



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1063 of 2023
Date of filing:	03.05.2023
Date of first hearing:	12.07.2023
Date of decision:	19.10.2023

Sushila Devi, w/o Late Shri Ishwar Chand Garg
R/o House no.A1/3, Hastal road, Uttam Nagar,
D K Mohan Garden, West Delhi-110059

....COMPLAINANT

VERSUS

Parsvnath Developers Ltd.
Office: Parsvnath Tower, Near Shahdara Metro Station,
Shahdara, Delhi- 110001

....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.

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

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project	Parsvnath City, Sonapat
2.	Date of application (by original allottees)	07.06.2004
3.	Plot no, and area	B-3432, Block B, 233.27 sq. mts.



4.	Date of allotment	Not mentioned
5.	Date of Plot buyer agreement	13.06.2011 (with second allottee)
6.	Basic sale price	₹ 9,76,500/-
7.	Amount paid by complainants	₹ 16,18,200/-
8.	Offer of possession	Not made
9.	Date of endorsement in favour of the present complainant	31.07.2014

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

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

(i) That on 07.06.2004 original allottee Mr. Gurpreet Singh Bhatia applied for advance registration in the plot of the respondent's project "Parsvnath City" Sonipat. Said plot was then transferred in the name of Mrs. Tarawati Batra (second allottee) on 18.05.2006. In April 2011, Mrs. Tarawati Batra was allotted a residential plot bearing no. B-3432 having area of 233.27 sq. mts in the respondent's project namely "Parsvnath City" Sonipat -. Plot buyer agreement was executed

Tarawati

between the respondent and Mrs. Tarawati Batra (second allottee) on 13.06.2011. Said plot was transferred in the name of Mr. Amit Kumar Shibe and Mr. Durgesh Kumar (third allottees) on 20.06.2014. Thereafter said plot was transferred in the name of the complainant Mrs. Sushila Devi on 30.07.2014.

(ii) That as per the plot buyer agreement the basic sales price of the plot was Rs. 9,76,500/- against which an amount of Rs. 15,48,450/- stands paid by the complainant and her predecessor.

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

(iv) That respondent has also 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.


J. K. Ramesh

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

(vi) That 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.

(vi) 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-3432, Block B, Parsvnath City, Sonipat;


R. K. Rastogi

- (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-3432, Block B, Parsvnath City, Sonipat, Haryana.
- (iv) To direct the respondent-Company to pay interest on delayed possession for more than 6 years as per Rule 15 of Haryana Real Estate (Regulation And Development) Rules, 2017 to the complainant;
- (v) To direct the respondent to pay Rs.10,00,000/- as part of damages to the complainant on account of mental agony, torture and harassment;
- (vi) To direct the respondents to pay upfront interest and also monthly interest in pursuance of the order dated 13.10.2021
- (vii) To direct the respondent company to refund of all legal cost of Rs. 1,00,000/- incurred by the complainants;
- (viii) Any other relief- remedy which is deemed fit by this Hon'ble Authority in the present facts and legal proposition of the case.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

5. Learned counsel for the respondent filed detailed reply on 24.08.2023 and contested the complaint on the following grounds:-

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

(ii) That the Complainant, before this Hon'ble Authority, had made a speculative investment in the project of the respondent-company, wherein Complainant invested knowingly and willingly.

(iii) That 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 vs, State of U.P. and others**, 2022 SCC 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 without prejudice, since the project is not being developed due to unavoidable circumstances, the prayer of possession is not tenable and without prejudice, it is submitted that only plausible submission is refund in terms of Section 18 of the Real Estate (Regulation and Development) Act, 2016 alongwith the interest from the date of endorsement in favour of the Complainant and after the due date of possession.

(vi) That without prejudice, further, in view of the judgment passed by the Hon'ble Supreme Court in "**IREO Grace Realtech Private Limited vs. Abhishek Khanna and others**" decided on 11.01.2021 and reported as (2021) 3 SCC 241, it has been settled that the delayed possession interest is payable from the due date of possession and not from the respective dates of deposit even in the cases of refund.

(vii) That the Complainant has misdirected herself by placing reliance upon the judgments passed by this Hon'ble Authority in



Deepak Gupta's matter as the same is not applicable in the facts and circumstances of the present case. Moreover, in view of the submissions made above, the relief for possession is not even maintainable.

(viii) That the Complainant in the present case has purchased the allotment from the original buyer in the year 2014 that is, much after the alleged due date of possession as per the original agreement dated 13.06.2011. The Complainant cannot be given benefit of any sort from the original date of agreement.

(ix) That, initially, Mr. Gurpreet Singh Bhatia had applied on 07.06.2004 for advance towards registration of a plot in new projects of the respondent company wherein the location and project's name was not defined. Later on 18.05.2006, this advance registration was endorsed in the favour of Mrs. Tarawati Batra after the mutual willingness and approval of both the parties in the records of the Respondent Company.

(x) That in the April' 2011, Mrs. Tarawati had been allotted a residential plot bearing no. B-3432, having area admeasuring 279 sq. yards tentatively in the township "Parsvnath City at Sonapat"



provisionally. That the Basic Selling Price of said plot was fixed at Rs. 9,76,500/- excluding other compulsory charges with respect to said plot.

(xi) That on 13.06.2011, plot buyer agreement was executed between the Mrs. Tarawati Batra and the respondent-company with abiding the terms and conditions of executed plot buyer agreement and committed to make further payments as per their chosen payment Plan.

(xii) That on 20.06.2014, said plot was transferred to the Mr. Amit Kumar Shibe & Mr. Durgesh Kumar Jha, jointly by Mrs. Tarawati Batra after mutual agreement of both the parties after necessary formalities in the records of respondent company.

(xiii) That on 30.07.2014, Mr. Amit Kumar Shibe and Mr. Durgesh Kumar Jha jointly transferred said Plot to Mrs. Sushila Devi (complainant) after necessary formalities in the records of respondent company.

(xiv) That on 29.07.2014, the complainant submitted an affidavit with the respondent company. It is apposite to reproduce the clause 5 of the said affidavit is hereunder as:


S. Sathya

"Clause 5: That I/We shall not be entitled to receive any penalty/compensation in case of delay, if any, in the construction/offer of physical possession of the said Plot/Flat/Shop to me in terms of the said Agreement for the period of delay, if any, prior to the date of endorsement of the said Agreement in my/our favour. I/We shall be entitled to receive such penalty/compensation for the period of delay, if any, caused after the date of endorsement of the said Agreement in my/our favour".

(xv) That in view of the undertaking/ affidavit submitted by the complainant, it is evidently clear that the complainant was well aware of the fact that no allotment was made till the date of transfer in her favour to the original or subsequent allottee.

(xvi) That the complainant had purchased said plot from open or secondary market even knowing the possession status of said plot & development of the project.

(xvii) That the brief facts as regards to the project are 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.

(xviii) That pursuant to that on 19.09.2019, one of the associate

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company of the respondent company applied for license for the land admeasuring 25.344 acres falling under in the revenue Village Rajpura, Sector 10 & 11, District- Sonapat, Haryana to develop a residential plotted colony.

(xix) 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.

(xx) 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.

(xxi) That it is further submitted that an application has been submitted

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for grant of licence for 25 acres through Generous Builders Private Limited, which was rejected by this Hon'ble Authority.

(xxii) 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. Relief of possession in these circumstances is not applicable in the present case as the respondent company is not developing the project and under no provision of law the respondent-company can be asked to develop and deliver the project which has otherwise become impossible and hence, enviable. That without prejudice, for the reasons beyond the control of the respondent company, it could not developed the land in question and it is ready and willing to refund the amount received from the Complainant in terms of Clause 5 (b) of the Buyer's Agreement applicable from the date of endorsement.

(xxiv) That without prejudice, it is further submitted that in case the refund is allowed, the right of the Complainant to seek delayed possession interest/ interest can be reckoned only after the date of endorsement as committed in executed Affidavit with Respondent Company and not from the dates of respective deposits, which is a



settled position of law.

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

6. During oral arguments, learned counsel for the complainant reiterated the submissions as stated in the complaint. He argued that the decision already taken by the Authority in bunch of cases with lead **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 same terms.
7. On the other hand, learned counsel for the respondent argued that facts of the present complaint are not similar to complaint case no. 865 of 2020. Thus present case may not be disposed of in same terms, as 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 did not receive LOI for the project and is not in a position to offer the possession of the booked plot. She 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. She also argued that in case possession is being awarded, deemed date of possession be reckoned from the date of endorsement in favor of the complainant and delay interest be awarded accordingly as the complainant is a subsequent allottee who stepped into shoes of the original allottee in 2014.

F. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

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

(i) That on 07.06.2004 original allottee Mr. Gurpreet Singh Bhatia applied for advance registration in the plot of the respondent's project "Parsvnath City" Sonipat. Said plot was then transferred in the name of Mrs. Tarawati Batra (second allottee) on 18.05.2006. In April 2011, Mrs. Tarawati Batra was allotted a residential plot bearing no. B-3432 having area of 279 sq. yds in the respondent's project namely; "Parsvnath City" Sonipat -. Plot buyer agreement was executed



between the respondent and Mrs. Tarawati Batra (second allottee) on 13.06.2011. Said plot was transferred in the name of Mr. Amit Kumar Shibe and Mr. Durgesh Kumar (Third allottees) on 20.06.2014. Thereafter said plot was transferred in the name of the complainant Mrs. Sushila Devi on 30.07.2014. As per the plot buyer agreement the basic sales price of the plot was Rs. 9,76,500/-. On perusal of the ledger account annexed with the reply at page 28, it is revealed that an amount of Rs. 16,18,200/- stands paid against the plot by the complainant. However, complainant in his pleadings has stated that an amount of Rs. 15,48,450/- has been paid by the complainant and her predecessor. It is observed that Authority relies upon the ledger account submitted by the respondent and therefore it is observed that Rs. 16,18,200/- stands paid against the plot. In view of these facts, complainant in exercise of his rights u/s 18(1) is seeking relief of possession of the plot along with interest on delay in handing over possession.

- (ii) Per contra, the respondent has raised an objection regarding maintainability of the complaint on the ground that Authority does not have jurisdiction to decide the complaint. In this regard it is stated that



Authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E.1 Territorial Jurisdiction

As per notification no. 1/92/2017/TCP 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.

(iii) Respondent has also taken objection that complaint is grossly barred by limitation. In this regard Authority places reliance upon the judgement of Apex court Civil Appeal no. 4367 of 2004 titled as **M.P Steel Corporation v/s Commissioner of Central Excise** where it has been held that Indian Limitation Act deals with applicability to courts and not tribunals. Further, RERD Act 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. The promoter has till date failed to fulfil its obligations because of which the cause of action is re-occurring.

(iv) Another objection taken by the respondent is that the provisions of RERD Act, 2016 cannot be applied retrospectively. In order to adjudicate this issue, 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.”



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

(v) The respondent has taken a stand that the complainants are speculative buyers who have invested in the project for monetary returns and taking undue advantage of RERD Act 2016 as a weapon during the present downside conditions of the real estate market and therefore not entitled to the protection of the Act of 2016. In this regard, Authority observes that "any aggrieved person" can file a complaint against a promoter if the promoter contravenes the provisions of the RERD Act, 2016 or the rules or regulations. In the present case, the complainants are aggrieved person who has filed a complaint under Section 31 of the RERD Act, 2016 against the promoter for violation/contravention of the provisions of the RERD

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Act, 2016 and the Rules and Regulations made thereunder. Here, it is important to emphasize upon the definition of term allottee under the RERA Act of 2016, reproduced below: -

Section 2(d) of the RERA Act:

(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

In view of the above-mentioned definition of "allottee" as well as upon careful perusal of builder buyer agreement dated 13.06.2011, it is clear that complainants are an "allottee" as unit bearing no. B-3432, Block B in the real estate project "Parsvnath City", Sonipat was allotted to them by the respondent promoter. The concept/definition of investor is not provided or referred to in the RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there will be "promoter" and "allottee" and there cannot be a party having a status of an investor. Further, the definition of "allottee" as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-



consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in **appeal no. 0006000000010557** titled as **M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. And Anr.** had also held that the concept of investors not defined or referred to in the Act. Thus, the contention of promoter that allottees being investor are not entitled to protection of this Act also stands rejected.

(vi) Respondent has also taken an objection that on 29.07.2014, complainant had executed the Affidavit-Cum Undertaking and Indemnity, the said Affidavit-Cum-Undertaking and Indemnity clearly stipulates that in case of delay in offer of possession of the plot, the allottee shall be entitled to receive penalty for the period of delay, if any, caused after the date of such endorsement in his favour. 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.,⁴ 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.

Respondent has also submitted that in view of the undertaking submitted by the complainant, it is clear that he was aware of the fact that there was no allotment in her favor. In this regard, reference is made to the plot buyer agreement executed between the parties dated 13.06.2011. Clause 1(a) of the agreement provides for the plot no. 3432, Block B admeasuring 233.27 sq. mts. So, the respondent is incorrect in stating that plot was not allotted to the complainant at the time of endorsement as plot buyer agreement (which was transferred in the name of the complainant) itself provides for plot no etc. Respondent's plea in this regard is also rejected.

9. Now there remains no doubt regarding the fact that the complaint is well within ambit of RERA Act, 2016 and the Authority has complete jurisdiction to adjudicate the same. Now there remains two fold issues for adjudication



(i) Whether complainant is entitled to possession of the plot along with interest on delay in handing over possession?

(ii) From which date complainant, who is a subsequent allottee, shall be entitled to interest on delayed possession?

10. With respect to the issue whether the complainant is entitled to possession of the plot along with interest on delay in handing over possession, as admitted the second allottee was allotted plot no. B-3432 measuring 233.27 sq. mts. in project Parsvnath City, Sonipat and plot buyer agreement was signed on 13.06.2011 inter se the second allottee and the respondent. The plot buyer agreement did not provide for a specific date for handing over of possession. In such cases where the exact date for handing over possession cannot be ascertained, 3 years time has been held as reasonable time by the **Hon'ble Apex Court in in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr.** Accordingly, the respondent was to handover the possession of the plot by 13.06.2014. However, respondent had failed to handover the possession of the plot till 2021. The second allottee instead of waiting endlessly for possession of the plot, sold the plot to the complainant and complainant accepted the same along with all rights and liabilities



attached to the plot. The respondent acknowledged the transfer and endorsed the name of the complainant on the same plot buyer agreement on 31.07.2014, meaning thereby that the respondent acknowledged the complainant as its allottee on the same terms and the complainant had stepped into the shoes of the original allottee with effect from 31.07.2014. The respondent has taken a plea that at the time of purchasing the plot the complainant was well aware of the fact that even after a period of almost 10 years from booking, possession of the plot had not been handed over to the original allottee, despite the same he took the risk of purchasing a plot, thus now the complainant should not press upon the relief of possession, rather relief of refund is more plausible. Any person who purchases a property/plot in a project for which plot buyer agreement is executed with the respondent, crystallizing terms and conditions of allotment, under no circumstances be expected to presume that such plot shall never be handed over, especially when in the present case, clause 5(b) of the plot buyer agreement states that in case the promoter is not able to deliver the plot due to any reason, the promoter may offer another plot in the colony or vicinity. Here, the fact that the respondent endorsed the name of the complainant on the plot buyer agreement (executed with second allottee) on 31.07.2014, re-affirmed the



fact that the respondent even in year 2014 had agreed to giving possession of the plot to the complainant. Thus, there remains no doubt that the complainant is entitled to relief of possession with interest under Section 18 of the RERA Act, 2016.

11. With respect to the issue that from which date complainant who is a subsequent allottee, shall be entitled to interest on delayed possession, respondent has argued that the rights have been endorsed in favor of the complainant on 31.07.2014 so legal obligations, if any, starts from the date of endorsement in her favor and not from the due date of possession. In the present case as observed in para 10 that in absence of a specific date of possession, three year from signing of plot buyer agreement i.e, 13.06.2014 shall be the deemed date of possession. The complainant who is a subsequent allottee stepped into the shoes of the second allottee on 31.07.2014. As per section 2(d) of RERA Act, 2016, Act does not distinct between an original allottee and subsequent allottee. Further, Section 18 of the RERA Act provides that if the promoter fails to complete or is unable to give possession of an apartment, plot or building, in accordance with agreement for sale and where allottee does not intend to withdraw from the project, he shall be paid by the promoter interest for every month of delay till



handing over of possession. As per this provision there are two ingredients that are required , one, promoter fails to give possession as per agreement and secondly allottee does not wish to withdraw from the project. The provision does not provide for different dates for original allottee and subsequent allottee. What is important to see is that plot has not been handed over as per agreement for sale or not? Here, the promoter failed to handover possession as per agreement for sale. Thus on the day of transfer/endorsement the right of delay interest had accrued in favour of the original allottee, the complainant shall be entitled to same and all such rights and liabilities as accrued in favour of the original allottee.


12. The complainant has argued that facts of his case are similar to complaint case no. 865 of 2020 titled as Deepak Gupta vs Parsvnath developers Ltd. Authority has referred to complaint case no. 865 of 2020, on perusal of the same, 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

A handwritten signature in blue ink, appearing to read 'Ramesh', with a horizontal line underneath it.

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 her complaint, she has prayed for directions to the respondent to hand over the possession of the plot no. 3432, Block B, 233.27 sq. yds in Parsvnath City along with interest on the amount paid from the date of payment till the date of possession of plot as per HREERA 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 RERD Act is entitled to the relief of interest on account of delayed possession.

13. Upon careful examination of plot buyer agreement executed between the parties on 13.06.2011, it has been revealed that terms and wordings of said plot buyer agreement are exactly the same as of builder buyer agreement executed between the parties on 08.10.2012 in complaint case no. **“865 of 2020 titled as Deepak Gupta versus M/s Parsvnath Developers Ltd.”** Moreover, 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 3278, Block B, Parvsnath City, Sonapat. Meaning thereby, the booking of plots made by complainants in both the complaints were made in “B Block” of

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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 complaint is of similar nature as complaint case no. 865 of 2020. Therefore, captioned complaint is disposed of in terms of the orders passed by the Authority in **Complaint no. 865 of 2020 titled as Deepak Gupta versus Parsvnath Developers Ltd.**

14. 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 HRERD Rules, 2017 i.e. SBI MCLR+2% which as on date works out to be 10.75% (8.75%+2%).

15. 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
₹16,18,200/-	₹16,26,995/-	₹14,298/-

16. 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.



(xiii) 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 ₹16,26,995/-. Respondent's liability for paying monthly interest of ₹14,298/- as shown in above table will commence w.c.f. 19.11.2023 and it shall be paid on monthly basis till valid offer of possession is made to complainants.
- (ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.



18. **Disposed of.** File be consigned to record room after uploading order on the website of the Authority.

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NADIM AKHTAR
[MEMBER]


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