



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

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|------------------------|-------------|
| Complaint no: | 208 of 2023 |
| Date of filing: | 25.01.2023 |
| First date of hearing: | 29.03.2023 |
| Date of decision: | 11.11.2024 |

Mr. Parminder Singh S/o Sh. Vedpal Singh,
R/O Block AP, House No. 2A,
Pitampura, New Delhi-100088

...COMPLAINANT

VERSUS

M/s Parsvnath Developers Pvt. Ltd.
Office:- 6TH Floor, Arunachal Building,
19, Barakhamba Road,
New Delhi-110001

...RESPONDENT

CORAM:

Nadim Akhtar
Chander Shekhar

Member
Member

Present: -

Mr. Savinder Singh, Id. Counsel for the complainant.
Ms. Neetu Singh proxy counsel for Ms. Rupali Verma
Counsel for the respondent through VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by the complainant on 25.01.2023 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 project, the details of sale consideration, the amount paid by the complainant, 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 | "Parsvnath Preston" Location: Sonapat, Haryana. |
| 2. | Name of promoter | Parsvnath Developers Pvt. Ltd. |
| 3. | Date of booking | 09.06.2008 |
| 4. | Unit area | 1265 sq. ft. |
| 5. | Date of allotment | Allotment not made |
| 6. | Date of builder buyer agreement | 08.09.2008 |
| 7. | Basic Sale Price | ₹29,54,788/- |



| | | |
|-----|---------------------------------|---|
| 8. | Amount paid by the complainants | ₹ 28,87,449/- as per statement of account which is annexed as Annexure C-2. |
| 9. | Possession clause in BBA | Clause-10 (a) |
| 10. | Due date of possession | 08.03.2012 |
| 11. | Offer of possession | Not Given till date |

B. FACTS AS STATED IN THE COMPLAINT

3. That the complainant booked a flat measuring 1265 sq. ft. in the respondent project on 09.06.2008. Copy of application form is annexed as Annexure C-2.
4. That the complainant was allotted flat no. T6-101 with total consideration of the said flat was fixed at ₹29,54,788/- and out of which complainant has already paid an amount of ₹28,87,449/-. A copy of account statement is annexed as Annexure C-2.
5. That the complainant has taken a loan of ₹20,00,000/- from Axis Bank for purchasing of this flat. The said flat was booked under Subvention Scheme in which respondent undertake to bear Pre-EMI interest till offer of possession. The flat buyer agreement executed between the parties on 08.09.2008 is annexed as Annexure C-2.
6. That the respondent failed to fulfill the commitment made by him to pay the Pre-EMIs to bank on behalf of the complainant. Due to default by the respondent, bank has issued notice to the complainant for making

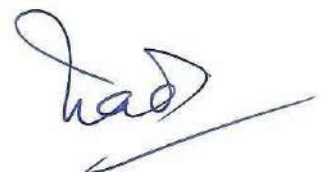


payments of Pre EMIs. The complainant has already paid 95% out of total sale consideration of the flat, but still did not get the possession of flat. The seemed date of possession was 08.03.2012.

C. RELIEFS SOUGHT:-

7. Complainant in his complaint has sought following reliefs:

- i) To refund the amount of ₹28,87,449/- along with interest as contemplated under rule 16 of the Real Estate (Regulation & Development) Rules, 2017, till date of payment.
- ii) To refund the Pre-EMI installments amounting to ₹2,19,453/- with interest as contemplated under rule 16 of the Real Estate (Regulation & Development) Rules, 2017, paid by the complainant from his own pocket since the same was the liability of respondent till the handing over of possession of the said apartment.
- iii) Directing the respondent to clear the outstanding loan towards the said apartment.
- iv) To refund the contribution of ₹2,54,381/- with interest as contemplated under rule 16 of the Real Estate (Regulation & Development) Rules, 2017, made towards EMIs paid to the bank from October, 2008 till April, 2019.
- v) Directing the respondents to pay ₹50,000/- towards the cost of litigation.



vi) Any other order or relief which Ld. Authority deems fit and proper in the facts and circumstances of the case, may kindly be passed in favour of the Complainants and against the Respondent.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 07.11.2024 pleading therein as under :-

8. That the present complaint is liable to be dismissed as FBA (Flat Buyer Agreement) was executed in the year of 2008 before the Real Estate (Regulations & Development Act), 2016 came into force. The Real Estate (Regulations & Development Act), 2016 cannot be said to have retrospective application and impose limits.
9. That the complaint pertains to an unregistered project of the respondent therefore, in view of the latest judgment of the Hon'ble Supreme Court in the case titled as '**Newtech promoters and developers Pvt. Ltd. Versus State of UP and others**' reported as (2021) SCC Online SC 1044, this Hon'ble Authority would not have the jurisdiction to entertain the present complaint filed under the Real Estate (Regulations and Development) Act, 2016.
10. That the present complaint is grossly barred by limitation and this Hon'ble Authority does not have 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.

11. That, the Hon'ble Authority does not have jurisdiction to entertain the claim of the complainant.
12. That the present complaint is not tenable in law as it has not been filed in the format prescribed by the Authority as the complainant has not mention under which provisions, the present complaint has been filed.
13. That the complainant has failed to implead Financial Institutions/bank which has granted loan facility, as necessary party.
14. That the complainant booked a flat in the project namely Parsvnath Preston , Sonapat after due diligence. The Flat Buyer Agreement was executed between the parties on 08.09.2008 with basic sale price of ₹29,54,788/- and the complainant voluntarily opted to make further payments as per EMI Subvention Scheme Plan. Copy of Flat Buyer Agreement is annexed as Annexure R-1 and copy of Ledger is annexed as Annexure R-2.



15. That the complainant was duly informed about the non-payment of Installments through letters dated 06.09.2008 & 08.09.2008 but he never cleared dues. Copies of letters are annexed as Annexure R-4
16. That the respondent company already paid EMIs of ₹30,45,633/- to complainant but due to liquidity crunch the respondent company could not pay the remaining EMI on time.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

17. During oral arguments complainant reiterated the facts of the complaint. Learned counsel for complainant submitted that the complainant did not wants to file any rejoinder to the reply filed on 07.11.2024 Complainant is seeking refund of amount paid by him to the respondent. In support of his arguments, he referred to Hon'ble Supreme Court judgment passed in Civil Appeal No. 2504 of 2020 in which it is specifically mentioned that under the subvention scheme, interest was payable by the developer to the bank for a stipulated period.

F. ISSUES FOR ADJUDICATION

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



G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

19. 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 the parties, Authority observes as follows:

(i) 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, 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) Another objection taken by the respondent is that the provisions of RERA Act, 2016 cannot be applied retrospectively. Reference can be made to the 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.” “45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest.” “53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the

Act which is completely misplaced and deserves rejection.
 54. *From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."*

The 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 were in the process of the completion though the contract/ agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

(iii) Respondent has also taken an objection that the present complaint is grossly barred by limitation. In this regard, Authority places reliance upon the judgment of Hon'ble Apex Court passed 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 fulfill its obligations because of which the cause of action is re-occurring.

iv) Respondent has also taken an objection that complainant has approached the Authority with multiple reliefs and Authority does not have jurisdiction to entertain the claim of complainant. In this regard it is observed that complainant in this case has sought only refund along with interest and has not sought multiple reliefs.

(v) Factual matrix of the case is that admittedly, the complainant booked a flat bearing no. T6-101, 1st floor, measuring 1265 sq. ft. in the project named 'Parsvnath Preston, Sonapat. Flat buyer agreement was executed between the parties on 08.09.2008. Basic selling price of the flat was fixed at ₹29,54,788/-. The complainant has opted to make payment as per the EMI Subvention Scheme Plan and complainant had paid ₹28,87,449/- to the respondent company. On perusal of documents, copy of account statement attached in the reply as annexure R-2, the paid amount is ₹28,07,049/-.



vi) Respondent has taken a plea that the complainant was duly informed by the respondent about non-payment of installments through letters dated 06.09.2008 and 08.09.2008 which was never cleared by the complainant. However, as per the ledger attached as Annexure R-2 with the reply, the complainant had paid the dues on 10.09.2008 of an amount of ₹3,63,029 and on 18.09.2008 of an amount of 20,00,000/-.

vii) Another plea of respondent is that the respondent had already paid EMIs of ₹30,45,633/- to the complainant. However, Authority observed that no proof of said payment of EMIs has been place on record by the respondent despite specific directions of the Authority during course of hearing.

viii) That complainant has sought relief of refund of pre EMI installments amounting to ₹2,19,453 and contribution of ₹2,54,381/- with interest towards EMIs paid to the bank. The said claim is supported by the documents placed on record on 04.12.2023 of Pre EMIs payment receipts and no due certificate of the concerned bank placed on record on 23.04.2024. Authority examine matters in summary procedure based on documents available on record. Thus respondent's claim of payment of EMIs of an amount of ₹30,45,633/- is hereby rejected.

ix) Further the complainant had filed an application for placing on record the payment receipts on 04.12.2023 which prove the complainant claim of Pre- EMIs paid by him from his own pocket amounting to



₹2,19,453 and contribution made towards EMIs paid to the bank. An application was also filed by the complainant for placing on record no due certificate from the bank against the loan taken by the complainant for the purpose of purchasing the said unit, which clearly substantiate his claim. Hence, complainant is entitled get the refund of Pre -EMIs paid by him from his own pocket and contribution towards EMIs paid.

(x) 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".

(xi) The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the HRERA Rules, 2017, 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.



(xii) 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. 11.11.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.

(xiii) 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, the Authority directs respondent to refund the paid amount of ₹28,07,049/- 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 to ₹28,07,049/- as per detail given in the table below:

Complaint no. 208/2023

| S.No. | Principal Amount paid by complainant | Date of payment | Interest Accrued till 11.11.2024 |
|--|--------------------------------------|-----------------|----------------------------------|
| 1. | 1,47,000 | 09.06.2008 | 2,68,225/- |
| 2. | 2,96,220 | 10.07.2008 | 5,37,707/- |
| 3. | 3,63,829 | 10.09.2008 | 6,53,573/- |
| 4. | 20,00,000 | 18.09.2008 | 35,87,885/- |
| TOTAL | ₹28,07,049/- | | ₹50,47,390/- |
| Total amount to be refunded to the complainant = ₹28,07,049/- + ₹50,47,390/- = ₹78,54,439/- | | | |

H. DIRECTIONS OF THE AUTHORITY

20. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to refund the entire paid amount of ₹28,07,049/- with interest ₹50,47,390/- to the complainant. 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) To refund the complainant amount of EMIs paid by him to bank from his own pocket and was the liability of respondent till handing over the possession of the said apartment, which as per complainant works out to ₹2,19,453 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 9.10% (9.10% + 2.00%) from the date the amounts became due till date of its payment.

iii) To refund the contribution made by the complainant towards EMIs paid to the bank from October 2008 till April, 2019 amounting of ₹2,54,381/- 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 9.10% (9.10% + 2.00%) from the date the amounts became due till date of its payment.

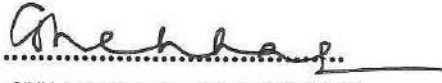
(iv) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of



Haryana Real Estate (Regulation & Development) Rules, 2017

failing which legal consequences would follow.

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


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]

