



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>1056 of 2023</b>
<b>Date of filing:</b>	<b>02.05.2023</b>
<b>Date of first hearing:</b>	<b>01.08.2023</b>
<b>Date of decision:</b>	<b>15.11.2023</b>

Surender Singh S/o Sher Singh

R/o Badhawar house, Malik Colony

Near Panchsheel school

Gohana road, Sonipat, Haryana

...Complainant

Versus

M/s Parsvnath Developers Ltd.

Parsvnath Tower Near Shahdara Metro Station,

Delhi: 110032

...Respondent

**CORAM:**

**Dr. Geeta Rathee Singh**  
**Nadim Akhtar**

**Member**  
**Member**

**Present: -**

Mr. Vikasdeep , Counsel for the complainant through video conference

Mr. Narender Kumar, counsel for the respondent through VC.

### **ORDER ( Dr. GEETA RATHEE SINGH - MEMBER)**

1. Present complaint dated 02.05.2023 has been filed 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 complainant and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Parsvnath Preston, Sonipat
2.	Name of promoter	Parsvnath Developers Ltd.
3.	Date of booking	04.03.2008
4.	Unit details	T-9-1801 in Tower-9 1900 sq. ft.
5.	Date of builder buyer agreement	10.03.2008
6.	Basic Sale Price	₹35,38,631.25
7.	Amount paid by complainant	₹5,30,832/-
8.	Due date of possession	10.03.2011(as per BBA)
9.	Offer of possession	Not yet offered



**B. FACTS OF THE COMPLAINT**

3. That the respondent represented that it is in the process of developing a group housing complex consisting of residential apartment known as "Parsvnath Preston" over land of 28.106 acres in village Shahpur Turk, Sonipat.
4. That complainant booked a flat in the respondent's project "Parsvnath Preston", Sonipat on 04.03.2008. Flat buyer agreement has been executed between the parties on 10.03.2008 for flat no. T-9-1801, 18<sup>th</sup> floor, Tower-9. Basic sales price of the flat is Rs. 35,38,631.25/- against which the complainant has paid an amount of Rs. 5,30,832/-
5. That clause 10(a) stipulates that the construction shall be completed within 36 months from the start of foundation of particular tower, respondent at the time of booking had represented that Tower 9 is under construction. Respondent was under an obligation to deliver possession within 36 months of booking that is 10.03.2011.
6. That there is no development at site, nor the respondent demanded further instalments. Project is inordinately delayed and respondent never intimated the status of the project and its development.
7. That due to non-delivery of flat cause of action is in favor of complainant and against the respondent, is a continuing cause of action and still subsisting since the respondent failed to give allotment and possession of flat to the complainant till date.

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8. That no other complaint against the respondent company is pending in any other court/forum in India.
9. That this Hon'ble Real Estate Regulatory Authority has jurisdiction to try and decide this complaint since the project which was to be developed was in project and is within the jurisdiction of the Hon'ble Authority.

**C. RELIEF SOUGHT**

10. The complainant in his complaint has sought following reliefs:
  - (i) The respondent may kindly be directed to refund the amount deposited with the respondent, along with statutory interest on amount deposited from their respective deposits till realization, in the interest of justice.

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

Learned counsel for the respondent filed detailed reply on 14.08.2023 pleading therein:-

- (i) That if the relief of refund as prayed by the complainant is allowed then it will affect the project of the respondent company.
- (ii) That the present complaint is not maintainable in law.
- (iii) That, the present complaint is grossly 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 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.

- (iv) That the provisions of Real Estate (Regulation and Development) Act, 2016 cannot be applied retrospectively.
- (v) That on 04.03.2008, Mr. Surender Singh booked a flat bearing no. T9-1801 ad-measuring 1900 sq. ft. in the project named as 'Parsvnath Preston, Sonapat. It is submitted that the complainant proceeded with the booking after conducting proper due-diligence and being aware about the status of the project.
- (vi) That on 10.03.2008, flat buyers agreement was executed between the parties as per which the basic selling price of the flat was fixed at Rs. 35,38,631.75 after availing the special discount Rs. 1,86,243.75/- i.e. 5% of basic sales price. The complainant had opted to make further payment as per the construction linked payment plan.



- (vii) That till date complainant has paid only Rs. 5,30,832/- towards basic price/cost of the said flat and has failed to make the timely payments.
- (viii) That the project is being developed in terms of statutory approvals granted by the competent authority. In this regard, license no. 1205-1206 of 2006 has been issued by the Department of town & Country Planning, Haryana and further, it is pertinent to mention that the renewal of license has been applied for the period from 06.10.2019-05.10.2024.
- (ix) That all statutory dues in the form of EDC, IDC, conversion charges etc. have been paid in full to the competent authority.
- (x) That presently existing unit T9-1801 had been relocated to the unit no. T1-12A01 which was communicated to the complainant vide letter dated 29.04.2017.

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

- 11. During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for complainant submitted that complainant is willing to accept refund of the amount deposited by him along with interest. Ld. Counsel for the respondent submitted that respondent is in the process of streamlining the project.



**F. ISSUES FOR ADJUDICATION**

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

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

13. 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) It is an admitted fact that complainant booked a flat in the respondent's project "Parsvnath Preston", Sonipat on 04.03.2008. Flat buyer agreement was executed between the parties on 10.03.2008 for flat no. T-9-1801, 18<sup>th</sup> floor, Tower-9. Basic sales price of the flat is Rs. 35,38,631.25/- against which the complainant has paid an amount of Rs. 5,30,832/-. As per clause 10(a) of the buyer's agreement, construction of the flat was likely to be completed within a period of 36 months from the date of start of foundation of the particular tower along with grace period of 6 months, however possession has not been offered to the complainant till date.

(ii) Respondent has raised certain objections with respect to maintainability, limitation and retrospective application of the Act. Each objection is dealt herein below.

(a) Respondent has raised an objection regarding maintainability of the complaint on the ground that Authority does not have jurisdiction

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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/TICP 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 Sonapat 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.

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

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



2016 as the Authority set up under that Act being quasi-judicial and not a Court.

(c) Further, the respondent has objected that the provisions of RERA Act, 2016 cannot be applied retrospectively. This has been already decided by the Hon'ble Supreme Court in 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.

(iii) The main grouse of the complainant in the present case is that even after lapse of 13 years from the date of execution of the builder buyer agreement possession has not been offered to the complainant. As per section 18(1) of the RERA Act, complainant now wants to withdraw from the project and demands refund of the amount deposited by him. Respondent has not denied the fact that possession has not been offered to the complainant rather a plea has been taken that existing unit T9-1801 had been relocated to the unit no. T1-12A01 which was communicated to the complainant vide letter dated 29.04.2017. Respondent has averred that relief of refund as prayed by the complainant may not be allowed as it will affect the completion of project. In this regard Authority observes that as per clause 10(a) of the builder buyer agreement executed between the parties, construction of the unit was to be completed within 36 months from the start of foundation of particular tower which was initially Tower 9 in the present case. However, respondent has not placed on record any document to show when the construction of the tower in which the



unit of the complainant is located was started. Also, there is nothing on record placed by the respondent to show as to whether the factum of start of construction was ever communicated to the complainant. In absence of any such document, exact date of start of construction cannot be ascertained. Further, the aforementioned clause is heavily loaded in favour of respondent. In such circumstances, Authority has placed reliance upon the judgement of Hon'ble Supreme Court in the case of **M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr** wherein 3 years' time has been held as reasonable time where the exact date for handing over possession cannot be ascertained. Accordingly, the respondent was to handover the possession of the unit within 3 years of date of builder buyer agreement i.e., by 10.03.2011. Perusal of clause 10(a) also states that respondent is entitled to grace period of 6 months for circumstances beyond control of the respondent, however respondent has failed to explain/prove any situation which can justify grace period. Furthermore, respondent has averred that existing unit T9-1801 had been relocated to the unit no. T1-12A01 however respondent has not placed on record any letter of communication to complainant informing him of the relocation and whether complainant ever consented for said relocation. Only ledger account annexed at page 30 mentions the number of the changed unit.

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(iv) With regard to the averment of the respondent that refund may not be allowed as it will affect the project of the respondent company. Authority observes that respondent has admitted that there are various approvals pending before the competent Authority. Also no timeline for completion of the project has been provided. Thus, it can easily be inferred from the given circumstances of the project that there is no scope of completion of the project in near future. Complainant who has booked his unit in year 2008 cannot be made to wait endlessly for possession. Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others " in Civil Appeal no. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

*"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the*



*amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

In view of the ratio laid down by Hon'ble Supreme Court in Newtech Judgment Authority finds it to be fit case for allowing refund in favour of complainant.

Section 18(1) of the RERA Act of 2016 is reproduced below:

*18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

Case is clearly made out to allow relief of refund as sought by complainant. Therefore, as per provisions of Section 18 of the Act, relief of refund as sought by the complainant deserves to be granted.



(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 (NCLR) 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) 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.

(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. 15.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.

(vii) 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 ₹5,30,832/- 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 10.75% (8.75% + 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 10.75% till the date of this order and said amount works out to ₹7,24,484/-/- as per detail given in the table below:

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Sr. No.	Principal Amount	Date of payment	Interest Accrued till 15.11.2023
1.	₹5,30,832/-	10.03.2011	7,24,484/-

#### H. DIRECTIONS OF THE AUTHORITY

14. 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 ₹12,55,316/- to the complainant.

(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.

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

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

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