possession, the relief of possession is not tenable and therefore, in the above-stated appeal the Hon'ble Tribunal had directed the Complainant to accept refund of the deposited amount.
17. That the Complainant has failed to plead cause of action in accordance with law.

  
Attree

18. That on 09.02.2005, Mr. H. S. Cheema & Mr. Vinod Kapoor expressed their interest in the booking of a plot in any of the new/upcoming project of the respondent company and paid Rs. 2,06,250/- towards the registration.
19. That on 29.03.2006, the original applicants transferred/endorsed there interest in favour of Mr. Ashok Kumar (subsequent applicant). That on 18.01.2006, Mr. Ashok Kumar (subsequent applicant) signed & executed the affidavit-cum-undertaking and indemnity that clause 7 of the undertaking clearly stipulates that in case he is not allotted any plot in upcoming project of the respondent company, then he shall accept refund of the deposited amount with 9% simple interest per annum.
20. That on 10.02.2012, Mr. Ashok Kumar (subsequent applicant) transferred/endorsed his interest in favour of Mr. Prem Chand (another subsequent applicant/purchaser). That on 18.01.2012, Mr. Prem Chand (subsequent applicant) had signed & executed the affidavit-cum-undertaking and indemnity, which clause 7 of the undertaking clearly stipulates that in case he is not allotted any plot in upcoming project of the respondent company, then shall accept refund of the deposited amount with 9% simple interest per annum.
21. That on 29.10.2012, Mr. Prem Chand (subsequent applicant) made transferred/endorsed his interest in favour of Mr. Rajbir Singh





(complainant). Copy of the endorsement letter is annexed herewith as Annexure R-1.

22. That the complainant before this Hon'ble Authority was well aware of the fact that there was no allotment in favour of predecessor in interest of the complainant.
23. That on 18.10.2012, Mr. Rajbir Singh (complainant) had signed executed the affidavit-cum-undertaking and indemnity, the said affidavit-cum-undertaking and indemnity clearly stipulates that in case he is not allotted any plot in upcoming project of the respondent company, then shall accept refund of the deposited amount with 9% simple interest per annum. 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 % P.A. from the date of acceptance of my nomination by the Company."*

A copy of affidavit-cum-undertaking and indemnity dated 18.10.2012 is herewith annexed as Annexure R-2.

24. That it is pertinent to mention that neither any location nor any site of the project was confirmed at the time of registration. This fact has been prevailing in the knowledge of the complainant as well as to his



predecessor interest also. Therefore, the complainant gave undertaking that in case no allotment is made, then he shall accept the refund.

25. That the complainant before this Hon'ble Authority had purchased this registration from open or secondary market and further, complainant was well aware of the fact that there was no allotment in favour of his predecessor interest therefore, the present complaint is not maintainable before this Hon 'ble Authority.
26. That it is pertinent to place on the record that till date respondent company had received an amount of Rs. 8,70,000/- towards the advance registration. Further, it is pertinent to mention that Rs. 8,70,000/- has been paid by the original applicants & by the subsequent applicants(s) and no amount was paid by the complainant. copy of ledger dated 04.11.2022, is annexed herewith as annexure R 3.
27. That it is a matter of record that the respondent had not demanded any amount after the year 2006 which establishes the fact that no plot was ever allotted to his predecessor interest and registration was merely an expression of interest towards the upcoming project of the Respondent Company.
28. That it is pertinent to state that in absence of any agreement to sale, the complainant is bound by the terms & conditions of the affidavit cum undertaking & indemnity which is duly signed & executed by the complainant.



29. That the money receipts clearly depicts that necessary ingredients of an agreement much less a valid contract is conspicuously missing in receipts, which have been 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.
30. That the present complaint filed by the complainant before this Hon'ble Authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainant has misdirected herself in filing the above captioned complaint before this Hon'ble H-RERA, Panchkula as the relief (s) claimed by the complainant does not even fall within the realm of jurisdiction of this Hon'ble Authority, Panchkula as there is neither any allotment nor any agreement to sale which can be adjudicated by this Hon'ble Authority.
31. That in view of the submissions made hereinabove it is submitted that no cause of action has arisen in favour of the complainant and further, the present complaint is grossly barred by limitation and deserves and outright dismissal on this ground alone.

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

32. During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for the complainant has stated



in the Court today that the decision already taken by the Authority in bunch of cases with lead case **complaint case no. 723 of 2019 titled Nishant Bansal versus Parsvnath Developers Ltd.** squarely covers the controversy involved in the above-mentioned complaint. Hence, this complaint be disposed of in the same manner. He submitted that Project in Sonipat has been mentioned in the endorsement letter annexed as annexure C-6.

33. Learned counsel for the respondent reiterated the arguments as were submitted in writing. She stated that in the present case, there is no proof that booking was made for 'Parsvnath City, Sonapat' and there is no agreement between the parties which can be executed by the Authority. So, in absence of any agreement to sell, complainant is bound by terms of affidavit-cum-undertaking and indemnity signed by her and shall accept refund of the amount deposited by her. She further argued that appeals have been filed in bunch of cases with lead case no. 723 of 2019 before Hon'ble High Court, so outcome of those appeals may be awaited.

**G. ISSUES FOR ADJUDICATION**

34. Whether the complainant is entitled to relief of possession of plot booked by her along with interest for delay in handing over the possession in terms of Section 18 of Act of 2016?

**H. OBSERVATIONS AND FINDINGS OF THE AUTHORITY**



35. On perusal of record and after hearing both the parties, Authority observes that the respondent has taken a stand that present complaint is not maintainable for the reason that complainant is not "an allottee" of the respondent company and registration was mere an expression of interest towards future project of respondent.

As far as the objection of the respondent that complainant is not an allottee is concerned, perusal of the customer ledger annexed as annexure C-7 dated 18.10.2012 issued by the respondent Parsvnath Developers Limited reflects property no. 0111, size 300 sq. yds and rate as ₹ 5500. The basic cost of the property is shown as ₹16,50,000/- and the respondent as on 18.12.2012 had accepted ₹8,25,000/- towards the basic cost and ₹22,500/- as administrative charges. It is clear from the customer ledger that the respondent had accepted the predecessors in interest of the complainants as its allottees and had allotted property no. 0111 admeasuring 300 sq. yds. @ 5500/- per sq. ft. The fact that the respondent had accepted payments from the predecessor of the complainant and had issued receipts for the same clearly shows that respondent had recognised the original applicant as his allottee. Acceptance of multiple payments and subsequent transfer by way of endorsement in favour of the complainant leaves no doubt about the fact that the complainant who stepped into the shoes of the original



allottee on 29.10.2012 is covered within the definition of allottee as provided under Section 2(d) of the RERA Act of 2016.

Respondent in his reply has contended that there is no "agreement to sale" between the parties and therefore relief sought under Section 18 of RERA Act is not maintainable. With regard to this, reference is made to the ledger account annexed at page 27 of the complaint wherein property no. basic cost, administrative charges etc have been mentioned. If argument of respondent is accepted that there was no "agreement to sale" between the parties, it would imply that respondent, who is into the business of real estate development had accepted payment of ₹8,70,000/- i.e. more than fifty percent of the basic sale price and issued receipts to predecessors of the complainant for 'nothing in return', which is impossible and hard to believe. Mere fact that a document with a nomenclature builder buyer agreement was not signed by the original allottee does not mean that he was not an allottee of the respondent. Once respondent has received multiple payments from original allottee for purchase of a unit in his project and has allotted him the plot no. 0111 admeasuring 300 sq. yds. as mentioned in the ledger account, it was its duty to execute a builder buyer agreement within a reasonable time. Failure on its part to do so will not affect the rights of applicant as an allottee. It is observed that the promoter has repeatedly raised demands for a unit i.e. more than



fifty percent of the basic sale price of the unit and therefore same cannot be considered as mere 'expression of interest.'

The definition of "agreement for sale" as provided in Section 2(c) means an agreement entered into between the promoter and the allottee. The definition is not restricted to execution of a builder buyer agreement. Accepting the payment towards a unit in present and future project shows there was a meeting of minds on the point that the promoter will give possession in any present or future project developed by respondent in Sonapat.

Ledger account dated 18.10.2012 issued by respondent makes it apparent that amounts were accepted towards the project Parsvnath City situated at 'Sonapat' and property no. 0111 was allocated to the complainants. Accordingly, the original applicant was very much "allottee" for the unit in project of respondent at Sonapat. It is pertinent to mention that the definition of allottee as provided under Section 2(d) of the Act of 2016 does not distinguish between original/erstwhile allottee and subsequent allottee. Therefore, the complainant in this case after endorsement in his favour stepped into the shoes of the original/erstwhile allottee and complainant is well within the definition of the term allottee as provided in the Act. Hence, objection of respondent that complaint is not maintainable as complainant is not an allottee stands rejected.



It has also been contended by the respondent that amount of ₹8,70,000/- has been paid by the original applicants and subsequent applicants and no amount has been paid by the complainant. In this regard it is observed that since RERA Act does not differentiate between original allottee and subsequent allottee, any amount paid by predecessors in interest of the plot is towards the cost of the plot and is deemed to have been paid by the allottee. This objection of the respondent is also not tenable.

36. 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*

*Rattree*



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.

37. Another objection of respondent is that there is no proof that booking was made for 'Parsvnath City, Sonapat' and there is no agreement between the parties which can be executed by the Authority. Said argument of respondent is rejected and has been dealt in detail in **complaint no. 723 of 2019 titled as Nishant Bansal v/s Parsvnath Developers Ltd.**
38. Respondent has also taken an objection that on 18.10.2012, complainant had executed the affidavit-cum undertaking and



Indemnity, the said affidavit-cum-undertaking and indemnity clearly stipulates that in case he is not allotted any plot in upcoming project of the respondent company, then shall accept refund of the deposited amount with 9% simple interest per annum. To deal with this objection reference is made to **Civil Appeal no. 12238 of 2019 titled as Pioneer Urban Land & Infrastructure Ltd v/s Govindan Raghavan**. Operative part of the said judgment is being reproduced below:

*Section 2 (r) of the Consumer Protection Act, 1986 defines 'unfair trade practices' in the following words : " 'unfair trade practice' means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice ... ", and includes any of the practices enumerated therein. The provision is illustrative, and not exhaustive.*

*In Central Inland Water Transport Corporation Limited and Ors. v. Brojo Nath Ganguly and Ors.,<sup>4</sup> this Court held that :*

*"89. ... Our judges are bound by their oath to 'uphold the Constitution and the laws'. The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and equal protection of the laws. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive*



*list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them.*

*It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not 4 (1986) 3 SCC 156.*

*It applies where both parties are businessmen and the contract is a commercial transaction. ... These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances.” (emphasis supplied) 6.7. A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the Agreement dated 08.05.2012 are ex-facie one-sided, unfair, and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2 (r) of the Consumer Protection Act, 1986 since it adopts unfair*



*methods or practices for the purpose of selling the flats by the Builder.*

*7. In view of the above discussion, we have no hesitation in holding that the terms of the Apartment Buyer's Agreement dated 08.05.2012 were wholly one-sided and unfair to the Respondent – Flat Purchaser. The Appellant – Builder could not seek to bind the Respondent with such one-sided contractual terms.*

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

39. It is pertinent to mention here that respondent 'Parsvnath Developers Ltd.' had filed an appeal no. 327 of 2020 before Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh against order dated 11.03.2020 passed in complaint no. 723 of 2019 which was dismissed by Hon'ble Tribunal vide its order dated 31.10.2022. Operative part of order dated 31.10.2022 is reproduced below:

*"24. Though, the learned Authority by way of impugned order had directed the appellant to allot and deliver the possession of the booked plots to the respondents/allottees in the project Parsvnath City, Sonipat, but did not award the interest at the prescribed rate, as stipulated in the proviso to Section 18(1) of the Act, which lays down that where an allottee does not intend to withdraw from the project, he/she shall be paid, by promoter,*



*interest for every month of delay till the handing over of the possession, as such rate as may be prescribed. Accordingly, the respondents/allottees are entitled to the prescribed rate of interest i.e. at the SBI highest marginal cost of lending rate (MCLR) +2% i.e. 10.25% after a period of three years from the date of deposit of the amount which is a reasonable period for completion of the contract, till the handing over the possession.*

*25. Alternatively, if the allottees wish to purchase equivalent size plots of their own in resale of the colony of the promoter, or equivalent plots in any other project of the appellant in District Sonipat, they are at liberty to take refund of the amount paid along with prescribed rate of interest i.e. SBI highest marginal cost of lending rate (MCLR) +2% i.e. 10.25% per annum from the date of deposits till realisation and seek compensation of the excess amount paid in such purchase of plots, along with compensation for mental agony, harassment and legal expenses by way of filing separate complaints before the learned Adjudicating Officer."*

40. In view of above and after going through the record, Authority observes that complainant has booked plot in present and future project of respondent, paid fifty percent of total sale price, no allotment letter was issued nor any builder buyer agreement was executed between the parties and complainant is seeking possession of the plot booked by her. It is observed that the factual matrix of present case is similar to bunch of cases with lead case Complaint no. 723 of 2019 titled as "**Nishant Bansal versus Parsvnath Developers Ltd.**" Accordingly, Authority is satisfied that issues and controversies involved in present complaints are of similar nature as complaint case no. 723 of 2019. Therefore, captioned complaint is disposed of in terms of the orders passed by the Authority in **Complaint no. 723 of**



**2019 titled as Nishant Bansal versus Parsvnath Developers Ltd.**

Therefore, complainant will be entitled to interest for delay in handing over the possession as per Rule 15 Haryana Real Estate (Regulation & Development) Rules, 2017 till the handing over of possession.

41. In the present case, there is no allotment letter and plot buyer agreement has not been executed between the parties. 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 09.02.2008 (three years from the date of booking i.e, 09.02.2005).
42. Authority has got delay interest calculated from its account branch in terms of the observations made by Hon'ble Haryana Real Estate Appellate Tribunal vide its order dated 10.01.2023 in appeal no. 619 of 2021 titled as Parminder Singh Sohal versus BPTP Ltd. The details of amounts paid by the complainant and delay interest calculated on said amounts are shown in the following table: -





Amount paid by complainant	Upfront delay interest calculated by Authority till 17.08.2023	Further monthly interest
₹ 8,70,000/-	₹14,31,684/-	₹7,687/-

43. Complainant is also seeking compensation and damages on account of acute frustration leading to extreme mental, financial and emotional harassment and litigation charges. 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 & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 44. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of damages and compensation.



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

**I. DIRECTIONS OF THE AUTHORITY**

45. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act incorporating the modifications made by Hon'ble Appellate Tribunal to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to allot and deliver the possession of booked plot to the complainant in the project 'Parsvnath City, Sonapat' on payment of balance sale consideration recoverable from him. In case, respondent promoter due to non-availability of plots is not able to allot and offer its possession to the complainant, he will be liable to make available to her a plot of the size, as booked, by purchasing it from open market at his own cost. Respondent promoter however will be entitled to recover from the complainant the balance amount payable by him as per the rate agreed by the parties at the time of booking of plot.

(ii) Respondent is directed to pay the complainants upfront amount of ₹14,31,684/-. Respondent's liability for paying

  
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monthly interest of ₹7,687/- as shown in above table will commence w.e.f. 17.09.2023 and it shall be paid on monthly basis till valid offer of possession is made to complainants.

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

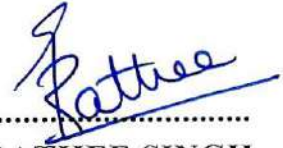
(iv) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.



46. **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]