



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Date of Decision

18.11.2024

Name of the Builder		PARSVNATH DEVELOPERS LIMITED		
Project Name		PARSVNATH PRESTON, SONIPAT, HARYANA		
Sr. no.	Complaint no.	Title of the case	Appearance on behalf of complainant	Appearance on behalf of respondent
1.	328/2024	<p><b>Mrs. Amarjeet Kaur</b> W/o Sh. Narinder Jeet Singh HNO. N-14/29(I), DLF City, Phase-2, Gurugram, Haryana-122001.</p> <p>Vs.</p> <p><b>M/s. Parsvnath Developers Limited</b> (through its Managing Director and others Directors Parsvnath Tower, Near Shahdara Metro Station, New Delhi-110032</p>	Mr. Ashish Budhiraja, Counsel for complainant, through VC.	Ms. Rupali S. Verma, Counsel for respondent through VC.
2.	329 /2024	<p><b>Mrs. Ritu Sethi</b> W/o Sh. Parveen Kumar Sethi HNO. 25, Vasundhara Apartments, Plot No. 44, Sector-9, Rohini, Delhi-110085.</p> <p>Vs.</p> <p><b>M/s. Parsvnath Developers Limited</b> (through its Managing Director and others</p>	Mr. Ashish Budhiraja, Counsel for complainant, through VC.	Ms. Rupali S. Verma, Counsel for respondent through VC.

		Directors Parsvnath Tower, Near Shahdara Metro Station, New Delhi- 110032 <b><u>2nd Address:-</u></b> 6 <sup>th</sup> Floor, Arunachal Building, 19, Barakhamba Road, New Delhi-110001.		
3.	330 /2024	<b>Mr. Harvinder Singh</b> S/o Sh. Gurcharan Singh Chadha R/o HNO. AG-103, Sanjay Gandhi Transport Nagar, Delhi-110042. Vs. <b>M/s. Parsvnath Developers Limited</b> (through its Managing Director and others Directors Parsvnath Tower, Near Shahdara Metro Station, New Delhi-	Mr. Ashish Budhiraja, Counsel for complainant, through VC.	Ms. Rupali S. Verma, Counsel for respondent through VC.

**CORAM: Nadim Akhtar  
Chander Shekhar**

**Member  
Member**

**ORDER (NADIM AKHTAR-MEMBER)**

1. This order shall dispose off all the above captioned three complaints filed by the complainants before this Authority 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 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.

2. The core issues emanating from the above captioned complaints are similar in nature. The complainant in complaint No. 328 of 2024 and above referred all other captioned complaints are allottees of the project namely; "Parsvnath Preston" being developed by the same respondent/ promoter, i.e., Parsvnath Developers Ltd. As such the issue involved in all the above captioned cases pertains to failure on the part of the respondent/promoter to deliver timely possession of the unit in question despite receipt of part completion certificate for the plots in question and all complainant(s) are now seeking mainly refund with delay interest. This order is passed by taking the complaint no. 328/2024 titled as "Amarjeet Kaur vs Parsvnath Developers Ltd" as a lead case.
3. The details of the captioned complaints i.e. unit no., date of allotment letter, date of builder buyer agreement, total sale consideration and amount paid by the complainant, offer of possession and relief sought are given in the table below:



**Project- Parsvnath Preston, Sonapat, Haryana**

**RERA Registered/not registered-Not registered**

**DTCP License no.- 1205 and 1206 of 2006**

**Area for which part completion certificate granted- 1310 sq. ft, (approx.).**

**Flat Buyer Agreement has been executed on 10.05.2008 in all the cases.**

Sr no	Complaint no. /Date of filing	Reply Status	Unit no.	Date of BBA executed/ DDOP	Total sale consideration (TSC) and Paid amount	Offer of possession given or not given	Relief sought
1.	328-2024 29.02.2024	Filed on 27.08.2024	Plot no. -T5-103, First Floor in Tower no. T5 of having 1310 sq. ft. of area	10.05.2008 DDOP- 10.05.2011	TSC: ₹23,84,025/- Paid amount: ₹08,39,160/-	Not given	-Refund with delay interest - Allottee wishes to withdraw from the project and without prejudice to any other remedy seeks return of the amount paid with interest. - Prayed to the Authority to pass any other interim relief which deems fit and in favour of complainant.
2.	329-2024 29.02.2024	Filed on 27.08.2024	Plot no. -T5-203, 2 <sup>nd</sup> Floor in Tower no. T5 of having 1310 sq. ft. area.	10.05.2008 DDOP- 10.05.2011	TSC: ₹23,84,025/- Paid amount: ₹08,39,048	Not given	-Refund with delay interest - Allottee wishes to withdraw from the project and without prejudice to any other remedy seeks return of the amount paid with interest. - Prayed to the Authority to pass any other interim relief which deems

*[Handwritten signature]*

							fit and in favour of complainant.
3.	330-2024 29.02.2024	Filed on 27.08.2024	Plot no. -T5-704, 7 <sup>th</sup> Floor in Tower no. T6 of having 1310 sq. ft. area	10.05.2008 DDOP- 10.05.2011	TSC: ₹23,84,025/- Paid amount: ₹08,14,279/-	Not given	-Refund with delay interest - Allottee wishes to withdraw from the project and without prejudice to any other remedy seeks return of the amount paid with interest. - Prayed to the Authority to pass any other interim relief which deems fit and in favour of complainant.

#### A. FACTS OF THE LEAD COMPLAINT

4. Facts of the present complaint are that complainant booked a unit in the project of the respondent by paying an amount of Rs.1,19,500.00 towards the booking of the said unit bearing no. T5-103, 1st Floor, Tower-T5, in Parsvnath Preston, Sonapat, having super built up area measuring 1310 sq. ft. application form dated 16.04.2008 and the same was acknowledged by the respondent. The respondent confirmed the booking of the said unit for a total sale consideration of the unit i.e. Rs. 23,90,000.00, Plus EDC and IDC, Car parking charges, Club Membership charges, IFMS, Taxes and other Specifications of the allotted unit and providing the time frame within which the next installment was to be paid.



5. That on 10.05.2008, Flat Buyer Agreement was executed between the Complainant and respondent in respect of unit T5-103, 1 Floor, Tower-T5, in Parsvnath Preston, Sonapat. As per the agreement the total sale consideration was Rs. 23,84,025/- along with car parking. At the time of booking the cost of the apartment was Rs.23,90,000/- after certain negotiations. Copy of the Flat Buyer Agreement is annexed as Annexure C-1. That the payment plan was changed later on from time linked to construction linked and an approval letter dated 28.01.2009 in this regard was sent to the complainants and is annexed herewith as Annexure C-2.
6. That as per Clause 10(a) of the said agreement respondent had to deliver the possession within a period of 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 months but till date possession has not been delivered to the complainant.
7. That as per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit has already paid a total sum of Rs. 08,39,160/-, towards the said unit. A copy of the customer ledger account sent by the respondent is annexed as Annexure C-3.
8. That the Complainant is entitled to get refund of the amount invested with interest at the prescribed rate from date of application/payment to



till the realization of money under section 18 & 19(4) of the RERA Act. The Complainant is also entitled for any other relief which she is found entitled by this Hon'ble Authority. Therefore, complainant is left with no other option but to approach this Authority. Hence, the present complaint has been filed by the complainant.

#### **B. RELIEFS SOUGHT**

9. Complainant in his complaint has sought following reliefs:
- i) To order the Respondent to refund the amount paid by the complainant till date along with interest at 18% per annum till the actual realisation of amount.
  - ii) That allottee wishes to withdraw from the project and without prejudice to any other remedy available seeks return of the amount received by the respondent in respect of the allotted unit with interest at the prescribed rate.
  - iii) To pass any other interim relief(s) which this Hon'ble Authority thinks fit in the interest of justice and in favour of the Complainant.

#### **C. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

Learned counsel for the respondent filed a detailed reply on 27.08.2024 pleading therein as under:

10. That the present Complaint is not maintainable in law, as the relief prayed by the Complainant does not fall within the jurisdiction of this Hon'ble Authority. The project is not registered with this Hon'ble



Authority and therefore, this Hon'ble Authority does not have jurisdiction to entertain the present complaint.

11. That if relief of refund as prayed by the complainant in the present complaint is allowed then it will not only affect the interest of the other allottees but it will also affect the project of the Respondent Company
12. 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 Authority could not have entertained the complaint in the 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 latches, therefore, her claim should be dismissed.
13. That there is no contravention of the Real Estate (Regulation and Development) Act, 2016 on behalf of the Respondent, hence the present Complaint is not maintainable.





14. That on 19.04.2008, Mrs. Amarjeet Kaur (complainant) booked a flat bearing no. T5- 103 ad-measuring 1310 sq. ft. in the project named as Parsvnath Preston, Sonapat'. That the complainant proceeded with the booking after conducting proper due-diligence and being aware about the status of the project.
15. That on 10.05.2008, Flat Buyers Agreement (FBA) was executed between the parties according to which the Basic Selling Price of the flat under question was fixed at ₹23,84,025/- after availing the discount of ₹1,25,475/- i.e. 5% of BSP. That the complainant had opted to make further payment as per the Construction Linked Payment Plan. Copy of Flat Buyers Agreement dated 10.05.2008, is annexed herewith as Annexure R-1.
16. That till date complainant has paid only ₹8,39,161/- (Rupees Eight Lakhs Thirteen Nine Thousand One Hundred & Sixty One Only) towards Basic sale Price/Cost & other heads of said flat. A true copy of ledger is annexed herewith as Annexure R-2.

**D. ARGUMENTS OF LEARNED COUNSELS FOR COMPLAINANT AND RESPONDENT**

18. During oral arguments complainant reiterated the facts of the complaint. Learned counsel for complainant submitted that he has received a copy of reply filed by the respondent and the complainant interested in seeking refund of the amount deposited by her along with



delay interest. Learned counsel for the respondent has accepted the amount paid by the complainant.

#### **E. ISSUES FOR ADJUDICATION**

19. Whether the complainant is entitled to refund of amount deposited by her along with interest in terms of Section 18 of RERA Act of 2016?

#### **F. OBSERVATIONS AND DECISION OF THE AUTHORITY**

20. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as under:-

(i) The 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/TTCP dated 14.12.2017 issued by Town and Country Planning Department, 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.

(ii) Respondent has also taken objection that complaint is grossly barred by limitation. In this regard Authority places reliance upon the judgment of Hon'ble Apex Court in Civil Appeal no. 4367 of 2004



titled as “**M.P Steel Corporation v/s Commissioner of Central Excise** where it has been held that Indian Limitation Act deals with applicability to courts and not tribunals. Further, RERA Act is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act, 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not a Court. The promoter has till date failed to fulfil its obligations because of which the cause of action is re-occurring”.

(iii) Factual matrix of the case is that admittedly, Complainant booked a unit in the project by paying an amount of Rs. 1,19,500.00 towards the booking of the said unit bearing no. T5-103, 1st Floor, Tower-T5, in Parsvnath Preston, Sonapat, having super built up area measuring 1310 sq. ft. vide application form dated 16.04.2008. On 10.05.2008, Flat Buyer Agreement was executed between the Complainant and respondent in respect of unit T5-103, 1 Floor, Tower-T5, in Parsvnath Preston, Sonapat. As per the agreement the total sale consideration was ₹ 23,84,025/-. Complainant had paid a total amount of ₹8,39,160 to the respondent but till date respondent has failed to give the possession of the unit to the complainant. It is an admitted fact that even after a lapse of 19-20 years, no allotment of



flat has been made in favour of complainant by the respondent. Thus, the respondent, who has accepted total paid amount of ₹08,39,160/- way back in the year 2008, has been in custody of the money paid for allotment of the flat and has been enjoying benefits out of it. Facts of this case are identical to the facts of the case in complaint no. **1198 of 2021** titled as **Mohinder Singh Aggarwal vs Parsvnath Developers Ltd.** So, the present case is being disposed of in the same terms of the said case by allowing refund of paid amount with interest.

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

(v) 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. 14.10.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.

(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 complainants interest from the date amounts were paid till the actual realization of the amount. Hence, the Authority directs respondent to refund the paid amount along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, i.e,



at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 11.10%( 9.10% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 11.10% till the date of this order and said amount works out as per detail given in the table below:

Complaint no. 328/2024

Sr.no.	Principal Amount	Date of payment	Interest Accrued till 18.11.2024
1.	1,19,500/-	19.04.2008.	2,20,154
2.	2,38,103.75/-	03.06.2008	4,35,399
3.	1,90,722+50,000/- =2,40,722/-	24.07.2008	4,36,453
4.	1,90,722+50,000/- =2,40,722/-	18.10.2008	4,30,158
5.	113/-	15.01.2009	199
TOTAL=	08,39,160.75/-		₹15,22,363/-
Total amount to be refunded to the complainant = ₹8,39,160.75/- + ₹15,22,363/- =23,61,523.75/-			

Complaint no. 329/2024

Sr.no.	Principal Amount	Date of payment	Interest Accrued till 18.11.2024
1.	1,19,500/-	19.04.2008	2,20,154
2.	2,38,104/-	06.06.2008	4,35,182
3.	2,40,722/-	21.07.2008	4,36,673
4.	2,40,722/-	22.10.2008	4,29,865
TOTAL=	08,39,048/-		₹15,21,874/-
Total amount to be refunded to the complainant = ₹08,39,048/- + ₹15,21,874/- =23,60,922/-			



Complaint no. 330/2024

Sr.no.	Principal Amount	Date of payment	Interest Accrued till 18.11.2024
1.	1,13,525/-	24.04.2008	2,08,974
2.	2,27,050/-	11.06.2008	4,14,634
3.	2,31,640/-	30.07.2022	4,19,564
4.	2,31,640/-	29.10.2008	4,13,154
5.	10.424/-	20.07.2017	8,496
TOTAL=	08,14,279/-		14,64,822/-
Total amount to be refunded to the complainant = ₹08,14,279/- + ₹14,64,822/- = 22,79,101/-			

### G. DIRECTIONS OF THE AUTHORITY

21. 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(I) of the Act of 2016:

(i) Respondent is directed to refund the entire amount along with delayed interest to the complainants as per details given in para 20(vii) of this order. It is further clarified that respondent will remain liable to pay the interest to the complainants till the actual realization of the above said amounts.

(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.





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

  
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**CHANDER SHEKHAR**  
[MEMBER]

  
.....  
**NADIM AKHTAR**  
[MEMBER]

