



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no:	1027 of 2020
Date of filing:	14.10.2020
First date of hearing:	19.11.2020
Date of decision:	11.11.2024

Sh. Devender Singh, S/o Sh. Ram Singh,
R/o B-158, Lok Vihar,
Pitampura, New Delhi-110034

...COMPLAINANT NO.1

Sh. Inderpal Singh, S/o Sh. Puran Singh
R/o HNO.316, Sector- 46 A, Chandigarh

.... COMPLAINANT NO. 2

VERSUS

M/s Parsvnath Developers Pvt. Ltd.
(Through its Managing Director/ Chairman)
Parsvnath Towers, Near Shahdara Metro Station,
Shahdara, Delhi-110032

...RESPONDENT

CORAM:

Nadim Akhtar
Chander Shekhar

Member
Member

Present: -

Mr. Vikas deep, Ld. counsel for the complainants through VC.

Ms. Neetu Singh proxy counsel for Adv. Rupali Verma for the respondent through VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed on 14.10.2020 by the complainants 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 projects (P& F); Location: Sonapat, Haryana.
2.	Name of promoter	Parsvnath Developers Ltd.
3.	Date of booking	17.08.2004
4.	Unit area	400 sq. yds. as stated by complainants in their pleadings.
5.	Date of allotment	Allotment not made sofar
6.	Date of builder buyer agreement	Not executed



7.	Basic Sale Price	Not mentioned Rs 14,40,000/- claimed by complainants in their pleadings.
8.	Amount paid by the complainants	₹ 7,20,056/-
9.	Due date of possession	Cannot be ascertained as neither allotment letter issued nor BBA executed
10.	Offer of possession	Not given.

B. FACTS AS STATED IN THE COMPLAINT

3. That the original allottee Ms. Vandana Gupta booked a residential plot measuring 400 sq. yds. by depositing the initial amount of ₹40,000/- against receipt dated 17.08.2004 under customer Code no. PS/V0030. The sale consideration was fixed @ Rs 3,600/- per sq. yd., accordingly total sale consideration comes out to ₹14,40,000/- . Receipt dated 17.08.2004 is annexed as Annexure A of the complaint.
4. That the booking holder had further deposited an amount of ₹1,85,000/- against the receipt dated 02.06.2005 and ₹4,95,056/- against the receipt dated 09.02.2006, copies of which are annexed as Annexure- B & C. Total amount paid by the original allottee is ₹7,20,056/- to the respondent.
5. That the rights in respect to the booking were purchased by Mr. Devender Singh and Mr. Inderpal Singh jointly from erstwhile owner who executed the relevant documents for transferring rights. The complainants had



respondent refused to entertain the said transfer document until the entire payment against the booking was not deposited. Copies of documents executed by the erstwhile owner in favour of the complainants are collectively annexed as Annexure-D.

6. After an extended duration, respondent failed to make the allotment which created an apprehension in the mind of the complainants. As a result, complainants made enquiries and came to know that respondent received the booking amount from complainants without obtaining mandatory license from the DTCP, Haryana as per the Haryana Development and Regulations of Urban Areas Act, 1975 and Rules 1976. Later, the license was obtained by respondent vide File No. LC-840A, License No. 878-894, File No. LC-504A dated 25.04.2006, as per information available on the website of Director, Town and Country Planning, Govt. of Haryana. The respondent has adopted not only unfair trade practice but illegal trade practice by accepting the huge amount in respect of booking of plot and not allotting any plot till date. Respondent has also failed to develop the same as per schedule and committed huge delay.

C. RELIEFS SOUGHT:-

7. That the complainants seeks following reliefs and seeking directions to the respondent:-



- i. The respondent may kindly be directed to refund the amount deposited with the respondent, along with the interest @ 24% per annum, on amount deposited from their respective deposits till realization, after transferring the rights in respect of the booking in favor of complainant, in the interest of justice.
- ii. 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 15.12.2020 pleading therein:-

8. That the complaints does not have any locus standi against the respondent company as the complainant are not the applicant in the upcoming/new project in respondent's record.
9. That the application form containing terms and conditions of the allotment was duly agreed by original allottee-Ms. Vandana Gupta at the time of booking on 17.08.2004. A copy of the Application Form is annexed as Annexure R-1.
10. That the Ms. Vandana Gupta had duly agreed as per Clause 7 of the Application Form, that respondent shall try to make an allotment but in case it fails to do so for any reason whatsoever, no claim of any nature monetary



or otherwise would be raised by me/ us except that the advance money paid by me/us shall be refunded to me/us with 10% simple interest.

11. That Ms. Vandana Gupta has paid Rs.7,20,056/- 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-2.
12. That respondent had planned to develop Township in Sonapat upon various pieces of land which was to be acquired from various farmers in Sonapat but a piece of land admeasuring 200 acres has been acquired by the Government, therefore, the project got delayed due to Force Majeure conditions. Subsequently, due to force majeure conditions, the respondent was not in a position to develop the project in time but, the Respondent Company is ready to allot alternate Unit to the subsequent and current applicant subject to availability in other projects of the Respondent Company on mutual understanding of both the parties.
13. 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 Adjudication Officer (AO), H-RERA, Panchkula, besides being misconceived and erroneous, is untenable in the eyes of law.
14. That reliefs sought by complainant are barred by Limitation.



E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

15. During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for complainants submitted that complainants are interested in seeking refund of the amount deposited by them along with interest. Learned counsel for respondent apprised the Authority that endorsement of booking rights has been duly made in favour of complainants in compliance of directions issued vide order dated 20.03.2023.

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 RERA Act of 2016?

G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

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 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 complainants do not have locus standi to file present complaint as no record pertaining to transfer of allotment rights in their favour from Second allottee, i.e., Mr. Devender Singh is available in their record. In this respect, Authority vide order dated



20.03.2023 had directed the complainants to visit the office of respondent on 31.03.2023 and respondent was accordingly directed to transfer the booking of plot in favour of complainants. Relevant part of that order dated 20.03.2023 is reproduced below for reference:-

“After going through the submissions of the complainants and the available record, Authority finds that the erstwhile booking holders had executed receipt/agreement to sell wherein it has been stated that they have received a sum from complainants as full and final settlement in the matters and after that they will have no rights in said booking. Said receipts/agreements to sell have been annexed with the complaints. Mere fact, that complainants names do not appear in respondent’s record will not ipso facto mean that complainants are not valid allottees. Since, erstwhile booking holders have executed receipts/agreement to sell, Authority is of the considered opinion that complainants are valid allottees in the respondent’s project. They have, therefore, stepped into the shoes of previous allottee and will have all the rights and liabilities of the previous allottee. Resultantly, booking of the plots deserves to be transferred in favour of the complainants. Therefore, complainants are directed to visit the office of respondent company on 31.03.2023 and respondent is directed to transfer the booking of the plot in favour of the complainants”

In compliance of it, complainants visited the office of the respondent and submitted necessary documents. This fact is mentioned in subsequent hearing dated 17.05.2023 wherein, respondent sought 15 days of time for transferring the booking in favour of complainants. During the course of hearing, Id. counsel for respondent apprised the Authority that booking



rights stand transferred in the names of complainants. However, the endorsement in transfer documents filed by the complainants on 13.08.2024 in which Sh. Devender has purchased these rights from Ms. Veena Sehgal instead of Ms. Vandana Gupta but as the address of Sh. Devender is same as given and respondent admitted this fact in hearing. It means, they lawfully purchased these booking rights. The plea of respondent, the complainants are not allottees of the 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 judgement of Apex court 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 allottee Ms Vandana Gupta made advance registration for a plot in the present and future project of the respondent, M/s Parsvnath Developers Ltd. on 17.08.2004 by paying Rs 40,000/- as booking amount and further paid an amount of Rs. 7,20,056/- towards sales consideration till year 2006. It is also admitted by the respondent promoter that the advance registration was endorsed in favour of the subsequent allottee, i.e., Devender Singh on 19.05.2023 and later on, in favor of complainants by virtue of order dated 20.03.2023. There is also no dispute with regard to the fact that no specific plot was allotted to the predecessor in interest of the complainants 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 complainants by the respondent and Id. Counsel for respondent has stated even today that respondent is not in a position to allot a plot to the complainants. Thus, the respondent who has accepted an amount of Rs. 7,20,056/- way back in the year 2004-2005 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) Further, in the reply filed by the respondent, the complaint no. mentioned is 1028 of 2020 instead of complaint no. 1027 of 2020. However, all facts are same and relevant to the complaint and a typographical mistake has been made on the part of respondent.

(v) 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”.

(vi) Complainants had claimed in their complaint interest @ 24%. 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.



(vii) 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%.

(viii) 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's interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainants, the paid amount of ₹7,20,056/- 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 ₹ 07,20,056/- as per detail given in the table below:

Complaint no. 1027/2020

Sr.no.	Principal Amount	Date of payment	Interest Accrued till 11.11.2024
1.	40,000	17.08.2004.	89,919
2.	1,85,000	02.06.2005	3,99,617
3.	4,95,056	09.02.2006	10,31,427
TOTAL=	₹7,20,056/-		₹15,20,963/-
Total amount to be refunded to the complainant = ₹7,20,056/- + ₹15,20,963/- = ₹22,41,019/-			

(ix) Further, the complainants are 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 complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.


H. DIRECTIONS OF THE AUTHORITY

18. 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 of ₹7,20,056/- with interest of ₹15,20,963 /—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.

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


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]