



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2337 of 2023
Date of filing:	19.10.2023
Date of first hearing:	29.11.2023
Date of decision:	08.07.2024

Manoj Rana S/o Sh. Hoshar Singh  
R/o #2137, Nai Basti Purani Anajmandi,  
Narela, New Delhi

...COMPLAINANT

Versus

M/s Parsvnath Developers Ltd.  
6<sup>th</sup> Floor, Arunachal Building 19, Barakhamba Road  
Delhi- 110001 through its Authorised Person

...RESPONDENT

**CORAM:**            **Nadim Akhtar**            **Member**  
                         **Chander Shekhar**            **Member**

**Present: -**            Mr. Anand Bishnoi, Counsel for the complainant

                         Ms. Rupali S.Verma, Counsel for the respondent through  
                         VC.

### ORDER ( NADIM AKHTAR - MEMBER)

1. Present complaint dated 19.10.2023 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 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 (As per pleadings of complaint and ledger attached by respondent in reply)	08.05.2013
4.	Unit details	T1-G-03 in Tower-1 2550 sq. ft.
5.	Date of builder buyer agreement	30.04.2016
6.	Basic Sale Price (As per FBA)	₹72,67,500
7.	Amount paid by the complainant	₹24,64,591/-



8.	Due date of possession	Cannot be ascertained as date of start of foundation of Tower in question has not been provided by both the parties.
9.	Clause of deemed date of possession	<i>as per FBA, <b>Clause 10(a)</b> – “The Construction of the Flat is likely to be completed within a period of thirty-six (36) months from the date of start of foundation of the particular Tower in which the Flat is located with a grace period of six (6) months, on receipt of sanction of building plans/revised plans and approvals of all concerned authorities including the Fire Service Deptt., Civil Aviation Deptt., Traffic Deptt., Pollution Control Deptt. as may be required for commencing and carrying construction subject to force majeure”.</i>
10.	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 measuring 28.106 acres in village Shahpur Turk, Sonipat.



4. That complainant booked a flat in the respondent's project namely; "Parsvnath Preston", Sonipat on 08.05.2013 by making payment of Rs 7,50,000/-. Following which a Flat Buyer Agreement (FBA) was executed between the parties on 30.04.2016 for flat no. T-1-G-03, Ground floor, Tower-1. Basic sales price of the flat was Rs. 72,67,500/- against which the complainant has already paid an amount of Rs. 24,64,591/-.
5. That clause 10(a) stipulates that the construction shall be completed within 36 months from the date of starting of foundation of the particular tower. It is alleged that respondent at the time of booking in the year 2013 had represented that Tower 1 is under construction. Respondent was under an obligation to deliver the possession within 36 months from agreement but possession has not been offered till date.
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.
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 and is within the jurisdiction of this Hon'ble Authority.

**C. RELIEFS SOUGHT**

It is, therefore, most respectfully prayed that this Hon'ble Authority may be pleased to direct;

- (a) Respondent may be directed to refund the entire deposited sum of Rs. 24,64,591/- (Rupees Twenty Four Lakh Sixty Four Thousand Five Hundred Ninety One only), paid by the Complainant along with interest @ 18% per annum from the date of payment till its actual realization.
- (b) Respondent may be directed to compensate the Complainant with Rs.15,00,000/- (Rupees Fifteen Lakhs Only) due to inflation in property market proportionate size of Flat in the past 6 years.
- (c) Respondent may be directed to pay the compensation of Rs. 10,00,000/- (Rupees Ten Lakhs Only) for the mental agony and financial loss suffered by the Complainant;
- (d) Respondent may be directed to Pay Rs.2,00,000/- (Rupees Two Lakh Only) to the Complainant on account of deficiency in the services of Respondent and also Rs. 55,000/-towards the litigation charges; and/or



(e) Any other relief/s which this Hon'ble Authority may 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 28.11.2023 pleading therein:-

- (i) That the present complaint pertains to an un-registered project of the respondent, therefore, in view of the latest judgement by Hon'ble Supreme Court in the case 'Newtech Promoters and developers Pvt Ltd vs State of U.P & Ors.', this Hon'ble Authority would not have the jurisdiction to entertain the present complaint.
- (ii) That the present complaint is grossly barred by limitation and this Hon'ble Authority does not have the jurisdiction to entertain a time barred claim. Moreover, in the 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.



- (iii) That the provisions of Real Estate (Regulation and Development) Act, 2016 cannot be applied retrospectively.
- (iv) That on 08.05.2013, complainant booked a flat bearing no. T1-G03 ad-measuring 2550 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.
- (v) That on 30.04.2016, Flat Buyers Agreement (FBA) was executed between the parties, according to which the basic sale price of the said flat was fixed at Rs. 72,67,500/-. The complainant had opted to make further payment as per the House of Happiness Payment Plan.
- (vi) That till date complainant has paid only Rs. 24,64,591/- towards basic price/cost of the said flat.
- (vii) 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 here that the renewal of license has been applied for the period from 06.10.2019-05.10.2024.
- (viii) That all the statutory dues in the form of EDC, IDC, conversion charges etc. have been paid in full to the competent authority.



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

10. During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for the 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 and is putting its best effort to complete the project as soon as possible so that possession can be offered to the complainant.

**F. ISSUES FOR ADJUDICATION**

11. Whether the complainant is entitled to take 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**

12. 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 08.05.2013. Flat buyer agreement was executed between the parties on 30.04.2016 for flat no. T1- G03, Ground floor, Tower-1. Basic sales price of the flat is Rs. 72,67,500/- against which the complainant has already paid an amount of Rs. 24,64,591/- .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 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 is for the 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 of 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.

(b) With respect to the objection of respondent that the complaint is barred by limitation, the reference 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.** It is to mention here that the promoter has till date failed to fulfil his obligation pertaining to delivery



of possession of plot in question because of which the cause of action is continuing. 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 a Court. So, objection raised by the respondent on ground of limitation does not have any merit and is therefore rejected.

(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.

(d) Respondent has further raised an objection that the project in which the complainant is seeking refund is not registered with this Hon'ble Authority and therefore this Hon'ble Authority does not have jurisdiction to entertain the present complaint. This issue as to whether this Authority has jurisdiction to entertain the complaints pertaining to unregistered projects has been dealt with 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 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. The application filed by respondent promoter is accordingly rejected."*

The same reasoning is applicable and adopted in the present case as well.

Further, the RERA Act, 2016, nowhere provides that the provisions of the Act shall only be applicable to registered real estate projects, or only aggrieved person of a registered real estate project shall file a complaint

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u/s 31 of the RERA Act, 2016. Thus, the complaint is well within the ambit of RERA Act, 2016.

(iii) The main grouse of the complainant in the present case is that even after lapse of 8 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. Respondent has averred that relief of refund as prayed by the complainant may not be allowed. 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-1 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 30.04.2019. 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.

(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 2013 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 in terms of Section 18 of RERA Act,2016. 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 (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".*

(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. 08.07.2024 is 8.95%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.95%.

(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 ₹24,64,591/- 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 10.95% (8.95% + 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 10.95% till the date of this order and said amount works out to Rs 29,92,484/- as per detail given in the table below:

Sr. No.	Principal Amount in Rs	Date of payment	Interest Accrued till 08.07.2024
1.	7,50,000	08.05.2013	9,18,000/-
2.	17,14,591	24.06.2013	20,74,484/-
	Total =24,64,591/-		29,92,484/-

13. It is pertinent to mention here that complainant has attached details of payment at Page No. 21 of the complaint. However, same are not supported with proper proofs. So, a query was raised upon the Id. Counsel for complainant regarding proofs of paid amount at the time of hearing. To which, he replied that respondent in its written statement has annexed ledger of paid amount so same be taken into consideration for calculation of interest. Accepting his statement, the calculations are made taking ledger attached in reply as final proof of paid amount.



14. Further, the complainant is seeking compensation for mental agony/harassment and 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 compensation and litigation expenses.

#### **H. DIRECTIONS OF THE AUTHORITY**

15. Hence, the Authority hereby passes this order and issue 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 Rs 24,64,591/- to the complainant with interest of Rs 29,92,484/- to the complainant. It is further clarified that respondent will



remain liable to pay the interest to the complainant till the actual realization of the above said 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.

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

  
.....  
CHANDER SHEKHAR  
[MEMBER]

  
.....  
NADIM AKHTAR  
[MEMBER]