



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no:</b>	<b>516 of 2024</b>
<b>Date of filing:</b>	<b>09.04.2024</b>
<b>First date of hearing:</b>	<b>20.05.2024</b>
<b>Date of decision:</b>	<b>14.10.2024</b>

Mr. Raj Kawar Kataria S/o Sh. Tara Chand,  
HNo. 12, Gali No. 7B, Ashok Vihar, Phase-1,  
Gurugram-122001

....COMPLAINANT

VERSUS

M/s Parsvnath Developers Ltd.  
(through its Chairman-cum-Managing Director)  
6<sup>th</sup> Floor, Arunachal Building,  
Barakhamba Road, New Delhi

**2nd Address:**

Near Shahdra Metro Station,  
Shahdara, Delhi-110032

...RESPONDENT

**CORAM:**

**Nadim Akhtar**  
**Chander Shekhar**

**Member**  
**Member**

**Present: -** Ms. Stuti, Id. Counsel for the complainant through VC.  
Mr. Narender Kumar, Id. counsel for the respondent through VC.

**ORDER (NADIM AKHTAR - MEMBER)**

1. Present complaint has been filed by complainant on 09.04.2024 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	Present and Future project (P& F); Location: Sonapat, Haryana.
2.	Name of promoter	Parsvnath Developers Ltd.
3.	Date of booking	27.09.2004



4.	Unit area	300 sq. yds. as stated by the complainant in the pleadings.
5.	Date of allotment	Allotment not made
6.	Date of builder buyer agreement	Not executed
7.	Basic Sale Price	Not mentioned
8.	Amount paid by complainant	₹ 6,00,000/-
9.	Due date of possession	Cannot be ascertained
10.	Offer of possession	Not given but promised to give within six month from the date of booking.

**B. FACTS AS STATED IN THE COMPLAINT**

3. That the original allottee Mr. Sanjay Walia booked a residential plot measuring 300 sq. yds. by depositing advance booking amount of ₹1,75,000/- vide cheque no. 352649 dated 29.09.2004. The respondent issued receipt no. PC001542 dated 27.09.2004 against the respondent which is annexed as Annexure -01 to the complaint.
4. That the Original Allottee transferred the said registration of plot to his Nominee / Complainant, Mr. Raj Kavar Kataria and submitted an Affidavit to the Respondent on 20th December, 2005 for endorsement of the allotment of the plot along with Receipt of advance registration, No.



PC001542 dated 27th September, 2004 in favour of his Nominee i.e. Complainant, Raj Kavar Kataria. The Original Allottee also submitted a letter dated 22nd December, 2005 for endorsement of the plot and also Nomination Form dated 22nd December, 2005 to the Respondent. Copies of the Affidavit dated 20th December, 2005, Letter dated 22<sup>nd</sup> December, 2005 and nomination form dated 22.12.2005 are collectively appended as Annexure-02.

5. That the respondent endorsed the said plot and the advance registration receipt in favour of complainant vide application dated 22.12.2005 as appended as Annexure -03.
6. That the complainant Mr. Raj Kavar Kataria paid further an amount of ₹4,25,000/- vide receipt dated 22.12.2005 annexed as Annexure-04. The transfer was endorsed by the respondent in its record and endorsed at the back side of all the previous payments receipts. The respondent issued a letter dated 16.01.2006 evidencing the endorsement in favour of the purchaser, Mr. Raj Kavar Kataria. A copy of letter dated 16.01.2006 is annexed as Annexure-05 .
7. That complainant had paid total amount of ₹6,00,000/- but till date respondent had failed to execute the plot buyer's agreement with the complainant. Complainant made various phone calls and visited the offices of the Respondent at Delhi and Sonipat on numerous occasions in the last



nineteen (19) years seeking refund of the deposited amount with interest, but to no avail. The respondent made false promises, misguided and befooled the complainant for more than nineteen (19) years and six (6) months by illegally and unlawfully withholding the hard earned money of the Complainant. The Respondent neither allotted any plot nor refunded the deposited amount of ₹6,00,000/- to the complainant till date, even after numerous requests. The copies of two such letters and emails dated 2nd March 2024, 4th March 2024 & 18th March, 2024 sent by Complainant to the Respondent seeking refund of the deposited amount with interest are appended as Annexure-06. Respondent promised to offer the plot within 6 months from the date of booking but till date no offer of the plot has been made.

**C. RELIEFS SOUGHT:-**

8. That the complainant seeks following reliefs and directions to the respondent:-
  - i. Direct the Respondent to return/refund full amount deposited by the complainant amounting ₹6,00,000/- (Rupees Six Lakh) with the interest, from the various dates on which the amount was taken from the complainant till the amount is returned at the rate prescribed by the Act, 2016.



- ii. Direct the Respondent to pay legal expenses of ₹1,00,000/- (Rupees One Lakh) incurred by the Complainant for filing and pursuing the instant case.
- iii. Any other damages, interest and relief which the Hon'ble Authority may deem fit and proper under the circumstances of the case may kindly be passed in the favour of the complainant and against the respondent. The respondent be further directed to pay the cost and litigation charges.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

Learned counsel for the respondent filed a detailed reply on 09.10.2024 pleading therein as under :-

9. That the present complaint is not maintainable before this Hon'ble Authority for the reason that the complainant is not an allottee of the respondent company and the registration was merely an expression of interest towards the new projects of the Respondent Company.
10. That as per Section 2(d) of the Real Estate (Regulation and Development) Act, 2016, the definition of allottee is reproduced hereinafter for ease of this Hon'ble Authority.

*“Section 2(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.”*

11. 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.
12. That there is no 'Agreement to Sale' between the parties and therefore, relief sought under section 18 of the RERA Act, 2016 is not maintainable before this Hon'ble Authority.
13. That in similar appeal titled as "Savita Khaturia vs. M/s Parsvnath Developers (P) Limited Appeal No. 193 of 2019", the Hon'ble Tribunal



has been pleased to dispose of the appeal filed for granting the possession of plot by an allottee upholding the direction rendered by the Ld. Regulatory Authority to refund the earnest amount along with interest.

14. That on 16.01.2006, the original applicant transferred/endorsed his interest in favour of Mr. Raj Kawar Kataria ("The Complainant") after submitting the necessary/relevant documents in the office of respondent company. A copy of endorsement letter dated 16.01.2006, is annexed herewith as Annexure R-2 to the reply.
15. That on 22.12.2005, the complainant had signed and executed an Affidavit-Cum-Undertaking and Indemnity which clearly stipulates that in case the complainant is not allotted any plot in upcoming project of the respondent, he shall accept refund of the deposited amount with 9% simple interest per annum as per clause-7 of the undertaking. A true copy of which is annexed as Annexure R-3.
16. That complainant has paid ₹6,00,000/- till date to the respondent and is the applicant of this registration/ booking as per the records of the respondent. A copy of the latest ledger is annexed as Annexure R-4.
17. That respondent has submitted that the complainant was well versed with the fact that the registration was towards present & future project or new projects of the Respondent-Company. Further, it is submitted





that the Complainant is bound by the terms & conditions of the Application Form & an Affidavit-Cum-Undertaking and Indemnity which is duly signed & executed by the Complainant. That the Complainant had procured this registration from open or secondary market in-spite of being aware of that there was no allotment in favour of the original applicant.

18. That the entire complaint has been drafted based on incorrect & false information and as such, no cause of action has arisen in favour of the complainant to invoke jurisdiction of the Hon'ble Adjudication Officer, HRERA, Panchkula. That the Complaint filed by the Complainant before this Hon'ble Authority, besides being misconceived and erroneous, is untenable in the eyes of law.

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

19. During oral arguments complainant reiterated the facts of the complaint.. Learned counsel for complainant submitted that complainant is interested in seeking refund of the amount deposited by her along with interest. Learned counsel for respondent apprised the Authority respondent is ready to refund the amount along with interest as per RERA Act, 2016.

**F. ISSUES FOR ADJUDICATION**



20. Whether the complainant is entitled to 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**

21. 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 the parties, Authority observes as follows:

(i) The respondent has taken a stand that present complaint is not maintainable for the reason that complainant is not an allottee of the respondent company and registration was mere an expression of interest towards future project of respondent. Before adjudicating upon said issue, it is important to refer to the definition of allottee as provided in Section 2(d) of the Act. Said provision is reproduced below for reference:

*“Section 2(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.”*

However, respondent has admitted that original applicant transferred/endorsed his interest in favour of complainant after submitting necessary documents in the office of respondent . A copy of endorsement



letter dated 16.01.2006 is annexed as Annexure R-2 to the reply of respondent. Now, plea of respondent does not hold any merit and is therefore rejected.

(ii) Respondent has also taken objection that complaint is grossly barred by limitation. In this regard Authority places reliance upon the judgment of 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, the original allottee Mr. Sanjay Walia made advance registration for a plot in the Present and Future project of the respondent, M/s Parsvnath Developers Ltd. on 27.09.2004 by paying ₹1,75,000/- as booking amount. After the transfer of said registration in the name of complainant, he further paid ₹4,25,000/- to the respondent. There is also no dispute with regard to the



fact that no specific plot was allotted to the predecessor in interest of the complainant and that no builder buyer agreement was executed between the parties. It is an admitted fact that even after a lapse of 19-20 years, no allotment of plot has been made in favor of complainant by the respondent. Thus, the respondent who has accepted total paid amount of ₹6,00,000/- way back in the year 2004 has been in custody of the money paid for allotment of the plot 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 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 ₹6,00,000/- 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 ₹ 6,00,000/- as per detail given in the table below:

Complaint no. 516/2024

Sr.no.	Principal Amount	Date of payment	Interest Accrued till 14.10.2024
1.	1,75,000/-	27.09.2004.	3,89,724
2.	4,25,000/-	22.12.2005	8,88,182
TOTAL=	6,00,000/-		12,77,906/-
Total amount to be refunded to the complainant = ₹6,00,000/- + ₹ 12,77,906/- = ₹18,77,906/-			

(viii) Further, the complainant is seeking 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 litigation expenses.

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

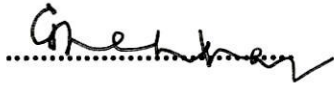
22. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to refund the entire amount ₹6,00,000/- with interest ₹12,77,906 /- to the complainant in complaint no. 516/2024. 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.



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



**CHANDER SHEKHAR**  
[MEMBER]



**NADIM AKHTAR**  
[MEMBER]