



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1271 of 2021
Date of filing:	23.11.2021
First date of hearing:	11.01.2022
Date of decision:	29.04.2024

### COMPLAINT NO. 1271 of 2021

**Rajeev Saroha,**

Sunrise Automobiles, Gali no.5 ke sath,  
near HP Petrol Pump, Murthal Road, Sonipat

.....COMPLAINANT

Versus

**Parker Builders Pvt. Ltd**

308,GD-ITL, Tower B-08, Netaji Subhash Place,  
Pitam Pura, New Delhi-34

.....RESPONDENT

**CORAM: Nadim Akhtar**

**Member**

**Chander Shekhar**

**Member**

**Date of Hearing: 29.04.2024**

**Hearing: 10<sup>th</sup>**

**Present:** - Mr. Akshat Mittal, Id counsel for complainant.

Mr. Gaurav Gupta, Id counsel for respondent through VC.

**ORDER (NADIM AKHTAR-MEMBER)**

1. Present complaint has been filed by the complainants on 23.11.2021 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, 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 RERA, Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil 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 project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	"Parker Mall", at Kundli, Sonipat, Haryana.
2.	Name of the promoter	Parker Builders Pvt. LTd
3.	RERA registered/not	Not registered

*Lead*

	registered	
4.	Unit No. allotted	GF-75
5.	Date of allotment	Not available
6.	Date of Builder Buyer Agreement	Not executed
8.	Due date of offer of possession	27.12.2009 (3years from the date of booking, i.e, 27.12.2006)
9.	Possession clause in BBA	Not available
10.	Total sale consideration	₹39,00,000/-
11.	Amount paid by complainant	₹9,75,000/-
12.	Offer of possession	Given on 13.10.2013

### **B. FACTS OF THE COMPLAINT**

3. That the respondent floated a scheme for the development of commercial complex to be constructed and developed on the land situated in the revenue estate of Kundli, District Sonipat, Haryana under the name and style of "Parker Mall".
4. That the unit in question was offered for a total sale consideration of around Rs.20,00,000/-. That the complainant applied for booking vide application dated 27.12.2006 and in furtherance thereof, a payment of Rs.5,85,000/- was made on 15.01.2007 as booking amount in favour of the respondent against shop, having an area of 650 sq. ft., on lower ground floor in project "Parkers Mall" of the respondents at Kundli, District Sonipat, Haryana.



5. That in pursuance of the same, the following payments were duly made, in regards to the shop in question:

Payment of Rs.5,85,000/- vide cheque no. 429011 dated 27.12.2006.

Payment for amount of Rs.3,90,000/- vide cheque no. 429021 dated 03.08.2007.

6. That a total payment of Rs.9,75,000/- has been duly made as and when called for by the respondent. Copy of the receipts are annexed as Annexure C-1- Colly-.

7. That the respondent has clearly violated the provisions as enumerated under section 13 of the Act by accepting a sum of more than 10% of the total cost of the shop in question without first entering into a proper written agreement and registration of the same. That the respondent has failed to allot any particular shop number to the complainant and to get any Builder Buyer Agreement executed with the complainant in regards to the shop in question.

8. As per the assurances of the respondent, the possession of the shop was to be handed over within a period of two years from booking of the same, i.e., from 27.12.2006, which comes out to 27.12.2008, relying upon which the complainant entered into the booking.

9. That respondent has failed to deliver possession of the shop even after a continuing delay of more than 14 and a half years since the booking





and more than 12 and a half years till date from the assured due date of possession.

10. That even otherwise, where no clear written due date of offer of possession is forthcoming, as per observation of the Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr, 3 years has been taken to be reasonable time to hand over possession to the allottee. As such, the respondent was duty bound to offer possession to the complainant latest within 3 years of the booking i.e. latest by 27.12.2009.

11. That the complainant allottee made repeated requests to the respondent for allotment of shop as promised and for handing over of the possession of the said shop. However, the same was avoided by the respondent on one pretext or the other and neither the possession of the shop has been offered, nor any amounts have been returned alongwith interest.

12. That it is most humbly submitted that the complainant allottee would have all the rights to withdraw from the project and to seek refund of the amount paid qua the unit in question, in accordance with the provisions of the RERA Act 2016.

13. That respondent has committed breach of the provisions incorporated under Section 12, Section 13, Section 18 (1), of the Real Estate



(Regulation & Development) Act 2016 read with relevant Rules as stipulated under the Haryana Real Estate (Regulation And Development) Rules, for which the complainant is entitled to the reliefs being prayed for, including the refund of the amount so paid, amounting to Rs.9,75,000/- alongwith interest @ 24% per annum or as prescribed from the date of payment of the aforesaid amount till the actual realisation of the same.

**C. RELIEFS SOUGHT**

14. Complainant has sought following relief :

- i. To direct the respondent to refund the entire deposited amount of Rs.9,75,000/- which has been deposited against the property in question so booked by the complainant along with interest @24% per annum, on the amounts from the respective dates of deposit till its actual realization within 90 days according to Section 18(1) Real Estate (Regulation And Development) Act 2016 read with Haryana Real Estate (Regulation & Development) Rules.

OR/ALTERNATIVELY,

In case the Ld. Authority observes that the interest @24% per annum is outside the purview and jurisdiction,

To direct the respondent to refund the entire deposited amount of Rs.9,75,000/- which has been deposited against the property in question so booked by the complainant along with interest as



prescribed, on the amounts from the respective dates of deposit till its actual realization according to Section 18(1) Real Estate (Regulation And Development) Act 2016 read with Haryana Real Estate (Regulation & Development) Rules.

- ii. To direct the respondent to pay an adequate compensatory interest on the entire deposited amount of Rs.9,75,000/- for delayed offer of possession, as deemed fit by the authority.
- iii. To direct the respondent to pay a sum of Rs.15,00,000/- on account of grievance, frustration, caused to the complainant by the miserable attitude of the respondent and deficiency in service and for causing acute mental agony to the complainant, along with interest from the date of filing the present complaint till its realization.
- iv. The registration, if any, granted to the respondent for the project namely, "Parker Mall", situated in the revenue estates of Kundli, District Sonapat, Haryana, under RERA read with relevant Rules may kindly be revoked under Section 7 of the RERA for violating the provisions of The Act.
- v. To impose heavy penalty on the respondent under section 61 of the Act for contravention of the provisions of the Act, as elaborated in the complaint.



- vi. The complainant may be allowed with costs and litigation expenses of Rs.1,50,000/-.
- vii. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the instant complaint.

**D. REPLY ON BEHALF OF RESPONDENT**

As per reply dated 30.06.2023, following submissions has been made by the respondent :

15. That complainant had voluntarily invested in the project of the respondent namely; "Parker Mall" developed at Kundli, Sonipat, Haryana. Complainant booked a unit vide reference no.C-1102 admeasuring 650 sq. ft. on the ground floor in the above mentioned project of the respondent. As such the complainant is an investor who has booked the unit for selling the booking receipts on premium. For this reason complainant did not enter into Builder Buyer Agreement and not come forward to take possession of the unit despite valid offer of possession by the respondent.
16. That the project of the respondent has already received Occupation Certificate on 06/09/2013 and Completion Certificate from the Directorate of Town and Country Planning, Haryana, prior to the date when provisions of the Real Estate (Regulation and Development Act, 2016) became applicable in Haryana. That when the respondent commenced construction of the said project and when the project





received occupation certificate and completion certificate from the Competent Authority, the Act was not in existence and as such the provisions of the Act are not applicable upon the "Parker Mall" project of the respondent. That the project "Parker Mall" do not fall under the ambit of RERA as stated above, therefore, Hon'ble Authority have no jurisdiction over the Parker Mall project of the respondent company.

17. That Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2021 titled as "**M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors.**", wherein the Hon'ble Supreme Court of India vide its order dated 11/11/2021 while adjudicating upon the issue "*Whether the Act 2016 is retrospective or retroactive in its operation and what will be its legal consequence if tested on anvil of the Constitution of India*", the Hon'ble Supreme Court in para No. 52 of the said order has observed that the Parliament has intended to bring within the fold of the Statute the ongoing real estate projects in its wide amplitude and also observed that the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued, within fold of the Act. Therefore, the complaint of the complainant deserves to be dismissed



on this ground alone. A copy of occupation certificate dated 06/09/2013 is attached as Annexure R-9.

18. That there is no cause of action to the complainant to approach this Hon'ble Authority and any cause of action so created by the complainant is false and fictitious and no right has accrued to the complainant to approach this Hon'ble Authority. Thus, the complaint needs to be dismissed.

19. That the complainant has booked a unit vide reference no. C-1102 measuring 650 sq. ft. vide application form dated 27/12/2006 and deposited an initial amount of Rs.5,85,000/- against which receipt was issued only on 15/01/2007. At the time of booking, the complainant agreed to make payments as per the Construction Linked Payment Plan and was required to make payments in the following manner:

- a) 15% (Rs.5,85,000/-) at the time of Application
- b) 10% (Rs.3,90,000/-) at the time of Bhumi Pujan
- c) 10% (Rs.3,90,000/-) at the time of Allotment
- d) 60% (Rs.23,40,000/-) in 6 equal instalments of 10%
- e) 5% (Rs.1,95,000/-) at the time of Possession

In this way, the complainant was required to deposit an amount of Rs.39,00,000/- at the rate of Rs.6,000/- per sq. ft. apart from other



charges and taxes etc. (as also described in the below mentioned paragraphs of this reply) towards the unit in question.

20. That despite repeated requests and reminders, the complainant has deposited an amount of Rs.9,75,000/- till 08/08/2007 and failed to deposit any further amount out of mala-fide and ulterior motives.

21. That as per the records of the company, the complainant is required to make payment of Rs.29,25,000/- towards the Basic Sales Price, tax amount of Rs.3,51,000/- and interest @12% per annum (calculated from 31.08.2007 till 30.06.2023) amounting to Rs.51,97,172/-. Further the complainant is liable to pay other charges to the tune of Rs.5,45,000/-, tax amount of Rs.86,985/- (levied on other charges) along with interest @ 18% amounting to Rs.12,10,169/-. The complainant is further liable to pay holding charges @Rs.10/- per square feet amounting to Rs.8,51,370/-.

22. As such, the complainant is liable to pay an amount of Rs.1,11,66,696/- towards the booking. A detailed statement of account/ statement of receivables and payables are attached as Annexure R-11.

23. That over the time, the complainant was served with several reminders to pay the outstanding amount. The respondent even served a legal notice dated 30/12/2010 annexed as Annexure R-7 wherein the complainant was informed about the due amount of Rs.29,25,000/-. It



was also brought within his knowledge that in case of non-payment of the same the booking of the complainant will be cancelled and amount be forfeited as per the terms agreed in this regard.

24. That in view of the builder buyer relationship with the complainant, the respondent did not cancel the unit despite having valid grounds to do so and called upon the complainant to execute the Builder Buyer Agreement vide letter dated 17/09/2011 in respect of Unit No, GF-75. However, despite receipt of such letter, the complainant did not come forward to execute the same and now cannot level false allegations against the respondent and obtain undue monetary benefits from the respondent.

25. That for the purpose of completing the project within time and handing over possession of the unit to the complainant within time, the respondent raised construction activities in full swing, obtained all the necessary and statutory approvals from the concerned departments within time without causing any delay, so that timely possession of the unit/ shop can be handed over to the complainant and other allottees, but it was the complainant who miserably failed to pay due instalments within time. After making payments to the tune of Rs.9,75,000, the complainant stopped making payments and ignored all or any communication with the respondent.





26.Despite breach of terms and conditions of the agreement by the complainant and existence of Force Majeure Circumstances, the respondent continued construction activities at the project, raised funds at higher interest rates from the market and lending institutions etc. and applied for issuance of Occupancy Certificate on 09/12/2011 from the concerned department, whereupon the Hon'ble Directorate of Town and Country Planning, Haryana was pleased to issue Occupancy Certificate dated 06/09/2013 to the project of the respondent and granted permission for the occupation of the building, i.e., Parker Mall of the respondent.

27.That the project "Parker Mall" having received Occupancy Certificate way back in the year 2013, has been physically occupied by the respective unit holders, conveyance deeds have been registered in their names and there is a great footfall of the public. At present, big brands like Mukta Cinemas, Gulab, Maruti Suzuki, ICICI Bank, Richlook, Unik Bazaar, Bindals, Khushi Banquet, Atomic Gym, Blood Bank, Gaming Zone and many more are operating from the project of the respondent and successfully running their business ventures from the project. The actual site photographs displaying occupancy of units/ outlets by above mentioned commercial entities are collectively attached as Annexure R-13.



28. That after obtaining Occupation Certificate, the complainant was served a letter dated 13/10/2013, attached as Annexure R-10, wherein an offer of possession was made to the complainant subject to clearance of outstanding dues. Further a letter dated 10/03/2016 was also served, annexed as Annexure R-14 wherein the complainant was asked to execute conveyance deed of the unit subject to payment of dues. Despite receipt of such letters, the complainant neither cleared the outstanding dues nor came forward to take possession and executed conveyance deed of the unit booked by the complainant.

29. That it is the duty of the complainant to make all the payments in the manner and time as agreed in respect of the booking, to pay all such charges as are required to be paid, to take physical possession of the booked unit within a period of 2 months from the date occupancy certificate is received to the real estate developer like respondent and as such the complainant is also liable to pay interest for delay in making payments due towards the booking at the rate agreed between the complainant and the respondent.

30. That the complainant is not entitled to seek any relief from this Hon'ble Authority qua refund of the deposited amount along with interest by invoking the provisions of Section 18 of the Real Estate (Regulation and Development) Act, 2016 because the project "Parker Mall" of the respondent has already obtained Occupation Certificate



and Completion Certificate from the Directorate of Town and Country Planning Haryana. The respondent is in very much position to hand over actual physical possession of the shop/ unit booked by the complainant since the year 2013. It is the complainant who has not come forward to take possession of the unit offered vide letter dated 13/10/2013 and execute conveyance deed after clearing outstanding due amount despite repeated reminders and requests in this regard. Thus, the complainant cannot be allowed to withdraw from the project and simply seek refund of the amount deposited by him along with interest in a case when the respondent is not at any fault. Now at this stage, the complainant is not entitled to seek any relief from this Hon'ble Authority, whatsoever.

31.It is denied that the total sales consideration of the unit was an amount of Rs.20,00,000/-. That the sale consideration of the unit was agreed at Rs.39,00,000/- at the rate of Rs.6000/- per sq. ft. and apart from the same, other charges were also payable as agreed between the complainant and the respondent.

32.It is denied that the respondent has violated the provisions as enumerated under Section 13 of the Act by accepting a sum of more than 10% of the total cost of the shop in question without first entering into a proper written agreement and registration of the same. That as per the payment plan agreed by the complainant, the





complainant was required to pay the amount in various installments as also completely described in reply. That at the relevant time, the provisions of RERA Act were not enacted and now after a lapse of more than 16 years from the date of booking, the complainant has no right to challenge the payment plan voluntarily agreed by him at the time of booking of the unit.

33.It is denied that the respondent has failed to allot any particular shop number to the complainant or that even failed to get any Builder Buyer Agreement executed with the complainant in regard to the shop in question.

34.That complainant has concealed material facts from this Hon'ble Authority. A unit No. GF-75 on ground floor of Parker Mall has already been allotted in the name of the complainant, the complainant was called to execute Builder Buyer Agreement vide letter dated 17/09/2011, where even after receiving the letter, the complainant did not come forward to sign the agreement voluntarily out of mala-fide and ulterior motives. Now, the complainant simply cannot allege blatant violation of the provisions of Real Estate (Regulation and Development) Act, 2016 on the part of respondent. Furthermore, a valid offer of possession has been made vide letter dated 13/10/2013 after receiving Occupation Certificate dated 06/09/2013 from the Directorate of Town and Country Planning Haryana.





35.It is denied that the possession of the shop was to be handed over within a period of 2 years from the date of booking or that the deemed date of possession comes to 27/12/2008. That the complainant deliberately out of mala-fide and ulterior motives, did not come forward to execute BBA in respect of the booking when called to do so vide letter dated 17/09/2011 and now the complainant is not entitled to consider date of booking as the date to calculate duration within which possession of the unit was to be handed over to the complainant. If any such date is to be considered, then the same be considered as 17/09/2011 when the complainant was called to execute Builder Buyer Agreement but he did not come forward to execute the same.

36.It denied that the respondent was duty bound to offer possession to the complainant latest within 3 years of the booking, latest by 27/12/2009. So far as the content of the para under reply relates to law laid down by Hon'ble Supreme Court of India is concerned, it is submitted that the same is not applicable upon the present complaint and the complainant is not entitled to seek any relief from the same. It is reiterated here that the complainant was called to execute the BBA vide letter dated 17/09/2011 but he did not come forward to execute the same and now at this belated stage, the complainant cannot shift blame or hold irresponsible respondent about the same and plead



before this Hon'ble Authority to consider the date of booking as the date from which possession of the unit was to be handed over to the complainant. Even if the settled law of Hon'ble Supreme Court of India is applied herein, then the complainant cannot be at liberty to count 3 years from such the date of booking. For the purpose of ascertaining deemed date of possession, the date of 17/09/2011 be considered as the date from which possession was to be delivered after a period of 3 years and as such, the deemed date of possession comes to 17/09/2014 only.

37.The complainant be directed to deposit the remainder amount of Rs.1,11,66,696/- towards the booking and take possession and register conveyance deed in respect of the unit booked by the complainant.

38.That complainant cannot withdraw from the project as per its own convenience. That the respondent is in very much position to handover actual physical possession of the unit since year 2013 but it is the complainant who is not coming forward to accept the same out of mala-fide and ulterior motives.

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

39. Counsel for complainant and respondent both reiterated the facts of the complaint and reply respectively. Authority put specific query to



the complainant that whether complainant made any communications with the respondent from the year 2006-2007, after making payment of ₹9,75,000/- to the respondent or after offer of possession made by the respondent. To this ld counsel for complainant stated that complainant had no written documents available to prove the same. However, complainant made several oral requests to the respondent but respondent did not reply satisfactorily. Ld counsel for complainant also submitted complainant is interested to withdraw from the project and seeking refund of the paid amount along with interest.

40. On the other hand, ld counsel for respondent stated that there is no default of the respondent because respondent had sent various reminders and demand letters, offer of possession after obtaining occupation certificate 06.09.2013 and completion certificate on 10.08.2016. Further, complainant cannot be allowed to withdraw from the project when the builder/promoter has done all the obligations on his part and unit still holds in the name of the complainant. Therefore, respondent cannot be made liable to refund the amount along with interest when complainant himself defaulted in making payments and accepting offer of possession. Also, counsel for respondent referred to the order dated 05.04.2022 passed by this Hon'ble Authority in complaint no.1271 of 2021 wherein as per para





3 of the order, Authority refuses to allow refund alongwith interest in favour of complainants when the project of the respondent is complete in all respects.

**F. ISSUE FOR ADJUDICATION**

41. Whether the complainant is entitled for refund of amount deposited by the complainant along with interest in terms of Section 18 of RERA, Act of 2016?

**G. OBSERVATIONS AND DECISION OF AUTHORITY**

**42. Objection of the respondent regarding maintainability of complaint:**

- i. Ld counsel of the respondent contended that respondent's project "Parker Mall" received the occupation certificate on 06.09.2013 and completion certificate on 10.08.2016 ( as per contention of the respondent during arguments), whereas the Real Estate (Regulation and Development) Act became applicable in the State of Haryana only upon the publication of a Notification in Gazette of Haryana on 28/07/2017. Respondent has submitted that when the respondent commenced the construction of the said project and when the project received occupation certificate and completion certificate from competent Authority, the Act of 2016 was not in existence and as such provisions of RERA Act of 2016 are not applicable upon "Parker Mall" project of the respondent. Respondent has also





referred to Civil Appeal no.6745-6749 of 2021 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd vs. State of UP and others*" and stated that the Hon'ble Supreme Court in para No. 52 of the said order has observed that the Parliament has intended to bring within the fold of the Statute the ongoing real estate projects in its wide amplitude and also observed that the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued, within fold of the Act. Therefore, the complaint of the complainant deserves to be dismissed on this ground alone. In this regard Authority observes that as respondent received the occupation certificate on 06.09.2013 and completion certificate on 10.08.2016, it has been clarified by this Authority in its numerous orders that the term 'on-going project' is only used in Section 3 of RERA Act, 2016 which deals with only one of the obligations of the promoter under RERA Act,2016 ,i.e, to get the project registered. There are various other obligations of promoter illustrated in the RERA Act and under those provisions it is nowhere provided that those obligations are only limited to registered projects.

It will be prudent to refer to the definition of allottee, promoter and real estate project. As per S.2(d) of the RERA Act, "allottee" is defined as follows:



*(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:*

Definition of "promoter" under section 2(zk) is provided below:

*(zk) "promoter" means,—*

*(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*

Further, as per Section 2(zj) & (zn) of the RERA Act,2016. "project"

& "real estate project" are defined respectively as follows:

*(zj) "project" means the real estate project as defined in clause (zn):*

*(zn) "real estate project means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works. all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;*



A conjoint reading of the above sections shows that respondent is promoter in respect of allottees of units/shops sold by it in its real estate project in question. There exists a relationship of an allottee and promoter between the parties. Since, relationship of an allottee and promoter between complainant and respondents is established and the issues/transaction pertains to the real estate project developed by respondent, hence, provisions of RERA Act, 2016 apply to the matter and Authority has the exclusive jurisdiction to deal with the matter. Furthermore, the preamble of the Real Estate (Regulation and Development) Act, 2016 provides as under.

*An Act to establish the real estate regulatory authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the appellate tribunal to hear appeals from the decisions, directions or orders of the real estate regulatory authority and the adjudicating officer and for matters connected therewith or incidental thereto;*

The Real Estate (Regulation and Development) Act, 2016 basically regulates relationship between buyer (i.e. allottee) and seller (i.e. promoter) of real estate, i.e., plot, apartment or building, as the case may be and matters incidental thereto. So, the issues involved in





complaint and relief sought are well within the ambit of the Authority.

- ii. **On Merits:** The Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes that the complainant booked a shop vide reference no.C1102 by paying booking amount of ₹5,85,000/- on 27.12.2006 in the real estate project "Parker Mall" being developed by the promoter namely; Parker Builders Pvt. Ltd. Against the said booking receipt was issued by the respondent on 15.01.2007. Complainant opted for construction linked plan and was required to pay ₹39,00,000/- at the rate of ₹6000/- per sq. ft. apart from other charges and taxes toward the shop. Thereafter, complainant paid an amount of ₹3,90,000/- on 03.08.2007 and total amount paid by complainant is ₹9,75,000/-. Complainant alleges that total sale consideration is ₹20,00,000/- whereas respondent alleges that it was agreed at ₹39,00,000/- at the rate of ₹6000/- per sq. ft. On Perusal of reminder letter dated 04.01.2010, Authority observes that complainant opted for construction linked plan and basic sale price was ₹39,00,000/-.
- iii. It is matter of fact that no builder buyer agreement has been executed between the parties for the said unit. However, it is





admitted that complainant applied for the shop by booking amount on 27.12.2006. Therefore, in absence of builder buyer agreement executed between the parties, law has already been settled by the Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr wherein it is observed that period of 3 years is reasonable time of completion of construction work and delivery of possession. In present complaint, complainant applied for shop on 27.12.2006. Taking a period of 3 years from the date of booking, as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 27.12.2009.

- iv. Now, the main issue involved in present case is that complainant seeks refund of amount of ₹9,75,000/- from the respondent as complainant wants to withdraw from the project. On the other hand, contention of the respondent that respondent has raised construction activities in full swing and obtained timely approvals. The shop can be handed over to the complainant and till date respondent has not cancelled the shop and is ready to give possession of the shop to the complainant, if complainant is ready to pay the dues against the said shop. Also, it is the complainant who failed to make timely payments despite issuance of various reminders by the respondent, therefore,



respondent cannot be made liable to refund the amount along with interest.

In this regard Authority observes that complainant had made initial payment of 5,85,000/- against the total sale consideration way back in year 2006-2007. The respondent issued first reminder to the complainant on 14.06.2007 and complainant made payment of ₹3,90,000/- on 3.08.2007. After that respondent issued reminder dated 24.04.2008, 04.01.2010 and final notice before cancellation on 04.08.2010 for making balance payments. However, complainant did not correspond to the reminders and cancellation letter. Also, respondent issued legal notice to the complainant on 30.12.2010 and invited complainant for execution of builder buyer agreement w.r.t unit G-75 vide letter dated 17.09.2011. During hearing also, Authority put specific question to complainant as to what efforts were made by the complainant to seek possession of shop and what communications were made by complainant with respondent after passing of deemed date of possession, i.e, 27.12.2009 till filing of the captioned complaint on 23.11.2021. To, this complainant stated that he has no written communications to this effect although he had made several oral requests to the respondent to handover possession of the shop to the complainant.



Respondent applied for occupation certificate before the concerned authorities and got the occupation certificate on 06.09.2013. After receiving occupation certificate, an offer of possession was made to the complainant on 13.10.2013 with the request to pay the outstanding dues. Hence prima facie, it appears that offer made by the respondent was valid legal offer of possession as per the provisions of RERA Act of 2016. However, the complainant did not accept the same for reasons best known to the complainant. Authority observes that complainant has failed to place on record even a single document which shows that after making the payment and even after receiving offer of possession in the year 2013, complainant has contacted the respondent and conveyed his intention to withdraw from the project on account of inordinate delay. Also complainant has failed to place on any documentary proof proving that the unit was not complete at the time of offer of possession by the respondent. In above situation, it is important to refer sub section (10) of section 19 of RERA act of 2016, which state that complainant is also under an obligation to accept the offer of possession within two months. In case allottee does not want to continue with the project he may exercise his unqualified right to seek refund. However, the unqualified right also has to be exercised in the prescribed time limits. Further, Section 18(1) clearly provides that





the promoter shall be liable on demand to the allottee, in case the allottees wishes to withdraw from the project, to return the amount received by him in respect of that apartment, plot or building, as the case may be, with interest. Meaning, thereby the complainant had to demand refund on lapse of deemed date of possession. Raising demand of refund within reasonable time of passing of deemed date of possession establishes the intention of an allottee to withdraw from the project.

However, in the present case, complainant even did not demand refund when the unit was offered to him. Complainant in present case did not refused the offer of possession nor did demanded for refund of its amount within the period as provided under Section 19(10). Meaning thereby complainant choose to continue with the project. Therefore, at this stage complainant-allottee cannot be allowed refund and prayer of complainant for passing order for refund is declined.

- v. Thus, consequent upon the considerable consideration, the Authority is constrained to conclude that present complaint is nothing but a ill-advised luxurious litigation and a classic example of litigation to enrich oneself at cost of another and to waste the precious time of this Authority. The Real Estate (Regulation and Development) Act,2016 is a beneficial /social legislation enacted by the Parliament






to put check on the malpractices prevailing in the real estate sector and to address the grievance of the allottee who have suffered due to the dominant position of the promoter. However, it is a moral obligation on the part of complainant to invoke the provisions of the Act with a clear and bonafide intent and not as a tool/instrument for enrichment.

- vi. The Authority is of view that this tendency needs to be curbed with iron hands and as such, this Authority observes that no cause of action survives in favour of the complainant and therefore, present complaint is **dismissed**.

43. File be consigned to record room after uploading on the website of the Authority.

  
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**CHANDER SHEKHAR**  
[MEMBER]

  
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**NADIM AKHTAR**  
[MEMBER]