



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	285 of 2024
Date of filing :	02.04.2024
Date of first hearing:	14.05.2024
Date of decision:	18.03.2025

Arindam Sarkar and Durgashree Dutta
R/o C-2 JCD Vidyapeeth Campus,
Barnala Road, Sirsa 125055 (Haryana)

....COMPLAINANTS

VERSUS

Parsvnath Developers Limited,
Office: 6th Floor Arunachal Building,
19 Barakhamba Road, New Delhi 110001

....RESPONDENT

CORAM:

Dr. Geeta Rathee Singh
Chander Shekhar

Member
Member

Present:

Adv. Ashwani, learned counsel for the complainants through video conference.

Adv. Neetu Singh, learned counsel for the respondent through video conference.

Geeta Rathee

ORDER

1. Present complaint was filed on 02.04.2024 by complainants under Section 31 of the Real Estate (Regulation & Development) Act, 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 unit booked by complainant, the details of sale consideration, the amount paid by the complainant and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Parsvnath Pleasant, Dharuhera, District Rewari.
2.	Flat no.	T14/503
3.	Area	1855 sq. ft.
4.	RERA registered/not registered	Unregistered



5.	Date of booking	13.05.2013
6.	Date of flat buyer agreement	24.10.2013
7.	Deemed date of possession (36+6) months	<p>24.04.2017; as per clause 9(a) of the flat buyer agreement:</p> <p>Clause 9(a) construction of the flat is likely to be completed within a period of thirty six (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(06) months, on receipt of sanction of building plans/ revised building plans and approvals of all concerned Authorities including the Fire Service Deptt., Civil Aviation Deptt., Traffic Deptt., Pollution Control Deptt., as may be required for commencing and carrying on construction subject to force majeure, restraints or restrictions from any courts/Authorities, non-availability of building materials, disputes with contractors/work force etc. and circumstances beyond the control of the developer and subject to timely payments by the flat buyers. No claim by way of damages/compensation shall lie against the developer in case of delay in handing over possession on account of any of such reasons and the</p>

		period of construction shall be deemed to be correspondingly extended. The date of submitting application to the concerned Authorities for issue of completion/part completion/occupancy/part occupancy certificate of the complex shall be treated as the date of completion of the flat for the purpose of this clause/agreement.
8.	Basic sale price	Rs. 52,71,910/-
9.	Amount paid by complainant	Rs. 17,36,531/-
10.	Offer of possession	No offer

B. FACTS OF THE COMPLAINT

3. Case of the complainants is that they booked a flat bearing unit no. T14/503, admeasuring 1855 sq. ft. in the project named "Parsvnath Pleasant" Dharuhera, Rewari being developed by respondent promoter. Flat buyer agreement was executed between the parties on 24.10.2013, copy of same has been annexed as Annexure P/5 with the complaint book. The payment plan as per Annexure -I was as under :

- a. At the time of booking 10%



- b. Within 45 days of booking 15% + 25% of car parking & Preferential Location Charges (PLC) and 100% of External Development Charges (EDC) + Infrastructure Development Charges (IDC)
 - c. At the time of possession 75% + 75% of car parking & Preferential Location Charges (PLC)
4. Basic sale price was Rs. 52,71,910/- out of which complainants had paid an amount of Rs. 17,36,531/- in the year 2013.
 5. That the respondent have not constructed that flat so far and there is no progress report communicated either through emails or through their website <https://www.parsvanth.com/project/parsvnath-plaesant-dharuhera/>
 6. That the respondent has misutilised the payments made by the complainants and whenever the complainants visit their office, respondent always making lame excuses.
 7. There is no information available on website about RERA registration, plans approval and environment clearance or construction stage.

C. RELIEF SOUGHT

8. Complainants in their complaint pray for the following relief(s):-
 - i. Direct the respondent to refund entire principal i.e. Rs. 17, 36,531/- alongwith prescribed rate of interest calculated from date of payment to the actual date of refund.
 - ii. Direct the respondent to pay litigation cost of Rs. 50,000/-



- iii. Direct the respondent to pay compensation for mental agony and harassment.
- iv. Any other relief as this Hon'ble Authority may deem fit.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed reply on 08.07.2024 pleading therein:

9. That present complaint is not maintainable in law, as the relief prayed for by the complainants does not fall within the jurisdiction of this Hon'ble Authority. The project is not registered with this Hon'ble Authority does not have the jurisdiction to entertain the present complaint.
10. That it is submitted that the present complaint is liable to be dismissed as the flat buyer agreement was executed on 24.10.2013 i.e. more than 3 years before the Real Estate (Regulation & Development Act), 2016 came into force. Therefore, in humble submission of the respondent company, the provisions of RERA Act, 2016 are inapplicable in the present agreement.
11. That further, project of the respondent company is an unregistered project, therefore in view of the latest judgment by Hon'ble Supreme Court in the case of "*Newtech Promoters and Developers Private Limited Vs State of U.P and others*" 2020 SCC online SC 1044, this Hon'ble Authority does not have the jurisdiction to entertain the present.



12. That there is no contravention of the provisions of the Real Estate (Regulation and Development) Act, 2016 on the behalf of respondent, hence the present complaint is not maintainable.

13. That the present complaint is not tenable in law as it has not been filed in the prescribed format as prescribed by this Hon'ble Authority. The complainant has not mentioned that under what provisions of Real Estate (Regulation and Development) Act, 2016, the present complaint has been filed.

14. That in the reply Respondent denies each and every averment or allegation made by the complainants, in the complaint.

E. ARGUMENTS OF LEARNED COUNSEL FOR BOTH THE PARTIES

15. During oral arguments learned counsel for the complainants reiterated arguments as mentioned at Para 3-8 of this order. Ld. counsel for the respondent reiterated the averments at para 12 and para 13 mentioned in this order.

F. ISSUES FOR ADJUDICATION

16. 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. FINDINGS OF AUTHORITY ON RELIEFS CLAIMED BY COMPLAINANTS

17. 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 rendered by both parties, Authority observes that the respondent has raised objections with respect to the maintainability of the present complaint on the following grounds :-

- i. That the Authority lacks the jurisdiction to adjudicate and grant the relief of refund under section-18 of the RERA, Act 2016 as the same may only be granted by the Adjudicating officer of the Authority. In this regard, reference has been made to the judgment passed by the Hon'ble Apex Court in **"Newtech Promoters and Developers Pvt. Ltd versus State of UP and Ors."** 2021-2022 (1) RCR (C) 357 and followed in the case of **"Ramprastha Promoter and Developers Pvt. Ltd. Verus Union of India and others"** dated 13.01.2022 in **CWP bearing number 6688 of 2021** wherein it has been laid down as under:

" 86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory Authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading



of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory Authority which has the power to examine and determine the outcome of a complaint.

Hence, in the view of authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the Authority has the jurisdiction to entertain/adjudicate a complaint pertaining seeking refund of amount and interest thereupon.

- ii. Another averments of respondents is that the present complaint is not maintainable as provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act, 2016. Respondent has argued that relationship of builder and buyer in this case will be regulated by the agreement dated 24.10.2013, previously executed between them and same cannot be examined under the provisions of RERA Act, 2016. In this regard Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into force, the terms of agreement are not re-written. The



Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as **Madhu Sareen v/s BPTP Ltd.** Relevant part of the order is being reproduced below:

“The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act save the provisions of the agreements made between the buyers and seller.”

Further, as per recent judgement of Hon'ble Supreme court in **Newtech Promoters and Developers Pvt. Ltd** it has been held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going



projects and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects, therefore this Authority has complete jurisdiction to entertain the captioned complaint.

iii. Furthermore, respondent has also raised an objection that the present complaint as it pertains to unregistered project of the respondent therefore the same is not maintainable under RERA Act, 2016. Said plea of respondent regarding rejection of complaint on ground of jurisdiction stands rejected. Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint. Jurisdiction in matters of unregistered projects has already been decided by the Authority vide its order dated 30.03.2022 in compliant case no. 191 of 2020 titled ‘ **Mrs. Rajni & Mr. Ranbir Singh vs. M/S Parsvnath Developers Ltd.**’ And same is followed in present case as well. Relevant part is reproduced below:-

“Looked at from another angle, Promoter of a project which should be registered but the promoter is refusing to get it registered despite the project being incomplete should be treated as a double defaulter, i.e. defaulter towards allottees as well as violator of Section 3 of the Act. The Argument being put forwarded by learned counsel for respondent amounts to saying that promoters who violate the law by not getting their ongoing/incomplete projects registered shall enjoy special undeserved protection of law because their allottees cannot benefit of summary procedure provided under the RERA Act for redressal for their grievances. It is a classic argument in which in violator of law seeks



protection of law by misinterpreting the provisions to his own liking.

14. The Authority cannot accept such interpretation of law as has been sought to be put forwarded by learned counsel of respondent. RERA is a regulatory and protective legislation. It is meant to regulate the sector in overall interest of the sector, and economy of the country, and is also meant to protect rights of individual allottee vis-à-vis all powerful promoters. The promoters and allottees are usually placed at a highly uneven bargaining position. If the argument of learned counsel for respondent is to be accepted, defaulter promoters will simply get way from discharging their obligations towards allottee by not getting their incomplete project registered. Protection of defaulter promoters is not the intent of RERA Act. It is meant to hold them acceptable. The interpretation sought to be given by learned counsel for respondent will lead to perverse outcome.

15. For the foregoing reasons, Authority rejects the arguments of respondent company. The application filed by respondent promoter is accordingly rejected.

iv. In view of the aforementioned reasons, the present complaint is maintainable and the Authority has complete jurisdiction to adjudicate on present complaint.

18. Authority observes that there is no dispute with regard to the facts that the complainants were allotted flat no. T15/503 in the real estate project "Parsvnath Pleasant" located at Dharuhera, Distt. Rewari; that complainants have paid an amount of Rs. 17,36,531/- against the basic sale



sale price of Rs. 52,71,910/- and that till date possession of the unit has not been made to complainants.

As per Section 11(4) (a) of the RERA Act 2016, the promoter shall be responsible for all obligations, (responsibilities) and function under the provisions of this Act or the rules and regulations made there under or to the allottees, as per the agreement for sale. In present case, as per clause 9(a) of agreement for sale dated 24.10.2013, "*The developer shall endeavour to complete the construction of flat within thirty six (36) months from the date of commencement of construction on the individual plot on which the flat is located with a grace period of six 6(months), after receipts of all requisite approvals as may be required for commencing and carrying on construction, subject to timely payments by the buyers*". Here it is pertinent to mention that no exact date for start of construction has been provided by either of the parties. Moreover, on perusal of the possession clause, this Authority is of the view that clause is completely vague, arbitrary and favouring the respondent only. Therefore, 36 months plus 6 months grace period from date of flat buyer agreement shall be considered as deemed date of possession. Further, it is a matter of fact that the respondent promoter has till date neither handed over possession nor completed the construction of the unit, thus, the respondent has failed to fulfill his obligation to handover the possession within stipulated/agreed time.



19. In this present complaint, complainants are seeking relief of refund of paid amount along with interest. In this regard reference is made to section 18 of the RERA Act, 2016 which deals with "Return of amount and compensation". Section 18 of RERA Act, 2016 is reproduced below:

"If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason.

He shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed"

Section 18 which is covered under chapter 2 of the RERA Act,2016 enumerates certain obligations on part of the promoter in case the promoter fails to offer possession of an apartment,plot or building as per agreement to sale.It provides that in case, the promoter fails to complete or unable to hand over possession of an apartment plot and building as



per agreement for sale, allottee wish to withdraw from the project , then in such situation/ circumstances the promoter shall be liable “on demand” to return the amount received by him in respect of the apartment along with interest.

In the present complaint as observed by the Authority preceding paragraphs the possession of flat was to be handed over by 24.04.2017, however, the promoter failed to deliver the possession of the unit within such time. Therefore, complainants are well within their rights to demand refund of this amounts paid towards the purchase of the flat.

20. Further, Hon’ble Supreme Court in the matter of “**Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others**” has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

“25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on



demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.

21. Authority observes that the project i.e. " Parsvnath Pleasant" is already delayed by several years. It is still not complete and admittedly respondents are not in a position to complete the project within reasonable time, therefore, Thus, Authority finds it to be fit case for allowing refund in favor of complainant. 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 section19]

(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 (NCLR) 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". 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. "

22. 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. 18.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.1%.

23. The definition of term 'interest' is defined under Section 2(z) of the Act which is as under:

Section 2(z). "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;*

24. Accordingly, respondents will be liable to pay the complainants interest from the date amounts were paid till the actual realization of



the amount. Complainants have sought refund of Rs. 17,36,531/- payment proof of said amount of Rs. 17,36,531/- have been annexed at Annexure C5(Colly). Hence, Authority directs respondents to refund to the complainant the paid amount of ₹ Rs.40,09,431/- 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 11.1% (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 11.1% till the date of this order and said amount works out to ₹ 40,09,431/- as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 18.03.2025
1.	208431	13.05.2013	274334
2.	335050	13.05.2013	440988
3.	700000	17.06.2013	913880
4.	493050	17.06.2013	643698
Total	17,36,531		22,72,900



Further, the complainants are seeking compensation on account of mental agony and cost of litigation. In this regard it is observed 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.V/s State of U.P. & ors.*", 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 complaint in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of compensation harassment, mental agony and undue hardship to complainants and litigation cost.

H. DIRECTIONS OF THE AUTHORITY

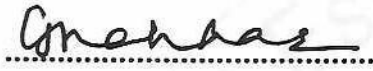
25. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondents is directed to refund the entire amount of ₹ 40,09,431/- to the complainant. Interest shall be continued to be paid till the date, the amount is refunded.



(ii) A period of 90 days is given to the respondents 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.

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


.....
CHANDER SHEKHAR
[MEMBER]


.....
Dr. GEETA RATHEE SINGH
[MEMBER]