



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	820 of 2022
Date of filing:	25.05.2022
Date of first hearing:	02.08.2022
Date of decision:	22.11.2023

Kapil Kumar Sharma,

R/o House no. A-1002, Devinder Vihar,

Sector-56, Gurugram,

Haryana- 122011,

....COMPLAINANT(S)

VERSUS

1. Parsvnath Developers Ltd.

Parsvnath Tower, Near Shahdara Metro Station,

Shahdara, Delhi, 110032

2. Kotak Mahindra Bank Limited

G-39, Connaught Place

New Delhi- 110001

....RESPONDENT(S)

CORAM:

Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Present: - Ms. Amrita Garg, Counsel for the complainant.
Mr. Narender Kumar , Counsel for the respondent

ORDER (Dr. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated 25.05.2022 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 him and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Parsvnath Preston, Sonipat
2.	Name of the promoter	Parsvnath Developers Ltd.
3.	Date of booking by complainant	15.01.2008
4.	Unit no. and area	T-4, 906, 1265 sq. ft.



6.	Date of builder buyer agreement	14.03.2008
7.	Date of EMI agreement	24.03.2008
8.	Basic sale price	₹27,20,630/-
9.	Amount paid by complainant	₹25,84,094/-
10.	Due date of possession	14.03.2011
11.	Offer of possession	No offer

B. FACTS OF THE COMPLAINT

3. Facts of the complainant's case are that in the year 2008 complainant booked a flat bearing no. T4-906 admeasuring 1265 sq.ft. along with open car parking in a project named 'Parsvnath Preston, Sonapat' being developed by respondent Parsvnath Pvt. Ltd after paying an amount of Rs. 1,38,000/-. Complainant and the respondents entered into a tripartite agreement dated 13.03.2008 wherein it was agreed between the parties that respondent no. 2 would disburse monthly payments against the loan amount sought by the complainant. Flat buyer agreement dated 14.03.2008 was executed between respondent no. 1 and complainant. As per the said agreement basic sales price of unit was Rs. 27,20,630/-. Complainant opted for an open car parking space valuing Rs. 1,00,000/-. As per clause 4(a)(ii), complainant opted



for EMI-Subvention Scheme as payment plan. Further as per clause 10(a) of flat buyer agreement executed between the parties on 14.03.2008, respondent was under an obligation to hand over possession of the flat within a period of 36 months from the date of start of foundation of particular tower along with grace period of 6 months which works out to be 15.06.2011 but respondent has failed to fulfil its promises.

4. Another agreement dated 24.03.2008 was executed between respondent no. 1 and complainant which states that respondent no. 1 would be liable to reimburse the complainant for the EMI calculated on 20 year loan at the current floating rate of interest till offer of possession of the apartment.
5. Complainant applied for a loan with ING Vyasya Bank which was sanctioned on 21.04.2008 for a loan amount of Rs. 22,19,411/- for a tenure of 240 months at 10.25% per annum. EMI for each month was calculated as Rs. 21,787/- which has now been increased to Rs. 27,031/-. Respondent no. 1 received an amount of Rs. 21,64,000/- from the bank and Rs. 12000/- from the complainant on 22.04.2008. As per EMI agreement dated 24.03.2008 (copy annexed as Annexure C-5 with the complaint), respondent no. 1 was supposed to pay the EMI's in respect of bank loan till the date of offer of possession of the flat was made to the complainant. However, from December 2012,



some cheques drawn by respondent no. 1 bounced and from December 2015, respondent no. 1 completely stopped making payments. It has been submitted that an outstanding amount of Rs. 31,19,809/- remains to be paid by respondent no. 1. Complainant has been in contact with respondent no. 1 for redressal of his grievance since 2014.

6. Complainant has paid an amount of Rs. 45,45,130/- apart from an amount of Rs. 4,20,094/- (paid directly to respondent no.1) as down payment and EMI till May 2022 but has received an amount of Rs. 15,74,824/- from respondent no. 1 till May 2022. Copies of relevant bank account statements are annexed as Annexure C-10.
5. Neither any possession has been offered till date nor have EMIs been reimbursed after May 2022. There has been lapse of more than 14 years from the date of booking, so the complainant has lost faith in respondent and has no hope of getting the flat. Hence, present complaint has been filed.

C. RELIEFS SOUGHT

6. The complainant in his original complaint has sought following reliefs:
 - (i) Direct Respondent no. I to handover possession of the unit in question. In alternate, direct Respondent no.1 to deliver possession of an alternate property of Respondent no.1 in the same project or any other project, subject to the preference / liking of the Complainant.



- II. Direct Respondent no. 1 to pay delayed possession charges at the prescribed rate of interest from the due date of possession, i.e. 15.06.2011 till the actual handing over of possession.
- III. Direct Respondent no. 1 to reimburse the amount being paid by Complainant as EMI and also make timely future payments.
- IV. In alternate, direct Respondent no. 1 to refund the entire amount paid by the Complainant, directly and through the loan facility/EMI, along with the prescribed rate of interest in accordance with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, incase the property being offered by Respondent no.1 is not agreeable to the Complainant or Respondent no.1 cannot guarantee possession of the allotted apartment i.e T-4, 906, in a timely manner.
- V. Direct Respondent no. 1 to pay compensation of Rs. for mental harassment.
- VI. Allow Complainant stop making future payments towards EMI, during the pendency of the present proceedings or till compliance of terms and conditions of the Flat-Buyer Agreement and Subvention Scheme Plan, by Respondent no. 1.
- VII. Pass such order or further orders as this Hon'ble Authority may deem fit and proper in the facts and circumstances of the present case.

A handwritten signature in blue ink, appearing to read 'G. K. Patil', is written over a blue horizontal line.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 08.04.2022 pleading therein:-

7. Present complaint pertains to unregistered project of respondent company. Further, Hon'ble Supreme Court in the matter titled Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others has ruled that the RERA does not have jurisdiction to entertain complaints relating to un-registered projects.
8. 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.
9. The provisions of RERA Act, 2016 cannot be applied retrospectively.



10. The complainant has approached the Authority with multiple reliefs, thus Authority does not have jurisdiction to entertain the claim of complainant.
11. On 15.01.2008, complainants booked a flat bearing no. T-4-906 admeasuring 1265 sq.ft. in the project named 'Parsvnath Preston, provisionally. Complainants proceeded with the booking after conducting proper due diligence and being aware about the status of the project.
12. On 14.03.2008, flat buyer agreement was executed between the parties as per which basic selling price of the flat was fixed at ₹27,20,623/- and the complainants had opted to make further payment as per the EMI Subvention Scheme Plan.
13. That project is being developed in terms of statutory approvals granted by competent authority. It has been submitted that licence no. 1206 of 2006 dated 06.10.2006 had been duly issued by Town & Country Planning Department and respondent has applied for its renewal for the period from 06.10.2019 to 05.10.2024.
14. That EDC, IDC, conversion charges etc have been paid in full to the Competent Authority.
15. There is no intentional delay on the part of respondent and the project got delayed for reasons beyond control of respondent company. The project could not achieve pace as the customers/allottees did not make



timely payments and even started opting out of the project. All such factors played vital role in causing damage to the project and hence development and construction of the project could not take place as per the agreed schedule. However, respondent company is putting its best efforts to complete the construction work at the project site.

17. It has been submitted that time is not the essence of contract. The respondent has prayed that the complaint may kindly be dismissed in view of above said submissions.

E. REJOINDER FILED BY COMPLAINANT

18. Complainant filed rejoinder on 20.12.2022 reiterating the facts of complaint and disputing the facts alleged by respondent. Complainant has prayed that he may awarded possession of the flat or in alternative refund be allowed in his favour along with interest.

F. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANT AND RESPONDENT

19. During oral arguments both parties reiterated their arguments as were submitted in writing. Ld. counsel for the complainant submitted that she confirms that an amount of ₹15,96,192/- stands paid by respondent no. 1. She further argued that the complainant wants to withdraw from the project and the amount deposited by him may be refunded along with interest and respondent be directed to reimburse the EMIs which have not been paid by him along with interest.



Learned counsel for respondent also reiterated her written submissions.

G. ISSUES FOR ADJUDICATION

20. Whether the complainant is entitled to refund of amount deposited by him and reimbursement of EMIs paid by him to bank, along with interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

21. Case was heard at length on 12.07.2023 and Authority was of the view that complainant has received an amount of Rs. 15,96,192/- towards the amount of loan paid by him to the bank. Further, it was observed that for an amount of Rs. 22,456/- respondent no. 1 has not placed on record any authentic document and both parties were directed to prove their stand with respect to the remaining amount of Rs. 22,456/-. Respondent has failed to prove that an amount of Rs. 22,456/- was received by the complainant.
22. Respondent has taken an objection that the RERA Act, 2016 does not apply to an unregistered project. This issue that whether this Authority has jurisdiction entertain the present complaint as the project is not registered has been dealt and decided by the Authority in **complaint no. 191 of 2020 titled as Mrs. Rajni and Mr. Ranbir Singh vs Parsvnath Developers Ltd.** Relevant part of said order dated 30.03.2022 is being reproduced below:



“Looked at from another angle, promoter of a project which should be registered but the promoter is refusing to get it registered despite the project being incomplete should be treated as a double defaulter, i.e. defaulter towards allottees as well as violator of Sector 3 of the Act. The argument being put forwarded by learned counsel for respondent amounts to saying that promoters who violate the law by not getting their ongoing/incomplete projects registered shall enjoy special undeserved protection of law because their allottees cannot avail benefit of summary procedure provided under the RERA Act for redressal of their grievances. It is a classic argument in which violator of law seeks protection of law by misinterpreting the provisions to his own liking.

14. *The Authority cannot accept such interpretation of law as has been sought to be put forwarded by learned counsel of respondent. RERA is a regulatory and protective legislation. It is meant to regulate the sector in overall interest of the sector, and economy of the country, and is also meant to protect rights of individual allottee vis-a-vis all powerful promoters. The promoters and allottees are usually placed at a highly uneven bargaining position. If the argument of learned counsel for respondent is to be accepted, defaulter promoters will simply get away from discharging their obligations towards allottee by not getting their incomplete project registered. Protection of defaulter promoters is not the intent of RERA Act. It is meant to hold them accountable. The interpretation sought to be given by learned counsel for respondent will lead to perverse outcome.*

15. *For the foregoing reasons, Authority rejects the arguments of respondent company.*

23. 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 his obligations because of which the cause of action is re-occurring. Thus, the complaint is maintainable as per RERA Act, 2016. RERA 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 Courts. Further,

24. Another objection taken by the respondent is 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.” 53 That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.”

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.



25. Respondent has also taken an objection that complainant has approached the Authority with multiple reliefs and Authority does not have jurisdiction to entertain the claim of complainant. In this regard it is observed that complainant in this case has sought only refund along with interest and has not sought multiple reliefs.
26. In the present complaint there is no dispute regarding the fact that the complainant booked a flat bearing no. T-4-906, admeasuring 1265 sq. in the project named 'Parsvnath Preston, Sonepat. Flat buyer agreement was executed between the parties on 14.03.2008. Basic selling price of the flat was fixed at ₹27,20,630/- and the complainants had opted to make further payment as per the EMI Subvention Scheme Plan and complainant had paid ₹25,84,094/- to the respondent company. As per clause 10(a) of the builder buyer agreement possession was supposed to be offered within a period of thirty six months from the date of start of foundation of the particular tower along with grace period of 6 months, on receipt of sanction of building plans and approvals of all concerned departments. Said clause is vague as the complainant or any common man cannot know about the intricacies of the building plans etc. and start of foundation of particular tower. In this case deemed date of possession shall be taken as 36 months from the date of execution of agreement which works


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out to be 14.03.2011. Authority could consider continuation of the allottees in the project only if the project was completed or an application for grant of occupation certificate had been filed. On the contrary, in this case, project is not complete, nor there is any plan of action for completing it. For these reasons, a case is clearly made out to allow relief of refund as sought by complainant. So, Authority is of the view that refund deserves to be granted as prayed for.

27. Complainant in the present case is seeking refund of the down payment amount deposited by him with respondent along with interest. Further, there remains no dispute with respect to the upfront payment of 25,84,094/- made by the complainant at his own end. The only limited issue that remained pending for adjudication was regarding exact amount to be reimbursed towards the payment of EMI's that were paid by the complainant as the complainant admits that the respondent had reimbursed ₹15,96,192/- whereas the respondent claims that it has reimbursed an amount of ₹ 16,18,648/- towards the EMI's. For the disputed amount of Rs. 22,456/- it was observed that respondent has not placed on record evidence in the form of bank statement to prove that he had paid the said amount to the complainant. Respondent has not submitted the proof of payment of Rs. 22,456/- to the complainant. In the absence of such proof, it can safely be assumed that said amount has not been reimbursed to the



complainant. Respondent is at liberty to prove his case to complainant and demand refund of the amount in excess of ₹22,456/-.

Hon'ble Supreme Court in the matter of "**Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others**" 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."

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.



For these reasons, a 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 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 amounts.

I DIRECTIONS OF THE AUTHORITY

28. Complainants in the present case has made down payment of ₹4,20,094/- and a bank loan of ₹22,19,411/- was got disbursed from ING Vysya bank to respondent. 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) To refund the complainants an amount of ₹4,20,094/- 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 its actual realization.



Accordingly, total amount along with interest calculated at the rate of 10.75% works out to ₹4,20,094/- as per detail given in the table below:

S.No.	Principal Amount paid by complainants	Date of payment	Interest Accrued till 22.11.2023
1.	1,38,000/-	15.01.2008	2,35,368/-
2.	2,70,094/-	14.02.2008	4,58,277/-
3.	12,000/-	22.04.2008	20,120/-
Total	₹ 4,20,094/-		₹7,13,765

- (ii) To refund the complainants amount of EMIs paid by them to bank from their own pocket and were not reimbursed by respondent (as per terms of EMI agreement executed between them), which as per complainants worked out to ₹29,48,938/- (45,45,130-15,96,192) 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 the amounts became due till date of its payment.

Complainants will make demand for payment of these amounts duly supported by bank statements in respect of



outstanding loan amount as well as amounts of EMIs paid by him to bank which were not reimbursed. The interest on EMIs paid be also calculated and certified by an accountant.

- (iv) 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. Complaint is, accordingly, **disposed of**. File be consigned to the record room after uploading the order on the website of the Authority.



.....
NADIM AKHTAR
[MEMBER]



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