

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 4035 of 2023
Order reserved on: 05.07.2024
Order Pronounced on: 26.07.2024

Smt. Usha Gupta
R/o: - B-1/11, Sector - 15, Rohini, North
West Delhi - 110089

Complainant

Versus

M/s Parsvnath Developers Limited.
Regd. Office at: - Parsvnath Tower, Near
Shahdara Metro Station

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Shri Gaurav Rawat (Advocate)
Shri Deeptanshu Jain (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed *inter se* them.

A. Unit and project related details

2. The particulars of unit details, 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 tabular form:

S.N.	Particulars	Details
1.	Name of the project	Cannot be ascertained <i>(Upcoming Future Project , Gurugram)</i>
2.	Date of booking	19.02.2005 <i>(As stated by the complainant at page 13 of complaint)</i>
3.	Apartment no.	Cannot be ascertained/No documents placed on record
4.	Date of builder buyer agreement	Cannot be ascertained/No documents placed on record
5.	Possession clause	Cannot be ascertained/No documents placed on record
6.	Due date of possession	22.02.2008 <i>(As per Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018 - 3 years from the date of first payment receipt issued by the respondent i.e., 22.02.2005)</i>
7.	Total sale consideration	Cannot be ascertained/No documents placed on record
8.	Paid up amount	Rs.11,50,000/- <i>(Inadvertently the amount paid is mentioned as Rs. 7,50,000/- but now the same is being corrected)</i>

		<i>(As stated by the complainant at page 14 of complaint and as per receipts on page 17-18 of complaint)</i>
9.	Occupation certificate	Not Obtained
10.	Offer of possession	Not Offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

- a) In 2005, the respondent issued an advertisement announcing future group housing project in Gurugram was launched by respondent, and thereby invited applications from prospective buyers for the purchase of unit in the said project. The respondent confirmed that the projects will soon get building plan approval from the authority. Relying on various representations and assurances given by the respondent and on belief of such assurances, complainant booked a unit in the future project by paying an amount of Rs.5,75,000/-vide cheque no. 150724 dated 19.01.2006, and Rs. 5,75,000/- vide cheque no. 672243 dated 19.02.2005 towards the booking of the said unit in the upcoming project in Gurugram and the same was acknowledged by the respondent. As per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit timely paid a total sum of Rs. 11,50,000/- towards the said unit. That is pertinent to mention here that

respondent till date failed to obtain the approvals, fail to issue allotment letter and complete the project.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- I. Direct the respondent to refund the entire amount to the complainant along with interest from the date of respective payments till its complete realization.

D. Reply by the respondent:

5. The respondent has contested the complaint on the following grounds: -

- a. That since the complainant is not covered under the definition of allottee as defined under section 2(d) of the Real Estate (Regulation and Development) Act, 2016 (RERA, Act), the respondent is filing the present reply to the captioned complaint. The complainant is not covered under the definition of allottee as defined under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016 (RERA, Act).
- b. Admittedly, the complainant in the captioned complaint has only applied for allotment of a residential apartment in the proposed project of the respondent. It is clear that no allotment had even been made to complainant. Therefore, the complainant is not covered under the definition of allottee as defined under section 2(d) of the RERA Act.
- c. The complainant has not placed on record to show any document evidencing that the she had approached the

respondent for allotment of unit for a project being constructed in Gurugram. The complainant had failed to place on record any document to show cause as to in which project she has applied for the allotment of unit. In view of the same, it is submitted that this Hon'ble Authority lacks jurisdiction to entertain the captioned complaint.

d. Since the complainant is not covered under the definition of allottee as defined under section 2(d) of the RERA Act, the captioned complaint is not maintainable and is liable to be rejected on this ground alone.

6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties as well as the written submission of the complainant.

E. Jurisdiction of the authority

The respondent has raised a preliminary objection regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the

present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

8. 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) The promoter shall-

(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.

9. So, in view of the provisions of the Act 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 the adjudicating officer if pursued by the complainant at a later stage.
10. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)*** and reiterated in case of ***M/s Sana Realtors Private Limited & other***

Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

11. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

E. Findings on the relief sought by the complainant

E. I Direct the respondent to refund the entire amount to the complainant along with interest from the date of respective payments till its complete realization.

12. The complainant submits that vide receipts dated 22.02.2005 and 19.01.2006, she had paid an amount of Rs.11,50,000/- to the respondent/promoter and the same was confirmed by the respondent in respect of advance against present and future project. Despite repeated follow up by complainant with the respondent /promoter

vide telephonic conversations neither any allotment letter was issued in respect of the aforesaid plot, nor the respondent has finalized anything regarding specify the said project till date. The complainant due to the neglectful behaviour of the respondent filed the present complaint pleading for refund along with interest before this authority.

13. Before coming to the facts of the case, it is to be seen as to the receipt issued by the respondent/promoter falls within the definition of agreement, as per section 2(e) of the contract Act, 1872 and which provides that:

"Every promise and every set of promise forming the consideration for each other is an agreement."

14. Further, section 10 of the act defines the conditions under which the agreement made fall with the definition of contract and the same provides as under:

"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void."

15. Furthermore, under section 31 of the RERA Act, 2016 any aggrieved person may file a complaint before the Authority or the A.O., however the complaint can be filed only against the promoter, allottee or the real estate agent. The act/section does not say only allottee or the real estate agent can file a complaint. In the present case, the complainant is aggrieved by the act of the non-compliance of this part of the contract by the respondent. Hence, objection of the respondent that complaint is not maintainable stands rejected.
16. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by her in respect

of subject unit along with interest at the prescribed rate as provided under section 18(1)(b) of the Act. Sec. 18(1)(b) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

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."

(Emphasis supplied)

17. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by her at the prescribed rate of interest. However, the allottee is seeking refund of the amount paid by her with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced 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.

18. The legislature in its wisdom in the subordinate legislation under the provision 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.

19. 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., 26.07.2024 is **9%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11%**.

20. The definition of term 'interest' as defined under section 2(za) of the Act provides that 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. The relevant section is reproduced below:

"(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;"*

21. The authority after considering the facts stated by the parties and the documents placed on record is of the view that the complainant is well within her right for seeking refund under section 18(1)(b) of the Act, 2016.

22. The instant matter falls in the category where the promoter has failed to allot a plot/unit in its any of the upcoming project as detailed earlier

despite receipts of Rs.11,50,000/- made in the year 2005 and 2006. So, the case falls under section 18(1)(b) of the Act of 2016.

23. In the instant matter, even after lapse of 16 years from the date of payment till the filling of complaint, no buyer's agreement has been executed inter- se parties. The respondent fails or surrender his claim w.r.t. the alleged date, the authority in a rightful manner can proceed in the light of judicial precedents established by higher courts. When the terms and conditions exchanging (agreement) between parties omits to specify the due date of possession the reasonable period should be allowed for possession of the unit or completion of the project.
24. That the authority is of the considered view that the Act, 2016 ensures the allottee's right to information about the project and the unit. That knowledge about the timelines of the delivery of possession forms an inseparable part of the agreement as the respondent is not communicating the same to the complainant/allottee. Hence, it is violation of the Act, and shows his unlawful conduct.
25. The Hon'ble Supreme Court in the case of **Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018** observed that *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that **when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this***

case, a time period of 3 years would have been reasonable for completion of the contract.

26. In view of the above-mentioned reasoning, the date of booking is to be treated as provisional allotment letter, ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 22.02.2008.
27. Moreover, the authority observed by Hon'ble Supreme Court of India in *Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021*

"... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

28. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of provisional allotment letter or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as she wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
29. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1)(b) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by her at the prescribed rate of

interest i.e., @ 11% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

30. Also vide proceeding dated 05.07.2024, the counsel for the complainant stated that the it had paid amount for the upcoming future project vide receipt numbers PH003678 AND PH001295 in which no area that is to be allotted is mentioned, no area/sector even no tower is mentioned and further stated that they are seeking refund of the amount paid by the complainant way back in 2004 based on the decision of *RERA Panchkula in case of Vikas Bansal versus Parsvnath Developers Pvt. Ltd. in CR No.2910/2022 and order dated 03.05.2023*.

F. Directions of the authority

31. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the amount i.e., Rs.11,50,000/- received by it from the complainant along with interest at the rate of 11% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.

ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

32. Complaint stands disposed of.

33. File be consigned to registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.07.2024



HARERA
GURUGRAM