



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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

|                               |              |
|-------------------------------|--------------|
| <b>Complaint no:</b>          | 1018 of 2020 |
| <b>Date of filing:</b>        | 14.10.2020   |
| <b>First date of hearing:</b> | 19.11.2020   |
| <b>Date of decision:</b>      | 29.01.2024   |

Smt. Paramjit Kaur W/o Sh. Sudershan Pal Singh,  
R/o 28C, Phase-111,  
Pocket-D, Deep Enclave,  
Ashok Vihar, New Delhi

....COMPLAINANT

VERSUS

M/s Parsvnath Developers Pvt. Ltd.  
Parsvnath Towers,  
Near Shahdara Metro Station,  
Shahdara, Delhi-110032

...RESPONDENT

|                               |              |
|-------------------------------|--------------|
| <b>Complaint no:</b>          | 1028 of 2020 |
| <b>Date of filing:</b>        | 14.10.2020   |
| <b>First date of hearing:</b> | 19.11.2020   |
| <b>Date of decision:</b>      | 29.01.2024   |

Devender Singh S/o Sh. Ram Singh,

R/o B-158, Lok Vihar,  
Pitampura, New Delhi

....COMPLAINANT

VERSUS

M/s Parsvnath Developers Pvt. Ltd.  
R/o Parsvnath Towers,  
Near Shahdara Metro Station,  
Shahdara, Delhi-110032

...RESPONDENT

**CORAM:**                    **Parneet Singh Sachdev**                    **Chairman**  
   **Nadim Akhtar**    **Member**

**Present: -**                    Ms. Nidhi Jain, Counsel for the complainant in both cases  
   through VC.  
   Ms. Rupali Verma, counsel for the respondent in both cases  
   through VC.

**ORDER (NADIM AKHTAR - MEMBER)**

1. Both of captioned complaints are taken up together for hearing as they involve similar issues and are against same project of respondent. This order is passed taking complaint no. 1018/2020-Paramjit Kaur v Parsvnath Developers Pvt Ltd as a lead case.
2. Present complaint has been filed on 14.10.2020 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**

3. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

| S.No. | Particulars                     | Details   |
|-------|---------------------------------|---|
| 1.    | Name of the project             | Present and Future projects (P& F);<br>Location: Sonapat, Haryana.          |
| 2.    | Name of promoter                | Parsvnath Developers Ltd.   |
| 3.    | Date of booking                 | 23.08.2004  |
| 4.    | Unit area                       | 300 sq. yds. as stated by complainant in the pleadings.                     |
| 5.    | Date of allotment               | Allotment not made  |
| 6.    | Date of builder buyer agreement | Not executed  |
| 7.    | Basic Sale Price                | Not mentioned<br><br>Rs 10,80,000/- claimed by complainant in the pleadngs. |
| 8.    | Amount paid by complainant      | ₹ 5,40,000/-  |



|     |                        |                       |
|-----|------------------------|-----------------------|
| 9.  | Due date of possession | Cannot be ascertained |
| 10. | Offer of possession    | Not give.             |

**B. FACTS AS STATED IN THE COMPLAINT**

4. That the original allottee M/s Rayaan International booked a residential plot measuring 300 sq. yds. by depositing the initial amount of ₹1,75,000/- against 2 receipts both dated 23.08.2004 under customer Code no. P/S R0101. The sale consideration was fixed at Rs 3600/- per sq yds, accordingly total sale consideration comes out to ₹10,80,000/- . Receipts dated 23.08.2004 are annexed as Annexure A and B to complaint.
5. That the rights in respect to the booking were purchased by Mr. Ved Prakash Bhandri (Second allottee) by depositing further amount of ₹3,65,000/- vide receipt dated 24.12.2005 annexed as Annexure-C. The transfer was endorsed by respondent in its record and endorsed at the back side of all the previous payments receipts. The respondent issued a letter dated 07.01.2006 evidencing the endorsement in favour of the purchaser, Mr. Ved Prakash Bhandari. A copy of letter dated 07.01.2006 is annexed as Annexure-D.
6. That an amount of ₹5,40,000/- stands paid out of total price of ₹10,80,000/-. However, respondent has miserably failed to allot the plot in its project. Later, the booking rights were purchased by the complainant from Mr. Ved Prakash



Bhandari in June 2006 who executed the relevant documents for transferring the rights in favor of the complainant. Complainant even contacted respondent for transferring the documents in her favor but the said request was rejected on the pretext that in order to transfer the name in favor of complainant, she has to make entire payment against the booking. Till then, there was no allotment done by the respondent. The documents executed by Mr. Ved Prakash Bhandari in favor of complainant are collectively annexed as Annexure-E.

7. After an extended duration, the respondent failed to make the allotment which created an apprehension in the mind of complainant. As a result, complainant made enquiries and came to know that respondent received the booking amount from complainant without obtaining mandatory license from the DTCP, Haryana as per the Haryana Development and Regulations of Urban Areas Act, 1975 and Rules 1976. Later, the license was obtained by respondent vide File No. LC-840A, License No. 878-894, File No. LC-504A dated 25.04.2006, as per information available on the website of Director, Town and Country Planning, Govt. of Haryana. The respondent has adopted not only unfair trade practice but illegal trade practice by accepting the huge amount in respect of booking of plot and not allotting any plot till date.



Respondent has also failed to develop the same as per schedule and committed huge delay.

**C. RELIEF SOUGHT**

8. That the complainant seeks following reliefs and directions to the respondent:-

- i. The respondent may kindly be directed to refund the amount deposited with the respondent, along with the interest @ 24% per annum, on amount deposited from their respective deposits till realization, after transferring the rights in respect of the booking in favor of complainant, in the interest of justice.
- ii. The respondent be further directed to pay the cost and litigation charges.

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

Learned counsel for the respondent filed detailed reply on 01.12.2020 pleading therein:-

9. That the complainant does not have any locus standi against the respondent company as the complainant is not the applicant in the upcoming/new project in respondent's record.
10. That the application form containing terms and conditions of the allotment was duly agreed by M/s Rayaan International at the time of booking. On

07.07.2006 original allottee M/s Rayaan International had transferred his nomination, rights and interest in favor of subsequent purchaser, i.e., Mr. Ved Prakash. On 07.01.2006, Ved Prakash executed and submitted transfer documents and affidavit cum undertaking alongwith Indemnity Bond.

11. That the Ved Prakash Bhandri had duly agreed that, as per Clause 7 of the Affidavit-Cum-Undertaking and Indemnity, if the Respondent fails to allot the plot, then Mr. Ved Prakash Bhandri shall accept refund of the amount deposited with the respondent along-with interest @9% per annum from the date of acceptance of nomination by the Respondent Company. A copy of the Affidavit-Cum-Undertaking and Indemnity Bond, Nomination Form, Agreement to Sell, Affidavit & Endorsement Letter are attached as Annexure R-2.
12. That Ved Prakash Bhandri has paid Rs.5,40,000/- till date to the respondent and is the applicant of this registration/ booking as per the records of the respondent. A copy of the latest ledger is annexed as Annexure R-3.
13. That respondent had planned to develop Township in Sonapat upon various pieces of land which was to be acquired from various farmers in Sonapat but a piece of land admeasuring 200 acres has been acquired by the Government, therefore, the project got delayed due to Force Majeure conditions. Subsequently, due to force majeure conditions the respondent was not in a



position to develop the project in time but, the Respondent Company is ready to allot alternate Unit to the Ved Prakash Bhandri (Subsequent Purchaser) subject to availability in other projects of the Respondent Company & mutual understanding of both the parties.

14. That the entire complaint has been drafted based on incorrect & false information and as such, no cause of action has arisen in favour of the Complainant to invoke jurisdiction of the Hon'ble Adjudication Officer, HRERA, Panchkula. That the Complaint filed by the Complainant before this Hon'ble Adjudication Officer (AO), H-RERA, Panchkula, besides being misconceived and erroneous, is untenable in the eyes of law.
15. That reliefs sought by complainant are barred by Limitation.

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

16. During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for complainant submitted that complainant is interested in seeking refund of the amount deposited by her along with interest. Learned counsel for respondent apprised the Authority that endorsement of booking rights has been duly made in favor of complainant in compliance of directions issued vide order dated 20.03.2023.





She further stated that respondent is ready to refund the amount in terms of application form.

**F. ISSUES FOR ADJUDICATION**

17. Whether the complainant is entitled to refund of amount deposited by her along with interest in terms of Section 18 of Act of 2016?

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

18. The Authority has gone through the rival contentions. In light of the background of the matter as raptured in this order and also the arguments submitted by both parties, Authority observes as follows:

(i) 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/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.



(ii) The respondent has taken a stand that present complaint is not maintainable for the reason that complainant does not have locus standi to file complaint as no record pertaining to transfer of allotment rights in her favor from Second allottee, i.e., Mr. Ved Prakash is available in their record. In this respect, Authority vide order dated 20.03.2023 had directed the complainant to visit office of respondent on 31.03.2023 and respondent was accordingly directed to transfer the booking of plot in favor of complainant. Relevant part of order dated 20.03.2023 is reproduced below for reference:-

*“After going through the submissions of the complainants and the available record, Authority finds that the erstwhile booking holders had executed receipt/agreement to sell wherein it has been stated that they have received a sum from complainants as full and final settlement in the matters and after that they will have no rights in said booking. Said receipts/agreements to sell have been annexed with the complaints.*

*Mere fact, that complainants names do not appear in respondent’s record will not ipso facto mean that complainants are not valid allottees. Since, erstwhile booking holders have executed receipts/agreement to sell, Authority is of the considered opinion that complainants are valid allottees in the respondent’s project. They have, therefore, stepped into the shoes of previous allottee and will have all the rights and liabilities of the previous allottee. Resultantly, booking of the plots deserves to be transferred in favour of the complainants. Therefore, complainants are directed to visit the office of respondent company on 31.03.2023 and respondent is directed to transfer the booking of the plot in favour of the complainants”*



In compliance of it, complainant visited the office and submitted necessary documents. This fact find mention in subsequent hearing dated 17.05.2023 wherein respondent sought 15 days time for transferring the booking in favor of complainant. During the course of hearing, ld. counsel for respondent apprised the Authority that booking rights stand transferred in name of complainant. Now, plea of respondent does not hold any merit and is therefore rejected.

(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, RERA 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) Factual matrix of the case is that admittedly, the original allottee M/s. Rayaan International made advance registration for a plot in the present and future project of the respondent, M/s Parsvnath Developers Ltd. on 23.08.2004 by paying Rs 5,000/- as booking amount and further paid an amount of Rs. 1,75,000/- towards sales consideration till year 2004. It is also admitted by the respondent promoter that the advance registration was endorsed in favour of the subsequent allottee, i.e., Ved Parkash on 07.07.2006 and later on, in favor of complainant by virtue of order dated 20.03.2023. There is also no dispute with regard to the fact that no specific plot was allotted to the predecessor in interest of the complainant and that no builder buyer agreement was executed between the parties. It is an admitted fact that even after a lapse of 19-20 years, no allotment of plot has been made in favor of complainant by the respondent and Id. Counsel for respondent has stated even today that respondent is not in a position to allot a plot to the complainant. Thus, the respondent who has accepted an amount of Rs. 5,40,000/- way back in the year 2004-2005 has been in custody of the money paid for allotment of the plot and has been enjoying benefits out of it. Facts of this case are identical to the facts of the case in complaint no. **1198 of 2021 titled as Mohinder Singh Aggarwal vs Parsvnath Developers**



**Ltd.** So, the present case is being disposed of in the same terms of the said case by allowing refund of paid amount with interest.

(v) As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

*“Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub. sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%. Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public”.*

(vi) Complainant has claimed in his complaint interest @ 24%. The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

(vii) Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the marginal cost of lending rate (in short MCLR) as on

date i.e. 29.01.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.85%.

(viii) The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainant the paid amount of ₹5,40,000/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, i.e, at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.85% (8.85% + 2.00%) from the date amounts were paid

till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 10.85% till the date of this order and said amount works out to ₹ 10,86,588/- as per detail given in the table below:

## Complaint no. 1018/2020

| Sr.no.  | Principal Amount | Date of payment | Interest Accrued till 29.01.2024 |
|---|------------------|-----------------|----------------------------------|
| 1.  | 5,000/-          | 23.08.2004.     | 10,551                           |
| 2.  | 1,70,000/-       | 23.08.2004      | 3,58,743                         |
| 3.  | 3,65,000/-       | 24.12.2005      | 7,17,294                         |
| Total=  | 5,40,000/-       |                 | 10,86,588/-                      |
| Total amount to be refunded to the complainant = ₹540000/- + ₹ 1086588/- = ₹16,26,588/- |                  |                 |                                  |

## Complaint no. 1028/2020

| Sr.no.   | Principal Amount | Date of payment | Interest Accrued till 29.01.2024 |
|--|------------------|-----------------|----------------------------------|
| 1.   | 1,75,000/-       | 17.08.2004.     | 3,69,606                         |
| 2.   | 3,60,000/-       | 22.12.2005      | 7,07,682                         |
| Total=   | 5,35,000/-       |                 | 10,77,288                        |
| Total amount to be refunded to the complainant = ₹535000/- + ₹ 10,77,288/- = ₹ 16,12,288/- |                  |                 |                                  |

(ix) Further, the complainant is seeking cost of litigation. 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 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.

#### **H. DIRECTIONS OF THE AUTHORITY**

32. 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 refund the entire amount of ₹ 5,40,000/- with interest of ₹ 10,86,588/- to the complainant in complaint no. 1018/2020 and ₹ 5,35,000/- with interest of ₹ 10,77,288/- to the complainant in complaint no. 1028/2020. It is further clarified that respondent will remain liable to pay the interest to the complainants till the actual realization of the above said amounts.

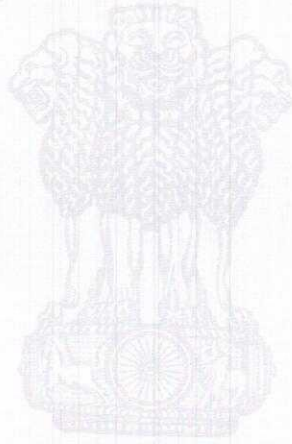


(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

33. **Disposed of.** File be consigned to record room and order be uploaded on the website of the Authority.

.....  
**NADIM AKHTAR**  
**[MEMBER]**

.....  
**PARNEET S SACHDEV**  
**[CHAIRMAN]**



सत्यमेव जयते