



**HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA**

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

**BEFORE THE ADJUDICATING OFFICER**

**Complaint No. – 1184 of 2023**

**Date of Institution: - 29.03.2023**

**Date of Decision: - 06.12.2023**

Puneet Sharma s/o Man Mohan Sharma, r/o 64 Anand Lok, Ground Floor, Siri Fort Road, New Delhi - 110049

...COMPLAINANT

VERSUS

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

....RESPONDENT

**Hearing:- 4<sup>th</sup>**

**Present:-** Mr. Chaitanya Singhal, Advocate, Counsel for the complainant  
Mr. Narender Kumar Rana, Advocate, Counsel for the respondent

*Chaitanya Singhal*

**JUDGEMENT:**

The brief facts culminating into the institution of the present complaint are:

1. The complainant had booked 3 BHK flat measuring 2550 sq. ft. on 08.09.2018 in project 'Parsvnath Preston' in Parsvnath City, Sonipat. On 21.10.2008, Builder Buyer Agreement was executed between the complainant and the respondent according to which Unit no.T-9-102, 1<sup>st</sup> Floor measuring super area of 2550 sq. ft. for total sale consideration of ₹47,36,025/- in project Parsvnath Preston, Parsvnath City, Sonipat, Haryana. As per clause 10(a) of Builder Buyer Agreement, the respondent was committed to deliver possession of the booked flat within 36 months from the date of execution of Builder Buyer Agreement with a further grace period of six months which comes to 21.04.2012. Respondent has failed to complete the project and did not handover the possession of the said unit even after lapse of 13 years from the date of booking. On 29.04.2017, the respondent had sent Relocation Letter to the complainant, according to which the respondent had arbitrarily shifted the unit allotted to the complainant from T-9-102 to T-1-102. The respondent had also shifted covered parking to open parking without any prior and mutual consent from the complainant. As per customer ledger statement and various payment receipts, the complainant had paid a sum of ₹7,10,404/-. On 14.07.2021, the complainant had filed Complaint bearing no.716 of 2021 titled as Puneet Sharma v/s Parsvnath Developers Ltd. before Hon'ble Authority seeking possession of the booked flat

and payment of delayed possession charges from deemed date of possession till actual handing over of possession after receipt of valid Occupation Certificate. On 08.09.2021, it was second date of hearing, Hon'ble Authority decided the complaint filed by the complainant and granted relief of delayed possession interest on the amount paid by the complainant from deemed date of possession till actual handing over of possession after receipt of valid Occupation Certificate. The respondent was directed to pay upfront interest of ₹6,20,130/- and monthly interest of ₹5,506/- w.e.f. 09.10.2021 till the offer of possession is made to the complainant after obtaining Occupation Certificate. Execution was filed on 04.01.2022 for execution of judgment dated 08.09.2021. On 13.07.2022 Recovery Certificate was ordered to be issued by Hon'ble Authority against the respondent to recover the decretal amount as arrears of land revenue with an order to recover the decretal amount of ₹6,75,190/- from the respondent. Even after lapse of 8 months, the complainant had not received a single penny from the respondent. Neither the booked flat has been constructed. The construction of the project is at halt from the beginning till today. The tower in which the complainant has a booking, has not been erected till date. The respondent had not given possession of flat to the complainant. The respondent is arbitrarily withholding the money of the complainant since 2008. Right from the beginning, the respondent did not have intention of constructing and handing over possession of the residential flat to the complainant. The complainant had repeatedly visited to branch/site office of respondent at Sonipat, Haryana for more than 10 times to

enquire about the status of residential flat but all his visits and phone calls went in vain. The respondent had assured the complainant that it would resolve the problem at the earliest. The respondent has deliberately and intentionally not completed construction and given possession of said residential flat nor given any refund. It is an attempt to cheat and dupe with a mala fide and dishonest intention to cause undue gain to respondent and undue loss to the complainant. The complainant had always desired to have a big residential flat to accommodate his family which could not be completed because of non-delivery of possession by the respondent. Cause of action has arisen in favour of the complainant. By way of present complaint, the complainant has prayed to issue direction to the respondent to pay ₹5,00,000/- for mental harassment and agony, he has also claimed compensation @6% per annum on the amount paid by the complainant from the date of respective payment till realization, ₹25,000/- per month has been claimed as loss of rental income if the flat of the complainant would have been given on rent and he has also claimed ₹2,00,000/- as litigation cost.

2. Upon notice, the respondent has appeared and filed reply taking preliminary objections that the present complaint is not maintainable being premature and relief of compensation being sought is no maintainable before the Court of Adjudicating Officer. As per Section 72 of RERA Act, this Court has to see the ingredients of Section 72 of RERA Act which are missing in the present case. Complainant was required to adduce relevant material to satisfy factors set out in Section 72 of the Act. Promoter may also be given opportunity to adduce

evidence to rebut the claim for compensation. Only after that the Court would proceed to allow or disallow prayer for compensation. The factors which are relevant for claiming compensation cannot be placed in straight jacket as they would vary from project to project, locality to locality and city to city. Adjudicating compensation is not an exact science and may involve degree of guess work but the opinion must be founded upon a perceptible process of reasoning, based upon relevant material. The present complaint pertains to an unregistered project of the respondent. In view of latest judgment by Hon'ble Apex Court Newtech Promoters and Developers Pvt. Ltd. versus State of UP and others (2021) SCC Online SC 1044, this Court would not have the jurisdiction to entertain the present complaint. The complaint is barred by limitation and in absence of any pleading regarding condonation of delay, this Court could not have entertained the complaint in the present form. In recent judgment by Hon'ble Apex Court in case of Surjeet Singh Sahni vs. State of U.P. and others, 2022 SCC online SC 249, it has observed by Hon'ble Apex Court that mere representations do not extend the period of limitation. The aggrieved person has to approach the Court expeditiously within reasonable time. In the present case, the complainant is guilty of delay and latches and this ground complainant is liable to be dismissed. There is no contravention of any provision of the RERA Act on behalf of respondent. The complainant himself is categorized chronicle and audacious payment defaulter to the respondent company. RERA Act is to be applied prospectively and not retrospectively. In preliminary submissions, the respondent

has admitted that Flat no. T9-102 having area of 2550 sq. ft. in the project namely "Parsvnath Preston" Sonapat was booked by the complainant Mr. Puneet Sharma with Ms. Vidushi Sharma co-applicant on 08.09.2008 after satisfying themselves regarding the progress of the project. The complainant was allowed special discount of 3% of basic cost which comes to the tune of ₹1,46,475/- and he had agreed to pay the basic selling price of ₹47,36,025/- and he had chosen construction linked payment plan for further payment. Flat Buyer Agreement was executed between the complainant and the respondent company on 21.10.2008. The complainant had deposited a sum of ₹2,36,801/- as signing amount at the time of booking of the said flat the complainant had deposited ₹7,10,404/- towards basic price of the said flat with the respondent company till date. The flat was booked for purely investment purposes rather than for residential purpose. Due to certain modifications in the plans and with a view to achieve early completion, the presently existing unit T9-102 was relocated to unit no. T1-102. Letter dated 29.04.2017 was sent to the complainant. The terms and conditions of already executed Flat Buyer Agreement dated 21.10.2008 were to remain unchanged. The project was being developed in terms of statutory approvals granted by competent Authority. The respondent company had already applied for further removal of license upto 2024 before the DTCP, Haryana. All the statutory dues in the form of EDC, IDC, conversion charges etc. have been paid in total to the competent Authority. Delay interest of ₹6,20,130/- on deposited amount of ₹7,10,404/- along with further monthly interest in the sum of ₹5,506/-

per month has already been granted by Hon'ble Authority to the complainant in Complaint no.716 of 2021. Simultaneously Execution Complaint no.13 of 2022 was filed which was pending before the Court of Adjudicating Officer, HRERA, Panchkula. At this stage, the complainant cannot seek any other relief without proving the ingredients of Section 72. The complainant has failed to make out a case for compensation and is trying to mislead the Court. Time is not the essence of the contract. The entire complaint has been drafted based on an incorrect interpretation of the clauses of Flat Buyer Agreement and as such no cause of action has been arisen in favour of the complainant. The present complaint is misconceived and erroneous and untenable in the eyes of law. The complainant has misdirected himself as the reliefs claimed by him cannot be said to even fall within the jurisdiction of this Court. There is no intentional delay on the part of respondent company. The project has been delayed beyond the control of respondent company. The respondent company is keen to hand over the possession of the respective flat and it is putting its best efforts so that possession can be offered to the complainant. The claim of the complainant for paying compensation, interest etc. is neither maintainable nor tenable at this stage at the project.

3. On merits, all the averments made in preliminary objections and preliminary submission have been reiterated. It has further been stated that due to unprecedented reasons i.e. COVID-19, recession in economy, default in payment

by the allottees/buyers, possession could not be offered. Dismissal of the complaint has been prayed for.

4. Arguments of both learned counsel for the parties have been carefully heard along with meticulous examination of the records of the case.

5. Undisputedly, the complainant had booked a residential flat measuring 2550 sq. ft. in project 'Parsvnath Preston' in Parsvnath City, Sonipat on 08.09.2018. Unit no.T-9-102 was allotted to the complainant and Flat Buyer Agreement was executed between the parties on 21.10.2008. As per clause 10(a) of Flat Buyer Agreement, possession of the flat was to be handed over within 36 months from the date of execution of Flat Buyer Agreement with a grace period of 6 months which comes to 21.04.2012. It was only on 29.04.2017, the respondent had shifted the unit allotted to the complainant from T-9-102 to T-1-102 and also shifted covered parking to open parking. The complainant had paid a sum of ₹7,10,404/-. He had filed Complaint bearing no. 716 of 2021 titled as Puneet Sharma v/s Parsvnath Developer Pvt. Ltd. before Hon'ble Authority. Vide order dated 08.09.2021, the respondent was directed to hand over possession to the complainant after receipt of valid Occupation Certificate along with upfront interest of ₹6,20,130/- and monthly interest of ₹5,506/- w.e.f. 09.10.2021 till the offer of possession is made to the complainant after obtaining Occupation Certificate. Execution has also been filed by the complainant in which Recovery Certificate has been ordered to be issued. It is the grievance of the complainant that neither possession of the flat has been handed over to him nor amount paid



by him has been refunded to him nor amount of upfront interest or monthly interest has been paid to the complainant. It is the argument of learned counsel for respondent that due to certain unavoidable reasons, the project could not be completed. Though, it is the argument of learned counsel for respondent that the complainant had booked a flat for investment purpose and not for the purpose of residence, yet this has not been proved by learned counsel for respondent. It has been admitted by respondent that the project has not been completed and the possession of the flat has not been handed over to the complainant till date. Meaning thereby amount of ₹7,10,404/- deposited by the complainant is being used by the respondent to its unfair advantage. It can be said to be wrongful gain to the respondent and wrongful loss to the complainant. The amount is quantified. The compensation on the ground of mental agony and harassment is calculated as:

#### Compensation Calculation

Amount Paid (in ₹)	Time period	Rate	Compensation Amount (in ₹)
₹7,10,404	21.04.2012 (Deemed date of possession) to 29.03.2023 (Date of filing complaint)	6%	₹4,66,531/-

6. The complainant has sought ₹25,000/- per month being loss of rental income if the flat of the complainant would have been given on rent. Firstly, the complainant has not adduced any evidence and has not placed on record any

document showing that complainant has been residing on rent and monthly rent is being paid by him. Secondly a sum of ₹5,506/- has been awarded by Hon'ble Authority as monthly interest w.e.f. 09.10.2021 till the offer of possession is made to the complainant after receiving Occupation Certificate. The same relief cannot be granted twice. Hence, this argument of learned counsel for complainant is rejected and no amount of compensation is being granted on ground of loss of rental income.

7. The complaint has also claimed ₹2,00,000/- as litigation cost. Against this demand, a sum of ₹25,000/- is being granted as litigation cost.

8. Compensation in the sum of ₹4,66,531/- under the head of mental agony and harassment and ₹25,000/- against cost of litigation = (₹4,66,531/- + ₹25,000/-) = ₹4,91,531/- (Rupees Four Lakh Ninety One Thousand Five Hundred and Thirty One only) is being granted to the complainant.

9. In these terms, the complaint is partly allowed. The respondent is directed to pay amount of ₹4,91,531/- (Rupees Four Lakh Ninety One Thousand Five Hundred and Thirty One only) within 90 days to the complainant. First instalment is to be paid within 45 days from the date of uploading of this order and remaining amount within next 45 days.

*Arjun Gupta*

10. The present complaint stands **disposed of.** File be consigned to record room after uploading of this order on the website of the Authority.

06.12.2023

*Sarita Gupta*  
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(DR. SARITA GUPTA)  
ADJUDICATING OFFICER

**Note:** This judgement contains 11 pages and all the pages have been checked and signed by me.

*Sarita Gupta*  
.....  
(DR. SARITA GUPTA)  
ADJUDICATING OFFICER