



**ORDER (NADIM AKHTAR - MEMBER)**

1. Present complaint dated 06.09.2022 has been filed by the 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 the 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	Present and Future project; Location: Sonapat, Haryana.
2.	Name of promoter	Parsvnath Developers Ltd.
3.	Date of booking	22.02.2005
4.	Unit area	400 Sq. Yd
5.	Date of allotment	Allotment not made
6.	Date of builder buyer agreement	Not executed
7.	Basic Sale Price	Not mentioned



8.	Amount paid by complainant	₹ 11,50,000/-
9.	Due date of possession	Cannot be ascertained
9.	Offer of possession	Not given till date

**B. FACTS OF THE COMPLAINT**

3. That the present complaint has been filed by Mr. Gulshan Kumar Narang S/o Sh. Varinder Kumar Narang on behalf of Gaurav Narang as an authorized person authorized vide Power of Attorney dated 03.02.2010 which is annexed herewith as annexure C-1
4. That the respondent is a public limited company incorporated under Companies At, 1956 duly engaged in the business of the Real Estate development and developing a real estate project with the name, "Parasnath City" at Sonipat Hayana.
5. That the allottee namely; Gaurav Narang had booked a residential plot in respondent's township named, 'Parsvnath City' Sonipat under "Present & Future Project" scheme launched by the respondent company at Sonipat, Haryana.
6. That in lieu of the above said booking, the original allottee had paid a sum of Rs. 5,75,000/- to the respondent on 22.02.2005 which was duly honored and thereafter respondent had issued payments receipt no. PH001448 under the customer code PH/G0074. Thereafter on 23.01.2006, the allottee further paid a sum of Rs. 5,75,000/- to the



Respondent. Copies of the receipts are annexed as Annexure C-2 and C-4 respectively.

7. That despite booking of plot in project in year 2005, neither any plot buyer agreement has been executed nor any allotment has been made by the respondent till date. Already a period of more than 19 years have elapsed from the date of booking but the project is not yet complete and there is even no possibility of it being completed in the near future.
8. That the complainant has approached the respondent several times to refund the paid amount but all in vain. Respondent has failed in completing the development of project and in handing over of possession of plot till date. Despite its failure, respondent did not even bother to return the paid amount with interest.
9. That the respondent did not honour their first commitments toward the allottees and have also not honoured their commitments towards complainant.
10. That due to act of non-delivery of plot and not refunding the paid amount with interest by the respondent, cause of action arosed in favour of the complainant and against the respondent, is a continuing cause of action and reoccurring.
11. That no other complaint against the respondent company is pending in any other court/forum in India.





12. That this Hon'ble Real Estate Regulatory Authority has jurisdiction to try and decide this complaint since the project which was to be developed is within the jurisdiction of the Hon'ble Authority.

**C. RELIEFS SOUGHT**

13. The complainant in his complaint has sought following reliefs:
- i. In the event that the registration has been granted to the Opposite party for the abovementioned project under RERA Act read with relevant Rules, it is prayed that the same may be revoked under Section 7 of the RERA Act, 2016 for violating the provisions of the RERA Act, 2016.
  - ii. In exercise of powers under section 35 of RERA Act, 2016, direct the Opposite party to place on record all statutory approvals and sanctions of the project;
  - iii. In exercise of powers under Section 35 of RERA Act, 2016 and Rule 21 of HRE (R&D), Rules, 2017, to provide complete details of EDC/IDC and statutory dues paid to the Competent Authority and pending demand if any;
  - iv. To compensate the Complainant for the delay in completion of the project and refund the entire amount of Rs. 1150000/- along with interest @9.5% in accordance with Rule 15 of HRERA Rules 2017 for the delayed period from dates of respective instalments/realization of the sale consideration by the Respondent.



- v. To pay/refund any liability of GST which will be payable by the complainants as the same would not have been imposed upon the complainants if the possession was delivered on time.
- vi. To compensate the complainant for a sum of Rs. 5,00,000/- as damages on account of mental agony, torture and harassment and Rs. 50,000/- as legal fees.

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

Learned counsel for the respondent filed a detailed reply on 24.02.2023 pleading therein: -

- 14. 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.
- 15. 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.”*



16. 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.
17. There is no 'Agreement to sell' between the parties and therefore, relief sought under Section 18 of the RERA, Act, 2016 is not maintainable before this Hon'ble Authority.
18. 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.
19. 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 22.02.2005, which was duly signed and executed by the original applicant is annexed as Annexure R-1.

20. 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 his favour and he has further given an undertaking that in case no allotment is possible in future, then he would accept refund with simple interest at the rate of 10% per annum.
21. That till date respondent has received an amount of Rs. 11,50,000/- from the complainant. Further, it is a matter of record that no demand was ever raised by the respondent company from the complainant after the year 2006, which establishes the fact that no plot was allotted to the complainant. The complainant is not an allottee of the Respondent Company and the registration was merely an expression of interest
22. In view of above submissions, the present complaint is barred by limitation and no cause of action has arisen in favour of the complainant to file the present complaint. The complainant is not an allottee of the Respondent Company and the registration was merely an expression of interest.

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



23. During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for complainant submitted that complainant has requested for refund of the amount deposited by him along with interest. Learned counsel for respondent also stated that respondent does not have any plot available with them to be offered to complainant, but is ready to refund the amount.

**F. ISSUES FOR ADJUDICATION**

24. 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**

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) The respondent has taken a stand that present complaint is not maintainable for the reason that complainant is not an allottee 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/ complainant (referred as purchaser) had agreed to pay a sum of ₹5,75,000/- 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 ₹5,75,000/- and ₹ 5,75,000/- were accepted by respondent from the purchaser. Clearly shows that respondent had recognised the complainant/ allottee as his allottee.

(ii) 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.

(iii) Factual matrix of the case is that admittedly, complainant Mr. Gaurav Narang made an advance for registration of a plot in the "Present and Future Project" of the respondent M/s Parsvnath Developers Ltd. on 22.05.2005 by paying Rs 5,75,000/- as booking amount and further paid an amount of Rs. 5,75,000/- towards sales consideration till year 2006. There is also no dispute with regard to the fact that no specific plot was allotted to the allottee and that no builder buyer agreement was executed between the parties. It is an admitted fact that even after a lapse of 19 years, no allotment of plot has been made in favour 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. 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.**





(iv) As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HIRERA 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".*

(v) Complainant has claimed in his complaint interest @ 9.5%. 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., 12.08.2024 is 9%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11%.

(viii) The definition of term 'interest' is defined under Section 2(z) 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 when the amounts were paid to the respondent 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 11% (9% + 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 11% till the date of this order and said amount works out to ₹ 11,50,000/- as per detail given in the table below:



Sr.no.	Principal Amount	Date of payment	Interest Accrued till 12.08.2024
1.	5,75,000/-	22.02.2005	12,32,422/-
2.	5,75,000/-	23.01.2006	11,74,371/-
Total=	11,50,000/-		24,06,793
Total amount to be refunded to the complainant = ₹11,50,000/- + ₹24,06,793/- = ₹35,56,793/-			

(vii) Further, the complainant is seeking compensation on account of mental agony and harassment 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.

(viii) In respect of relief clause no. i, ii, iii and v. mentioned in para 13 of this order, it is to mention here that ld. Counsel for complainant has neither argued nor pressed upon these relief clauses. No mentioning of any sort in

the pleadings by the complainant against these reliefs, so, no order has been passed against these reliefs.

#### H. DIRECTIONS OF THE AUTHORITY

28. 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 paid amount of ₹ 11,50,000/- with interest of ₹ 24,06,793/- total amount is ₹35,56,793/- to the complainant. It is further clarified that respondent will remain liable to pay interest to the complainant till the actual realization of the 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.

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

  
 CHANDER SHEKHAR  
 [MEMBER]

  
 NADIM AKHTAR  
 [MEMBER]