



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no:	2123 of 2023
Date of filing:	21.09.2023
Date of first hearing:	10.10.2023
Date of decision:	01.02.2024

Rakesh Chhabra & Dinesh Chhabra,
R/o 72, Raja Enclave, Pitampura
Near Ashiana Chowk,
New Delhi-110034

...COMPLAINANT

VERSUS

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

...RESPONDENT

CORAM: Parneet Singh Sachdev Chairman
Nadim Akhtar Member
Dr. Geeta Rathee Singh Member
Chander Shekhar Member

Present: - Mr. Chaitanya Singhal, Counsel for the complainants through VC.

Mr. Brijesh Ladwal, Proxy Counsel for Adv. Rupali Verma, Counsel for the respondent.

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. Present complaint has been filed on 21.09.2023 by the complainants 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 terms and conditions agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, 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	Parsvnath, Present and Future projects; Location: Sonapat (Haryana).

2.	Name of promoter	Parsvnath Developers Ltd.
3.	Date of booking	18.02.2005
4.	Unit area	400 sq. yds as mentioned by complainants in the pleadings
5.	Date of allotment	Allotment not made.
6.	Date of builder buyer agreement	Not executed
7.	Basic Sale Price	Not mentioned Rs 23,00,000/- claimed by the complainants in the pleadings of the complaint.
8.	Amount paid by complainants	₹ 11,50,000/-
9.	Due date of possession	Cannot be ascertained as no BBA has been executed.
10.	Offer of possession	Not given.

B. FACTS OF THE COMPLAINANT AS STATED IN THE COMPLAINT

3. That the original allottee Rakesh Sethi booked a residential plot measuring 400 sq. yds. by depositing an initial amount of ₹5,60,000/- vide receipt dated 20.02.2005 under customer Code no. PH/R0105. The sale consideration was fixed at Rs 5750/- per sq yd, accordingly, total sale consideration comes out to ₹23,00,000/- . Thereafter, another payment amounting to Rs 5,90,000/- was



- made by the original allottee vide receipt dated 19.01.2006. Both receipts dated 20.02.2005 and 19.01.2006 are annexed as Annexure P-1 to complaint.
4. That the rights in respect to the booking were purchased by the complainants on 18.02.2009. Thereafter, transfer was endorsed by the respondent in its record by issuing a letter dated 18.02.2009 which is annexed as Annexure P-2.
 5. That an amount of ₹11,50,000/- stands paid out of total sale price of ₹23,00,000/-. However, respondent had failed to give an allotment and possession of plot to the complainants even after a lapse of 18 years. No Builder Buyer Agreement (BBA) has been executed between the complainants and the respondent.
 6. That the respondent is arbitrarily withholding the money of the complainants since year 2005. Respondent has neither refunded the amount paid by the complainants nor given allotment letter of plot to the complainants.
 7. That the complainants had repeatedly visited respondent's office for more than 50 times to enquire about the status of their allotment but all their visits and phone calls went in vain. The respondent assured the complainants that they will allot the plot within 6 months every time. But respondent has deliberately and intentionally neither allotted any plot nor refunded the paid amount of the complainants.

8. That complainants do not wish to be a part of the project and prays for refund of principle amount alongwith interest as per HRERA Rules. The facts and issues of the present complaint are entirely similar as has been held by this Hon'ble Authority in complaint no. 1198/2021-“Mohinder Singh Aggarwal vs Parsvnath Developers” wherein Authority have ordered the respondent to give refund alongwith interest.

C. RELIEF SOUGHT

9. That the complainants seek following reliefs and directions to the respondent:-

- i. To refund the principle amount of Rs 11,50,000/- alongwith interest as per Rule 15 of HRERA Rules,2017 from the dates when the amounts were paid till date.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 10.10.2023 pleading therein:-

10. That the present complaint is not maintainable before this Hon'ble Authority for the reason that the complainant is not an allottee of the respondent company.



11. That as per section 2(d) of the Real Estate(Regulation and Development) Act, 2016, the definition of allottee is reproduced hereinafter for ease of this Hon'ble Authority.

“Section 2(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.”

12. That, the present complaint is grossly barred by limitation and this Hon'ble Authority does not have jurisdiction to entertain a time barred claim. Moreover, in absence of any pleadings regarding condonation of delay, this Hon'ble Court could not have entertained the complaint in present form. In recent judgment by the Hon'ble Supreme Court in the case of '*Surjeet Singh Sahni vs. State of U.P and others*', 2022 SCC online SC 249, the Hon'ble Apex Court has been pleased to observe that mere representations does not extend the period of limitation and the aggrieved person has to approach the court expeditiously and within reasonable time. In the present case the complainant is guilty of delay and laches, therefore, his claim should be dismissed.



13. That, there is no 'Agreement to Sale' between the parties and therefore, relief sought under section 18 of the RERA, Act, 2016 is not maintainable before this Hon'ble Authority.
14. That, there is no contravention of the Real Estate (Regulation and Development) Act, 2016 on behalf of the respondent, hence the present complaint is not maintainable.
15. That in the respectful submission of respondent, it is stated that in similar circumstances, in the matter of "Savita Khaturia vs. M/s Parsvnath Developers Limited Appeal No.193 of 2019", the Hon'ble Tribunal had been pleased to accept the contentions of the respondent-company to the extent that in the absence of any agreement to sell or any other agreement for possession, the relief of possession is not tenable and therefore, in the above-stated appeal the Hon'ble Tribunal had directed the complainant to accept refund of the deposited amount.
16. That it is pertinent to mention that the original applicant was very well aware with the fact that neither any location nor any site of the project was confirmed at the time of registration. Further in this regard, the original applicant while filling the application form gave undertaking that in case no allotment is made, then he shall accept the refund of the amount deposited



by him towards its registration. The relevant clauses of the application form are mentioned hereunder:-

- (a) *That you offer me/us a residential plot which you may promote in the near future within a period of six months.*
- (b) *That the said advance would be adjusted against the booking amount payable by me/us as and when a residential plot is allotted in my/our name.*
- (c) *That in the event the residential plot is allotted after nine months, simple interest @10% per annum shall be paid to me/us for the period delayed beyond nine months on the amount paid by me/us as advance till such time I/We am/are allotted a residential plot or adjusted against the price of the plot to be allotted to me/us.*
- (d) *In case the Company fails to allot a plot within a period of one year from the date of making payment, then I/We would have the option to withdraw the money by giving one-month notice.*
- (e) *That it is understood that the company shall allot me a residential plot at a price which is Rs. 400/- (Rupees Five Hundred Only) per square yard less than the launch price.*
- (f) *Though the company shall try to make an allotment but in case it fails to do so for any reason whatsoever, no claim of any nature, monetary or otherwise would be raised by me/us except that the advance money paid by me/us shall be refunded to me/us with 10% simple interest per annum.*

A copy of the application form dated 20.02.2005, which was duly signed and executed by the original applicant is annexed as Annexure R-1.

17. That Clause (f) of the application form which clearly states that while proceeding ahead with the purchase, the original applicant has clearly understood that no allotment was made in her favour and she has further given an undertaking that in case no allotment is possible in future, then she would accept refund with simple interest at the rate of 10% per annum.
18. That on 18.02.2009, the original applicant transferred/endorsed his rights in favour of the complainants. A copy of endorsement/nomination letter dated 18.02.2009, is annexed herewith as Annexure R-2.
19. That on 03.02.2009, the complainants had signed & executed an affidavit-cum-undertaking and indemnity, the said affidavit-cum-undertaking and indemnity clearly stipulates that in case the Complainant is not allotted any plot in upcoming project of the respondent, he shall accept refund of the deposited amount with 9% simple interest per annum. For case of appreciation, clause 7 of the undertaking is reproduced hereunder as :

"That I/We agree that if I/We are not allotted any plot in the Present & Future Projects, then I/We will accept the refund of the deposited money with the Company along with simple interest @ 9 % per annum from the date of acceptance of our nomination by the company"



20. That it is submitted that till date respondent has received an amount of Rs. 11,50,000/- from the original applicant. Further, it is submitted that it is a matter of record that no demand was ever raised by the respondent company from the complainants, which establishes the fact that no plot was allotted to the complainants or to her predecessor in interest and the registration was merely an expression of interest towards the upcoming project of the respondent company.
21. That it is pertinent to state that in absence of any agreement to sale, the complainants are strictly bound by the terms & conditions of the application form and affidavit-cum-undertaking & indemnity which is duly signed & executed by the Complainant.
22. That the money receipts would show that necessary ingredients of an agreement much less a valid contract is conspicuously missing. In the receipts, which have been annexed by the complainant in the present complaint, there is no plot number, no plot size and no specification of the project and rather, receipts specifically mention advance against present and future projects. The present complaint filed by the complainant before this Hon'ble Authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainants have



misdirected themselves in filing the above captioned complaint before this Hon'ble HRERA, Panchkula as the relief (s) claimed by the complainants do not even fall within the realm of jurisdiction of this Authority as there is neither any allotment nor any agreement to sale which can be adjudicated by the Authority. Further, the Complaint is barred by limitation and no cause of action has arisen in favour of the complainants to file the present complaint.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT

23. During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for complainants submitted that complainants are interested in seeking refund of the amount deposited by them along with interest as per terms of Rule-15 of RERA Rules. Learned proxy counsel for Adv. Rupali S. Verma, Counsel for the respondent apprised the Authority that respondent is ready to refund the paid amount alongwith interest at the rate of 9% p.a.

F. ISSUES FOR ADJUDICATION

24. Whether the complainants are entitled to refund of amount deposited by them along with interest in terms of Section 18 of Act of 2016?



G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

25. The Authority has gone through the rival contentions. In light of the background of the matter as captured 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/TTCP 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 complainants are not allottees of the respondent company and registration was mere an expression of interest towards future project of respondent. Before adjudicating upon said issue, it



is important to refer to the definition of allottee as provided in Section 2(d) of the Act. Said provision is reproduced below for reference:

“Section 2(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.”

Upon careful perusal of all the terms and conditions of application form annexed as Annexure R-1, it is revealed that original allottee/complainants (referred as purchaser) had agreed to pay a sum of ₹5,60,000/- for purchasing a residential plot and it was agreed between the parties that respondent shall allot a residential plot to purchaser and in case he fails to do so for any reason whatsoever, advance money paid by purchaser shall be refunded to him with 10% interest per annum. Thereafter, payment amounting to ₹5,90,000/- were accepted by respondent from the purchaser. The fact that the respondent had accepted subsequent other payments from the purchaser apart from the initial booking amount which was paid by the purchaser and had issued receipts for the same, clearly shows that respondent had recognised the complainant/original allottee as his allottee.



(iii) Respondent has also taken an 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 Mr. Rakesh Sethi made advance registration for a plot in the present and future project of the respondent M/s Parsvnath Developers Ltd. on 20.02.2005 by paying Rs 5,60,000/- as booking amount and further paid an amount of Rs. 5,90,000/- towards sales consideration till year 2006. It is also admitted by the respondent promoter that the advance registration was endorsed in favour of the subsequent allottee i.e. complainants on 18.02.2009. There is also no dispute with regard to the fact that no specific plot was allotted to the



predecessor in interest of the complainants 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 complainants by the respondent and ld. Counsel for respondent has stated even today that respondent is not in a position to allot a plot to the complainants. Thus, the respondent who has accepted an amount of Rs. 11,50,000/- way back in the year 2005-2006 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) 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. 01.02.2024 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 ₹11,50,000/- 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 ₹ 23,07,536/- as per detail given in the table below:

Sr.no.	Principal Amount	Date of payment	Interest Accrued till 01.02.2024
1.	5,60,000/-	20.02.2005.	11,52,109
2.	5,90,000/-	19.01.2006	11,55,427
Total=	11,50,000/-		23,07,536/-
Total amount to be refunded to the complainant = ₹1150000/- + ₹ 23,07,536/- = ₹ 34,57,536/-			

H. DIRECTIONS OF THE AUTHORITY

26. Hence, the Authority hereby passes this order and issue 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 ₹ 11,50,000/- with interest of Rs 23,07,536/- to the complainants in

equal share. It is further clarified that respondent will remain liable to pay the interest to the complainants till the actual realization of the above said amount.

(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 against the respondent.

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


.....
CHANDER SHEKHAR
[MEMBER]


.....
DR. GEETA RATHEE SINGH
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]


.....
PARNEET SINGH SACHDEV
[CHAIRMAN]