



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1443 of 2022
Date of filing:	17.06.2022
Date of first hearing:	09.08.2022
Date of decision:	06.12.2023

1. Poonam Kapur
W/o Deepak Kapur
R/o A-402, Shakti Apartments
Sector-5, Plot no. 18
Dwarka, New Delhi
2. Deepak Kapur
S/o Sh. M.L Kapur
R/o A-402, Shakti Apartments
Sector-5, Plot no. 18
Dwarka, New Delhi

...Complainants

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: -

Adv. Somnath Bhattacharya, Counsel for the complainant
through video conference.

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

ORDER (Dr. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated 17.06.2023 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 complainants, 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	23.07.2008
4.	Unit details	T9-1204

Geeta Rathee

5.	Date of builder buyer agreement	23.07.2008
6.	Basic Sale Price	₹26,10,000/-
7.	Amount paid by complainant	₹3,91,500/-
8.	Possession clause	The construction shall be completed within 36 months from the start of foundation of particular tower in which the flat is located with a grace period of 6 months, on receipt of sanction of building plans/revised building plans and approvals of all concerned authorities.
9.	Due date of possession	23.07.2011
10.	Offer of possession	Not 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 the land measuring 28.106 acres in village Shahpur Turk, Sonipat.
4. That complainant booked a flat in the respondent's project "Parsvnath Preston", Sonipat on 23.07.2008. Flat buyer agreement has been executed between the parties on 23.07.2008 for flat no. T-9-1204, 12th floor. Basic sales price of the flat is Rs. 26,10,000/- against which the complainant has paid an amount of Rs. 3,91,500/-. Clause 10(a)

[Handwritten Signature]

stipulates that the construction shall be completed within 36 months from the start of foundation of particular tower in which the flat is located with a grace period of 6 months, on receipt of sanction of building plans/revised building plans and approvals of all concerned authorities. Respondent was under an obligation to deliver possession within 36 months of booking that is 23.07.2011.

5. That on 12.11.2021, complainants received a letter wherein respondent stated that they are returning money paid by the complainants as the construction in the project could not continue at a regular pace despite their best efforts. Complainants made a police complaint to SHO PS Shahdra New Delhi on 11.02.2022.
6. 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

7. The complainants in his complaint have sought following reliefs:

- (i) To direct the respondents to pay compound interest of 18% per annum on the total principal amount of Rs. 3,91,500/-.
- (ii) Pass any other order/orders which this Hon'ble Authority deem fit and proper in the interest of justice.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT



Learned counsel for the respondent filed a detailed reply on 08.08.2023 pleading therein as under:-

- (i) That the present complaint is not maintainable in law, the relief prayed for in the complaint is not contemplated under the Real Estate (Regulation and Development) Act, 2016.
- (ii) That the entire sales consideration received from the complainants has been paid on 12.11.2021 and the contract stands cancelled. This fact has been accepted by the complainants without any reservation with encashment of the cheque for the refund amount. Present complaint is an afterthought and has been filed on 13.06.2022 and there was no subsisting valid contract between the parties.
- (iii) That on 07.07.2008, complainants booked a flat bearing no. T91204 ad-measuring 1900 sq. ft. in the project named as "Parsvnath Preston", Sonapat.
- (iv) That on 23.07.2008, flat buyers agreement was executed between the parties as per which the basic selling price of the flat was fixed at Rs. 26,10,000/-. The complainant had opted to make further payment as per the construction linked payment plan.
- (v) That till date complainants have paid only Rs. 3,91,500/- towards basic price/cost of the said flat.



E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT

8. During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for complainants submitted that complainants have kept the amount of ₹ 3,91,500/- for approx.. 13 years and has not given any interest on the said amount. He pressed for relief of interest on his paid amount. Ld. Counsel for the respondent submitted that respondent is not coming up with the present project due to which paid amount of the complainant has already been refunded and complainant has also encashed the cheque.

F. ISSUES FOR ADJUDICATION

9. Whether the complainants are entitled for interest on the amount deposited by them in terms of Section 18 of Act of 2016?

G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

10. 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 complainants booked a flat in the respondent's project "Parsvnath Preston", Sonipat on 23.07.2008. Flat buyer agreement was executed between the parties on the same date for flat no. T-9-1204, 12th floor, Tower-9. Basic sales price of the flat is Rs. 26,10,000/- against which the complainant has paid an amount



of Rs. 3,91,500/-. Amount of Rs. 3,91,500/- has already been refunded to the complainant on 12.11.2021 but no interest has been given to the complainants for the period of 2008-2021(i.e, the period from the date of deposit of the amount and the date of refund of amount)

(ii) 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'ITCP dated 14.12.2017 issued by Town and Country Planning Department,Haryana 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.

- (iii) The main grouse of the complainants in the present case is that respondent has not given interest on the amount refunded to them in the year 2021 even after keeping their money for 13 years. Respondent's stand is that the entire sales consideration received from the complainants has been paid on 12.11.2021 and the contract stands cancelled as complainants have already encashed the cheques without any reservation. Authority observes that respondent cannot be allowed to arbitrarily say that as the principal amount of the complainants has already been refunded so now they cannot claim interest on said



amount. Acceptance of principal amount by the complainants does not mean that the complainants have given up their statutory right of interest accrued under Section 18 after RERA Act, 2016 coming into force. Interest is the value for money and since respondent had used the amount paid for a considerable period of 13 years, respondent is obligated to pay interest for using complainants' money. The fact that complainants have also lodged a complaint for the interest on their paid amount on 11.02.2022 with SHO, PS Shahadra, New Delhi shows that complainants were never satisfied with the amount refunded by respondent. Authority further observes that right of the complainants with respect to interest on their paid amount got accrued after coming into force of the RERA Act, 2016. Obligation to pay interest remained pending on part of the respondent promoter while cancelling the allotment of the complainants.

Authority is of the considered view that complainants are entitled to interest on the total amount paid. Though the complainants have sought that interest be allowed @18%, however same cannot be allowed as interest can only be awarded in terms of RERA Act of 2016 and HRERA Rules of 2017. 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”.

11. 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.
12. 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. 06.12.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.
13. 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;

14. Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid till the time amount was refunded to the complainants. In this case, complainant has paid an amount of Rs. 3,91,500/- to the respondent. Respondent has also admitted that the said amount but neither the respondent nor the complainants have provided the exact date of payment. On perusal of page 10 of the complaint, it is revealed that complainants have written that proof of payment is not required as the amount has already been admitted by the developer. Authority observes that date of payment is necessary for calculating the interest payable to the complainants by the respondent as interest is awarded from the date of payment of an amount till the date of refund of such amount.

Proof of an amount of Rs. 1,68,052/- lies in clause 4(a)(i) of the builder buyer agreement and therefore interest on this amount will be calculated from the date of builder buyer agreement till the date of refund of such amount which works out to be Rs. 2,40,594/-. With regard to remaining amount of Rs. 2,23,448/- (3,91,500-1,68,052),



Authority is unable to calculate interest in the absence of date on which complainants made such payment.

Complainants may file their claim before the respondent for interest on an amount of Rs. 2,23,448/- along with proof of date on which such payment was made by the complainant. The respondent shall pay the interest @ 10.75% w.e.f the date of making payment.

DIRECTIONS OF THE AUTHORITY

15. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the RERA Act, 2016 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 pay interest on the entire amount of ₹ 3,91,500/- to the complainant. For an amount of Rs. 1,68,052/- interest amounting to Rs. 2,40,594/- is payable by the respondent to the complainant. Complainant may claim interest @ 10.75% directly from the respondent on the remaining amount of Rs. 2,23,448/- to be calculated from date of making payment till the date of this order.

(ii) A period of 90 days is given to the respondent to comply with the directions given by the Authority in this order as provided in Rule 16 of Haryana Real Estate (Regulation &




Development) Rules, 2017 failing which legal consequences would follow.

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



.....
NADIM AKHTAR
[MEMBER]



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