



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no:	1483 of 2023
Date of filing:	06.07.2023
First date of hearing:	09.08.2023
Date of decision:	21.10.2024

Mr. Sanjay Kumar Pahuja S/o Late Sh. Jawahar Lal Pahuja ,
R/O B-503, Saraswati Apartment, Plot No. 97,
I P Extension Patparganj, Delhi-110092

....COMPLAINANT NO.1

Shanno Devi Pahuja W/o Late Sh. Jawahar Lal Pahuja
R/O B-503, Saraswati Apartment, Plot No. 97,
I P Extension Patparganj, Delhi-110092

.....COMPLAINANT NO. 2

VERSUS

M/s Parsvnath Developers Ltd.
Parsvnath Tower, Near Shahdra Metro Station,
Shahdara, Delhi-110032

...RESPONDENT

CORAM:

Nadim Akhtar
Chander Shekhar

Member
Member

Present: - Mr. Prashant Chauhan, Id. Counsel for the complainants through VC.

Mr. Narender Kumar, Id. counsel for the respondent through VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by the complainant on 06.07.2023 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	Present and Future project (P& F); Location: Sonapat, Haryana.
2.	Name of promoter	Parsvnath Developers Ltd.
3.	Date of booking	24.02.2005
4.	Unit area	502 sq. yds.



5.	Date of allotment	Allotment not made
6.	Date of builder buyer agreement	Plot Buyer Agreement on 29.12.2009, as per stamp available on it. As per respondent, PBA date is 09.01.2010. (PBA NOT SIGNED).
7.	Basic Sale Price	₹27,61,000/-
8.	Amount paid by the complainants	₹ 35,14,000/- as per receipts which is annexed as Annexure-1,2,4,5,6,9,10,11 and 13 to 17 of the complaint.
9.	Due date of possession	January 2008
10.	Offer of possession	22.09.2009 provisionally

B. FACTS AS STATED IN THE COMPLAINT

3. That the complainants become the allottee by virtue of the Endorsement by the original buyers Mrs. Kiran and Mr. Arun Gupta in favour of the complainants for which the endorsement receipt dated 20.02.2006 was provided by the promoter to the complainants, which is annexed as Annexure -7.
4. That the first installment of ₹3,44,750/- was made vide receipt no. PH001526 to the promoters on 24.02.2005 annexed as Annexure-1.
5. That vide letter dated 22.09.2009, complainants were offered Plot No. B-3334 measuring 502 Sq Yard in Block B provisionally in Sonapat by the



- respondents with a making request for payment of due amount by 10.10.2009.
6. That on 22.12.2009 the Plot Buyer Agreement was delivered to the complainants but the same was never been executed by the respondent till date.
 7. That promoter delivered allotment letter/Plot buyer agreement for signing the same by complainants but its execution is still pending because of adamant behavior of the promoters despite of so many request.
 8. That on 12.08.2021, the Complainants again sent a letter to the promoter requesting for endorsement original payment receipts in the name of the Complainants from his father Late Mr. Jawahar Lal Pahuja and thereby requesting for change in name of legal heirs. The Complainant once again sent a letter on 26.09.2022 to the Promoter requesting for either allotment of the Plot No 3334, measuring 502 Sq Yard(419.73 meters) in Block-B situated in Parsvnath City, Sonapat, Haryana or to refund the money amount to Rs 35,14,000 along with interest (exclusive of interest) paid for the said plot to the Promoter.
 9. That the Hon'ble Apex Court while dealing with the provisions of Section 18 of the Act, 2016, in the case of M/S Imperia Structures Ltd. Vs. Anil Patni & Anr. in Civil Appeal Nos.3581-3590 of 2020, decided on 02.11.2020, in Para 23, observed as under:-



"In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment".

C. RELIEFS SOUGHT:-

10. Complainant in his complaint has sought following reliefs:
- i) That the Complainant should be refunded their amount to the tune of ₹ 35,14,000 paid by them from 24.02.2005 till 09.07.2010 to promoters and the interest thereon amounting to ₹54,79,256.



ii) Thereby total amount to be refunded by the Promoter is ₹89,93,256.

iii) That the said amount of ₹89,93,256 is inclusive of the interest accrued till the institution of the present case before the Hon'ble HRERA, as Section 18 of the Real Estate (Regulation and Development) Act, 2016 and Rule 15 of HRERA clearly indicates that refund to be provided to the Complainants along with the interest.

iv) That the Complainants prays for refund of their amount because the Promoter despite of so many requests made to him denied the possession of the said plot to the Complainant, moreover denied for the refund of the amount to the complainants.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 31.10.2023 pleading therein as under :-

11. That the present complaint is not maintainable in law, before this Hon'ble Authority as this Hon'ble Authority does not have jurisdiction to entertain the present complaint.
12. 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.

13. That, initially, 24.02.2005, Mrs. Kiran Gupta & Mr. Arun Gupta ("The Original Applicants") had applied for advance towards registration of a plot in new projects of the Respondent Company wherein the location & project's name was not defined. Later on 20.02.2006, this advance registration was endorsed in the favour of Mrs. Shanno Devi Pahuja & Mr. Jawahar Pal Pahuja Tarawati Batra ("The Subsequent Applicants") after the mutual willingness and approval of both the parties in the records of the Respondent Company.
14. That in the September 2009, Mrs. Shanno Devi Pahuja & Mr. Jawahar Pal Pahuja ("The Subsequent Applicants") had been provisionally allotted a residential plot bearing no. B-3434 having area admeasuring 502 sq. yards tentatively in the township "Parsvnath City at Sonapat. That the Basic Selling Price (BSP) of said plot was fixed at ₹27,61,000/- excluding other compulsory charges w.r.t. said plot.



15. That on 09.01.2010, two copies of Plot Buyer Agreement (PBA) were sent to the Mrs. Shanno Devi Pahuja & Mr. Jawahar Pal Pahuja for signing with the request to return these two PBA with two recent photographs of everyone vide letter no. PDL/FLATAGMT/S0267/11899 dated 09.01.2010 for making further processing. But, these two PBA were never returned to the Respondent Company. A copy of the letter dated 09.01.2010 is annexed as Annexure R-1.
16. That after sudden demise of Mr. Jawahar Pal Pahuja said Plot was transferred as co-allottee in the name of Mr. Sanjay Kumar Pahuja on the kind request of Mrs. Shanno Devi Pahuja and Mr. Sanjay Kumar Pahuja jointly in the records of the Respondent Company.
17. That the respondent company has received ₹35,14,000/- till date from complainants. A copy of ledger is annexed as Annexure R-2.
18. That without prejudice, it is further submitted that in case the refund is allowed, the right of the complainant to seek interest can be reckoned only after the date of allotment and not from the dates of respective deposits.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

19. During oral arguments complainants reiterated the facts of the complaint. Learned counsel for complainants submitted that the complainants had filed an application for waiver of claim of Mr. Vijay Kumar Pahuja on



10.09.2024. Learned counsel for complainants is interested in seeking refund of the amount deposited by her along with interest. Learned counsel for respondent apprised the Authority that respondent has not received the documents filed by the complainants. In response of this, the complainants stated that they have already sent copy of the application to the respondent through post.

F. ISSUES FOR ADJUDICATION

20. Whether the complainants are entitled to refund of amount deposited by them 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 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/TCP 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 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 fulfill its obligations because of which the cause of action is re-occurring.

(iii) Factual matrix of the case is that admittedly, the original applicants Mrs. Kiran Gupta & Mr. Arun Gupta made advance registration ON 24.02.2005 for a plot in the new projects of the respondent company, i.e. M/s Parsynath Developers Ltd wherein location and project name were not defined on 24.02.2005. After that the said registration was endorsed in favour of Mrs. Shanno Devi Pahuja & Mr. Jawahar Lal Pahuja Tarawati Batra. Due to sudden demise of Mr. Jawahar Lal Pahuja, said plot was transferred as co allottee in the name of Mr. Sanjay Kumar Pahuja. Thus, the respondent who has accepted total paid amount of ₹35,14,000/- way back between the year 2005-2010 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. 21.10.2024 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 ₹35,14,000/- 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 ₹ 35,14,000/- as per detail given in the table below:

Complaint no. 1483/2023

Sr.no.	Principal Amount	Date of payment	Interest Accrued till 21.10.2024
1.	3,43,750/-	24.02.2005.	750580
2.	3,43,750/-	09.03.2005	749221
3.	2,23,500/-	19.01.2006	465652
4.	2,60,000/-	19.01.2006	541698
5.	2,0,4000/-	19.01.2006	425025
6.	3,00,000/-	08.10.2009	501142
7.	1,50,000/-	08.10.2009	250571
8.	1,39,075/-	08.10.2009	232321
9.	2,50,000/-	08.10.2010	410624
10.	3,00,000/-	08.01.2010	492749
11.	1,47,725/-	08.01.2010	242638
12.	1,00,000/-	08.01.2010	164250
13.	2,00,000/-	08.01.2010	328499
14.	1,46,100/-	09.04.2010	235925
15.	1,30,000/-	09.04.2010	209927
16.	2,76,100/-	09.07.2010	438212
TOTAL=	35,41,000/-		64,39,034/-
Total amount to be refunded to the complainant = ₹35,14,000/- + ₹ 64,39,034/- = ₹99,53,034/-			

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 ₹35,14,000/- with interest ₹64,39,034/- to the complainants of the present complaint No. 1483/2023. 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 uploading the order on the website of the Authority.



CHANDER SHEKHAR
[MEMBER]



NADIM AKHTAR
[MEMBER]