



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1067 of 2023
Date of filing:	03.05.2023
Date of first hearing:	12.07.2023
Date of decision:	19.10.2023

Gurinder Pal Singh, S/o Sh. Manohar Singh,
R/o House No. 7, Road no. 48,
West Punjabi Bagh
West Delhi- 110026

....COMPLAINANT

VERSUS

Parsvnath Developers Ltd.
Office: Parsvnath Metro Tower, Near Shahdara Metro Station,
Shahdara, Delhi- 110032

....RESPONDENT

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

Present: - Mr. Ramesh Malik, learned counsel for the complainant
 through video conference.

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

Rathee

ORDER (Dr. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed on 03.05.2022 by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA Act, 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project	"Parsvnath City", Sonapat
2.	Date of application by complainants	Not mentioned
3.	Plot no, and area	B-3298, Block B, 502 sq. yd
4.	Date of booking	18.01.2006
5.	Date of Provisional Allotment	22.09.2009
6.	Date of plot buyer agreement	Not executed

6.	Basic sale price	₹27,61,000/-
7.	Amount paid by complainants	₹35,14,000/-
8.	Offer of possession	Not given

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

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

(i) That on 24.02.2005 complainant booked a residential plot in the respondent's project "Parsvnath City" Sonipat after paying an amount of ₹6,87,500/-. Complainant was issued provisional allotment letter for plot bearing no. B-3298 having area of 502 sq. yds in the said project namely.

(ii) Complainant has averred that the entire payment was made on 05.12.2011 but still the plot buyer agreement has not been executed between the parties.

(iii) That the basic sales price of the plot was ₹27,61,000/- against which an amount of ₹35,14,000/- stands paid by the complainant. Copies of payment receipts have been annexed with the complaint as Annexure C-3.

(iv) That respondent has acted contrary to clause 8(a) of the plot buyer agreement in accordance with which the promoter shall not withhold the plot beyond reasonable period and shall be granted after payment

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of administrative charges. There is unreasonable delay in offering possession of the plot in question.

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

(vi) That the complainant is entitled for receiving interest @ SBI MLCR+2%. on the amount paid to the respondent as per Rule 15 of Haryana Real Estate(Regulation and Development) Rules, 2017.

(vii) That after physically inspecting the site of the project it transpired that there is no scope of handing over possession of residential plot in question as the development at project area is very limited. Respondent has also not taken requisite approvals from the concerned authorities which strengthens the belief of the complainant that respondent has committed fraud on public at large.

(viii) That complainant has made reference of **Complaint no. 865 of 2020 titled as Deepak Gupta v/s Parsvnath Developers Ltd** wherein respondents were directed to handover possession along with upfront delay interest and monthly interest.

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

C. RELIEF SOUGHT

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

- (i) To direct the respondent company to offer actual physical possession of the Plot in question i.e, Plot B-3298, Block B, Parsvnath City, Sonipat;
- (ii) To direct the respondent -company to obtain license from Haryana Town & Country Planning, Haryana of the project Parsvnath City, Sonipat, Haryana:
- (iii) To direct the respondent company to get conveyance deed executed within a time bound manner qua plot no. B-3298, Block-B, Parsvnath City.
- (iv) To direct the respondent -company to pay interest on delayed possession for more than 8 years as per Rule 15 of Haryana Real Estate (Regulation And Development) Rules, 2017 to the complainant;
- (v) To direct the respondent to pay Rs.10,00,000/- as part of damages to the complainant on account of mental agony, torture and harassment;



- (vi) To direct the respondents to pay upfront interest and also monthly interest in pursuance of the order dated 13.10.2021
- (vii) To direct the respondent company to refund all legal cost of Rs. 1,00,000/- incurred by the complainants;
- (viii) Any other relief- remedy which is deemed fit by this Hon'ble Authority in the present facts and legal proposition of the case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

5. Learned counsel for the respondent filed detailed reply on 17.10.2023 wherein it is pleaded as under:-

(i) That the present complaint is not maintainable before this Hon'ble Authority, as this Hon'ble Authority does not have the jurisdiction to entertain the present complaint.

(ii) That there is no allottee/promoter relationship between the complainant and the respondent. The complainant has misdirected to file present complaint before this Hon'ble Authority. Further complainant has made a speculative investment in the project of the respondent company.

(iii) That without prejudice, the present complaint is barred by limitation and this Hon'ble Court does not have jurisdiction to entertain a time barred claim. Moreover, in absence of any pleadings regarding condonation of delay, this Hon'ble Court could not have entertained the complaint in the present form. In recent judgment by

the Hon'ble Supreme Court in the case of **Surjeet Singh Sahni us, State of U.P and others, 2022 SC online SC 249**, the Honble Apex Court has been pleased to observe that mere representations does not extend the period of limitation and the aggrieved person has to approach the court expeditiously and within reasonable time. In the present case the complainant is guilty of delay and latches, therefore, his claim should be dismissed.

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

(v) That on 24.02.2005, Mr. Gurinder Pal Singh expressed his interest in the registration of a plot and paid Rs. 6,87,500/- towards advance registration.

(vi) That original applicant was very well aware of the fact that neither any location nor any site of the project was confirmed at the time of registration. Further the original applicant gave an undertaking that in case no allotment is made, then he shall accept refund of the amount deposited by him towards registration.

(vii) That on 22.09.2009, complainant was provisionally allotted a residential plot bearing no. B-3298 having area admeasuring 502 sq. yds. Complainant was sent two copies of the plot buyer agreement for further process on 29.01.2010, however the complainant did not acknowledge the same.

(viii) Complainant has till date paid ₹30,43,412/-. Due to delay in the allotment of the plot, an amount of ₹4,70,588/- was credited in the account of the complainant as interest. This amount of ₹4,70,588/- was calculated from 24.11.2005 after 6 months from applying the application 24.02.2005 due to applicability of clause 3 of application form of said advance registration. The difference of Rs. 4,70,585/- has been credited/adjusted as delay interest/compensation from November'2005 to September' 2009 under the section/head other adjustment interest allow after TDS which is being evidently reflected in attached ledger that the complainant did not make the timely payments and committed defaults. In this regard, reminder letters dated 20.01.2010, 03.06.2010, 10.12.2010, 23.12.2010 & 09.03.2011 are annexed project of the respondent-company suffered due to non-payment of various allottees.

(ix) That on 10.07.2010, respondent company applied LOI for the land admeasuring 51 acres. however, the same was rejected by the competent authority (DTCP) vide letter dated 19.02.2013. Pursuant to that on 19.09.2019, one of the associate company of the respondent company applied for license for the land as measuring 25.344 acres falling under in the revenue Village Rajpura, Sector 10 & 11, District-Sonepat, Haryana to develop a residential plotted colony.

(x) That the inability of the respondent company to develop the project

is primarily the encroachments by the local farmers on the part of project land for which they have already been paid the sale consideration. It is submitted that despite all sincere efforts to get the Project land vacated, the local farmers have failed to agree and rather they are coercing the Respondent Company to agree to their unreasonable demands.

(xi) That further, with effect from 11.01.2022, Government of Haryana has taken a policy decision that where the outstanding dues against the statutory dues in the nature of EDC etc. are more than 20 Crore, fresh licence should not be issued to the landowner/ developer/its associate companies etc. till the clearance of all the outstanding EDC. Hence despite making all sincere steps, the respondent company is not able to get the LOI of the said Project Land.

(xii) That an application has been submitted for grant of licence for 25 acres through Generous Builders Private Limited, which was rejected by this Hon'ble Authority.

(xiii) That despite all the efforts made by the respondent company towards the completion of the said project as well as for getting the LOI, the project could not be regularized and this has caused the abandoning of the project.

(xiv) That the relief of possession prayed with interest is not

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maintainable as the respondent company is unable to give possession in the project and hence is ready and willing to refund the amount deposited by the complainant.

(xv) That for the reasons beyond the control of the respondent company, it could not develop the land in question and it is ready and willing to refund the amount received from the complainant(s) in terms of clause 5 (b) of the buyer's agreement applicable from the date of endorsement. without prejudice, it is further stated that the project cannot be delivered due to the unforeseen circumstances and therefore in terms of Section 18(1), the relief of refund is only a plausible solution.

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

13. During oral arguments, learned counsel for the complainant reiterated the arguments as were submitted in writing. He argued that the decision already taken by the Authority in bunch of cases with lead case **complaint case no. 865 of 2020 titled Deepak Gupta versus Parsvnath Developers Ltd.** squarely covers the controversy involved in the above-mentioned complaint. Therefore, he requested that this complaint be disposed of in the same manner.
14. On the other hand, learned counsel for the respondent argued that facts of the present complaint are not similar to complaint case no. 865 of



2020 titled Deepak Gupta versus Parsvnath Developers Ltd. She argued that present case may not be disposed of in terms of Deepak Gupta for the reason that at the time of passing of final order in complaint case no. 865 of 2020, respondent was in the process of getting LoI for the project, however situation is not the same today. Respondent has not received LoI for the project and is not in a position to develop the project and offer the possession of plot booked by the complainants. She also stated that none of the allottees have been given possession by respondent in project in question. She stated that in a situation where respondent is unable to develop the project and offer possession to the allottees, the only relief admissible is refund with interest. Therefore, she requested that refund be allowed instead of awarding possession with delay interest.

F. ISSUES FOR ADJUDICATION

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

G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

16. Authority has heard arguments of both parties and has perused the documents available on record. After going through the submissions made by both the parties, Authority observes as under:-

(i) It is an admitted fact that complainant booked a residential plot in the respondent's project "Parsvnath City" Sonipat after paying an amount of ₹6,87,500/-. Complainant was issued provisional allotment letter for plot bearing no. B-3298 having area of 502 sq. yds in the said project. Though the complainant has referred to various clauses of plot buyer agreement in his complaint but it is an admitted fact that plot buyer agreement has not been executed between the parties. Furthermore there is no plot buyer agreement annexed along with the complaint. Basic sales price of the plot is ₹27,61,000/- against which the complainant has allegedly paid an amount of ₹35,14,000/-. However, respondent has submitted that complainant has paid an amount of ₹30,43,412/- and an amount of ₹4,70,588/- has been credited as delay interest from Nov. 2005 to September 2009 after TDS which is reflected in attached ledger. Ld. Counsel for the complainant did not rebut to said submission of the respondent with respect to payment of delay interest of Rs. 4,70,588/-. Further, on perusal of the ledger account annexed at page 21 of the complainant, it can clearly be inferred that an amount of ₹4,70,588.40/- has been credited on account of other adjustment (Interest allowed after TDS). Therefore, it is observed that the stand taken by the respondent with respect to payments is correct and complainant has paid an amount of ₹30,43,412/- only. Further, it is an admitted fact that even after a lapse



of 11 years, possession of the plot has not been offered by the respondent and ld. Counsel for respondent has stated even today respondent is not in a position to offer possession of the said plot to the complainant in near future.

- (ii) Respondent in the present complaint has also stated that various reminders were sent to the complainant regarding non-payment of instalments. It is important to mention here that complainant has already paid an amount of ₹30,43,412/- against the basic sales price of Rs. 27,61,000/- but it is the respondent who has not delivered possession, when the respondent has received more than the basic sales price, it cannot take an objection that complainant has not paid the instalments in due time.
- (iii) Respondent has adopted a plea that the Authority does not have jurisdiction to decide the complaint. In this regard it is stated that Authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E.1 Territorial Jurisdiction

As per notification no. 1 /92/2017'ITCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be entire Haryana except Gurugram District for all purpose with



offices situated in Panchkula. In the present case the project in question is situated within the planning area Sonipat district. Therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

E.2 Subject Matter Jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale

Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act of 2016 quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by learned



Adjudicating Officer if pursued by the complainant at a later stage.

- (iv) Respondent has also taken objection that complaint is grossly barred by limitation. Reference in this regard is made to the judgement of Apex court **Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise** wherein the Hon'ble Apex Court had held that Indian Limitation Act applies only to the courts and not to the Tribunals.

Moreover, the promoter has till date failed to fulfil its obligations because of which the cause of action is re-occurring. Thus, the complaint is maintainable as per RERA Act, 2016. The RERA Act, 2016 is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not a Court.

- (v) 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 purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.” “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.

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.

(vi)The complainants in the present case have purchased a plot bearing no. B-3298 in the project of the respondent. The complainant in complaint case no. 865 of 2020 was allotted plot bearing no. B- 3305, Block B, Parsvnath City, Sonapat and complainants in present case have been allotted plot bearing no. B 3298, Block B, Parvsnath City, Sonapat. Meaning thereby, the booking of plots made by complainants in both the complaints was made in "B Block" of same project, i.e., Parsvnath City, Sonapat. So, it is observed



that the factual matrix of present case is similar to bunch of cases with lead case except the fact that in the present complaint, complainant is a subsequent allottee. Accordingly, Authority is satisfied that issues and controversies involved in present complaints are of similar nature as complaint case no. 865 of 2020. Therefore, captioned complaint is disposed of in terms of the orders passed by the Authority in **Complaint no. 865 of 2020 titled as Deepak Gupta versus Parsynath Developers Ltd.**

(vi) In the present case, provisional allotment letter has been issued to the complainant on 22.09.2009 however same does not provide for any date of possession. 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.** In the present case date of provisional allotment is 22.09.2009 and deemed date of possession is reckoned as 3 years from this date. Therefore, it works out to be 22.09.2012.

(vii) In complaint case no. 865 of 2020, it was revealed that respondent neither had license to develop the project nor even LoI was obtained by him for the same. In that eventuality, since complainants were not interested to withdraw from the project and wanted to continue with the project, respondent was directed to pay the complainant upfront interest on the amount paid by him from deemed date of possession along till date of the order and also future interest for every month of delay occurring thereafter

till the handing over of possession of the plot. Further respondent was prohibited from alienating the land of the project in question for any purposes except for completion of the project.

In the present complaint also the complainant wishes to continue in the project and in his complaint, he has prayed for directions to the respondent to hand over the possession of the plot no. 3298, Block B, 502 sq. yds in Parsvnath City, Sonipat along with interest on the amount paid from the date of payment till the date of possession of plot as per HRERA Rule 15. It is further observed that though the learned counsel for respondent has orally argued that the respondent has not received the LoI for the project and is not in a position to develop the same and offer possession of the booked plot to the complainant. However no document issued by competent authority has been placed on record or relied upon by the respondent to prove that it has surrendered/abandoned the project. Reference is also made to para 3 of the letter dated 19.02.2013 written by DTCP, Haryana to the respondent (annexure R-3 of the reply). Relevant part of said letter is being reproduced.

“Since, you did not attend the personal hearings on two occasions, therefore, it can be concluded that you are making lame excuse as the application for renewal of original license is yet to be filed and license for an additional area can be considered only if the main license is valid. It is, therefore regretted that the grant of license for an additional area



measuring 51.50 acres is hereby refused due to the reason mentioned above”

Perusal of this para shows that respondent had no intention of honouring his obligations and complainant cannot be made to suffer because of the repeated and deliberate defaults on the part of the respondent. Therefore, the complainant U/s 18(1) of the RERA Act is entitled to the relief of interest on account of delayed possession.

Accordingly, complainant in the present case is also entitled to upfront interest on the amount paid by him from deemed date of possession till today along with future interest for every month of delay occurring thereafter till the handing over of possession at the rate prescribed in Rule 15 of the HRERA Rules, 2017 i.e. SBI MCLR+2% which as on date works out to be 10.75% (8.75%+2%).

(viii) Authority has got delay interest calculated from its account branch in terms of the observations made by Hon'ble Haryana Real Estate Appellate Tribunal vide its order dated 10.01.2023 in appeal no. 619 of 2021 titled as Parminder Singh Sohal versus BPTP Ltd. The details of amounts paid by the complainant and delay interest calculated on amount are shown in the following table: -



Amount paid by complainants	Upfront delay interest calculated by Authority till 19.10.2023	Further monthly interest
₹30,43,412/-	₹36,27,518/-	₹26,890/-

(ix) The complainant is seeking compensation on account of mental agony, torture and harassment. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra.), has held that an allottee is entitled to claim compensation under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

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



H. DIRECTIONS OF THE AUTHORITY

17. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:-

- (i) Respondent is directed to pay the complainant upfront amount of ₹36,27,518/-. Respondent's liability for paying monthly interest of ₹26,890/- as shown in above table will commence w.e.f. 20.10.2023 and it shall be paid on monthly basis till valid offer of possession is made to complainants.
- (ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.
- (iii) Respondent is further directed to get the conveyance deed registered in favour of the complainant within 90 days of valid offer of possession.



18. **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]