



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1178 of 2023
Date of filing:	17.05.2023
Date of first hearing:	02.08.2023
Date of decision:	11.02.2025

Ritu Yadav, W/o Sh. Pawan Kumar
Resident of House no. 33/3, Gali no.8,
Near Modi temple, Braham Puri Fafrana Road,
Modinagar, Ghaziabd, Uttar Pradesh-201204

...COMPLAINANT

VERSUS

1. M/s Senior Builders Ltd,
Having registered office at- 1/1, Shanti Niketan,
New Delhi, South Delhi, Delhi-110021

2. Vijay Dixit
Director of M/s Senior Builders Ltd.
R/o B-109, Defense Colony
New Delhi-110024

...RESPONDENTS

CORAM: **Dr. Geeta Rathee Singh**
 Chander Shekhar

Member
Member

Present: Adv. Chaitanya Singhal, I.d. counsel for complainant, through VC.
Adv. Dhruv Mittal, I.d. counsel for respondents.

ORDER

1. Present complaint has been filed on 17.05.2023 by the complainant 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 fulfil 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, details of sale consideration, amount paid by the complainant and details of project as provided in the complaint are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	SBL City, Sonipat, Haryana.
2.	Name of the Promoter/Builder	M/s Senior Builders Ltd.
3.	Nature of Project	Present and Future Project

Rathee

5.	Area	360 sq. yds.
6.	RERA registered/ not registered	Not Registered
7.	Licensed/ not	Not licensed
8.	Date of booking	09.02.2005 (by original allottee) 20.03.2013 (booking transferred to complainant)
9.	Date of allotment	Not allotted
10.	Date of Flat/ Builder Buyer Agreement	Not executed
11.	Deemed date of possession	Not available
12.	Basic sale price	Not available
13.	Total amount paid by complainant	Rs.4,65,000/-
14.	Offer of possession	Not offered

B. FACTS OF THE CASE AS STATED IN COMPLAINT FILED BY COMPLAINANT:

3. In this case, Ms. Preeti Jindal, the original allottee booked a residential plot admeasuring 360 sq. yds. in the respondent's Present and Future Project- "SBL CITY" and in lieu of the same, a booking amount of Rs.2,65,000/- was taken on 09.02.2005. Thereafter, said booking was transferred to the present complainant on 20.03.2013 vide endorsement in



her name. On 20.03.2013, complainant made a further payment of Rs.2,00,000/- to respondent which was duly acknowledged vide receipt issued on 20.03.2013.

4. Complainant submits that respondent failed to issue allotment letter of plot to the complainant in spite of having received a sum of Rs. 4,65,000/- as advance. Further no builder buyer agreement has been executed between complainant and respondent till date. And till date respondents had neither refunded the money paid neither by complainant nor given allotment of plot to complainant and has been arbitrarily withholding the money since the year 2005.
5. That it is submitted that respondents had collected the money from complainant and other large no. of investors under the guise of generating capital for the pre-launch of residential plots in their upcoming project in Sonipat under the name of "SBL CITY" Sonipat. However, in reality respondents neither had any plot in Sonipat nor did they had any permission from the authorities for any such project and they vanished after having collected money from complainant and other investors.
6. That the complainant had repeatedly visited respondents' office for more than 50 times to enquire the status of his allotment but all his visits and phone calls went in vein. Complainant submits that every time



respondents assured him that they will allot the plot within 6 months, however said assurances never turned into reality. Thus, it was only an attempt to cheat and dupe with malafide and dishonest intention to cause undue gain to respondent itself and undue losses to the complainant.

7. That the facts of the complainant's case are similar to a case which had already been decided against the respondent developer by Hon'ble Patiala House Court, New Delhi vide judgment dated 23.07.2016 in the matter of *M/s Senior Builder Limited and others versus Rajesh Sharma" in CA NO. 32 OF 2015* wherein the respondent M/S Senior Builders Private Limited was held guilty for an offence punishable under Section 138 of the Negotiable Instruments Act for failure to return the booking amount paid by the complainant towards booking of 260 sq. yards plot in Sonipat in their upcoming township "SBL CITY Sonipat. And it was observed that the complainant had booked allotment of 260 sq. yards plot in sonipat for which he had paid an amount of Rs. 3, 50,000/- via cheque and further that the respondent developer had clearly admitted that the complainant had paid the booking amount of Rs. 3,50,000/- towards booking of plot in Sonipat however their project could not be developed since the land was acquired by the Govt. of Haryana and against the acquisition the respondent had moved before the Punjab and Haryana High Court..



8. That in another similar case against the respondent vide judgment dated 08.03.2018 titled "*Jai Singh v/s Senior Builder Limited in Appeal No. 699 of 2012*" passed by Hon'ble State Consumer Dispute Redressal Commission the Hon'ble State Commission had disposed off 3 appeals in favor of the appellants by refunding the booking amount of Rs. 3.5 lakhs paid to the respondent developer along with 18% interest and Rs. 1 lakhs towards compensation to the complainants. It was observed that the appellants had booked a plot with Senior Builder Pvt. Ltd and deposited a sum of Rs. 3.5 lakhs each on 07.04.2005 against receipt.
9. Complainant submits that the facts of the present complaint are also entirely the same as has been held by Hon'ble Rera Authority Panchkula in Complaint no. 1198 of 2021 in "*Mohinder Singh Aggarwal Vs Parsvnath Developers*" wherein the Hon'ble Rera Authority have ordered the respondent Parsvnath developers to give refund and along with interest to the complainant in Parsvnath "Present And Future Project" Bookings.
10. Further, it is submitted that in the month of December, 2013, the Economic offences Wing had arrested respondents for duping at least 60 people and a few companies of Rs.60 crore, the report of which clearly says the following:



"The respondent no.2, i.e. Vijay Dixit has been absconding since 2011, has also allegedly grabbed properties using forged documents as per police...."


...Vijay Dixit had floated a number of companies including M/s Senior Builders Ltd. And M/s Senior Power Projects Ltd....He had promised flats, plots, and shares in a project, SBL City, Sonapat and in a power plant project in Madhya Pradesh.

....In reality, he neither had any plot in Sonapat nor did he have any permission from the authorities for any such project. He had vanished after collecting the money," said Praveer Ranjan, joint commissioner of police, EOW, crime branch."

11. Therefore, complainant prays for refund of principal amount along-with interest and submits that the cause of action is still continuing as the plot has not been delivered till date.

C. RELIEF SOUGHT:

12. In view of the facts mentioned above, complainant prays for the following relief(s):-
- a) To refund the principal amount of Rs.4,65,000/- along with interest as per Rule 15 of IIRERA Rules from the date amounts were paid till date.
 - b) To levy penal interest of 14% on the respondent on account of wrongly keeping the money of the complainant from year 2004 till today.



c) Any other reliefs) as the Hon'ble Authority may deem fit and proper in light of the facts and circumstances of the above case.

D. REPLY:

13. Learned counsel for respondents filed a short reply on 04.03.2024 objecting to the maintainability of the captioned complaint in the following manner:

a. That that the instant complaint filed before the Hon'ble Authority is not maintainable and is liable to be dismissed as the project that was being carried out by respondents was scrapped and thereby the project was never "ongoing" in terms of the proviso of Section 3(1) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter to be referred to as "the Act"). It is imperative to bring to the notice of this Hon'ble Authority that the land on which the alleged project was to be carried out, never came into the possession of the Respondents as the same was acquired by the Government of Haryana for the purposes of development of Sector 2, IIUDA, Sonipat. A case regarding the same is currently pending before the Ld. Additional District Judge, Sonipat being ***Rajesh Kumar vs. State of Haryana and ors. bearing LAC No. 28/2021*** which is now fixed for hearing on 07.03.2024. In the petition itself, it is categorically stated that the alleged chunk of land could never come in the possession of



respondents as during the time of sale of such land, the state of Haryana started proceedings to acquire the same under the Land Acquisition Act, 1894. It is the stand of respondents that as the land was never in their possession, the construction of the alleged housing project could not have been carried out and thus the same could not be considered to be "ongoing" in terms of the Act.

- b. That it is also a settled principle of law that the Act shall not be taken to retroactive in terms of its operation as has been decided by the Hon'ble Apex Court in the judgement of *M/s Newtech Promoters and Developers Private Limited vs. State of U.P. and Ors. etc. 2022 (1) RCR (Civil) 357*. Relevant portion of the same is being reproduced here for the kind perusal of the Hon'ble Authority:

"51. Thus, it is clear that the statute is not retrospective merely because it affects existing rights or its retrospection because a part of the requisites for its action is drawn from a time antecedent to its passing, at the same time, retroactive statute means a statute which creates a new obligation on transactions or considerations already passed or destroys or impairs vested rights.

52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term "converting and existing building or a part thereof into apartments" including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing



and in cases where completion certificate has not been issued within fold of the Act."

- c. That the Act came into force on 25.03.2016, whereas the RERA Rules came into force even later, thereby applying the ratio of the aforementioned judgement, this Hon'ble Authority has no jurisdiction to try the present complaint and the same needs to be dismissed without carrying out any further proceedings.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS:

14. During oral arguments learned counsel for the complainant and respondents have reiterated arguments as mentioned in their written submissions.

F. ISSUE FOR ADJUDICATION:

15. Whether complainant is entitled to refund of the deposited amount along with interest in terms of Section 18 of Act of 2016?

G. OBSERVATIONS OF THE AUTHORITY:

16. 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 parties, Authority observes that complainant herein had purchased booking rights from original applicant Ms. Preeti Jindal who had booked a plot in respondent no.1's project under "Present and Future Scheme" in the year 2005 by paying booking amount of Rs.2,65,000/-.



Endorsement was done in favour of complainant on 20.03.2013. Complainant had also made further payment of Rs.2,00,000/- to respondent no.1 against said unit on 20.03.2013. Accordingly, complainant and its predecessor-in-interest have paid to the respondents a sum of Rs.4,65,000/-.

17. Main grouse of the complainant is that even after a lapse of approx. 19 years from the date of initial booking, respondents have neither allotted her any plot till date nor executed any builder buyer agreement despite partial payment being made by complainant; also respondents have not even refunded the amount paid till date. And since respondents never got possession of the plot on which they were to develop the project, complainant wishes for refund of amount that lies in custody of respondent in view of right under Section 18 of the RERA Act, 2016.
18. On perusal of receipt annexed with the complaint at page no.20 and 22 of the complaint book, Authority observes that respondents has accepted total payment of Rs.4,65,000/- for a plot admeasuring 360 sq. yds. towards its “proposed upcoming project” and issued receipt for the same. Respondents have not denied issuing the receipts for booking of the plot in its reply. Thus, the complainant is an allottee as she is the one to whom the plot was transferred by respondent by way of endorsement.
19. The defence adopted by respondents in their reply is that since the project land on which they had envisaged to develop the real estate project was

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acquired by the state government and they never got the possession of the same, therefore, the project is not covered within the ambit of definition of “ongoing project” and provisions of RERA Act, 2016 are not applicable to the present matter.

20. Here, it is to be noted that there is an admission on part of the respondent that they could not develop the project, as they did not get the possession of the project land, meaning thereby that the respondent wanted to develop the project, however they could not do so in absence of possession of land. Thus, admission on part of respondents makes it clear that respondents without obtaining requisite approvals to develop the project, sold it off to innocent allottees including the complainant. Authority observes that it is due to such malpractice prevalent in the real estate sector, especially during the first decade of 21st century that the RERA Act, 2016 was enacted by the parliament. The preamble of RERA Act, 2016 makes the intent of the legislature crystal clear that was to bring transparency and accountability in sale and purchase of apartment/ plot or building in a real estate project. The RERA Act, 2016 aims at protecting the rights and interests of consumers and it attempts to balance the interests of consumers and promoters by imposing certain responsibilities on both and establish symmetry of information between the promoter and purchaser, transparency of contractual conditions, set



minimum standards of accountability and a fast-track dispute resolution mechanism.

21. Respondents in the present matter cannot be allowed to run away from their obligation simply on the pretext that they never even initiated the development of the present and future project for which they had accepted booking amounts not only from the original allottee in the year 2005 but also from the complainant at the time of endorsement in the year 2013. Further no provision of RERA Act, 2016 provides that the RERA Act, 2016 shall be applicable only to the “ongoing project”. The obligation to get an “ongoing project” registered with the Real Estate Regulatory Authority is only one of the obligations of the promoter as provided under Section 3 of the RERA Act, 2016. Further Section 11(4) (a) of the RERA Act, 2016 provides that the promoter shall be obligated to fulfill all its obligations as per the agreement for sale. In the present matter, respondents had accepted a sum of Rs.4,65,000/- as booking amount from the complainant, made endorsement in favor of complainant on 20.03.2013 and issued receipts for the amounts collected as booking amount for a plot measuring 360 sq. yds. in the present and future project. The endorsement dated 20.03.2013 and receipts dated 09.02.2005 and 20.03.2013 leaves no room for any ambiguity and establishes that there was an agreement for sale for a plot measuring 360 sq. yds. in a present and future project of the respondent.



22. Further respondents have not placed on record any document to prove that they are not in the business of development of real estate project. In fact respondent admits the fact that they could not carry out the development works as project land got acquired by the state government with respect to which court case is pending before court of I.d. Additional District Judge, Sonipat being *Rajesh Kumar vs. State of Haryana and ors. bearing LAC No. 28/2021*. There is also nothing on record to show that the receipts on record are fraudulent.
23. The obligation to give possession of plot measuring 360 sq. yds. still remains unfulfilled, thus cause of action still continues. It is the matter of fact that even after 19 years from the date of collecting the booking amount, respondents have not developed the project nor there is a hope that they would be able to give possession of the unit to the complainant. after such an inordinate delay, complainant cannot be expected to wait for respondents to sort out that issue with government and then to hand over possession of the unit.
24. Authority observes that due to default on part of respondents to hand over possession of the plot even after 19 years, complainant does not want to continue with the project and wishes to withdraw from the same. As per Section 18(1) of the RERA Act, 2016, complainant is at liberty to exercise his right to withdraw from the project on account of default on part of respondents to deliver possession and seek refund of the paid



amount along-with interest. Hon'ble Supreme Court in the matter of "*Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others* " in Civil Appeal no. 6745-6749 of 2021 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 aforesaid 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. The complainant wishes to withdraw from the project of the respondent, therefore, Authority finds it to be fit case for allowing refund in favour of complainant. As per Section 18 of Act,



interest shall be awarded at such rate as may be prescribed. Rule 15 of IIRERA Rules, 2017 provides for prescribed rate of interest which is as under: 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;

Rule 15 of IIRERA Rules, 2017 which is reproduced below for ready reference:

“Rule 15: *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 (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”.



25. Consequently, as per website of State Bank of India i.e. <https://sbi.co.in>, the marginal cost of lending rate (in short MCLR) as on date i.e. 11.02.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR+2% i.e. 11.10%.
26. Accordingly, respondents will be liable to pay the complainant, interest from the date amounts were paid by them till the actual realization of the amount. Hence, Authority directs respondents to refund to the complainant the paid amount of ₹ 4,65,000/- 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.
27. Authority has got calculated the total amount along with interest at the rate of 11.10% till the date of this order and said amount works out to ₹13,18,338/- as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 11.02.2025 (in Rs.)	TOTAL (in Rs.)
1.	2,65,000/-	07.02.2005	5,88,945	8,53,945/-
2.	2,00,000/-	20.03.2013	2,64,393/-	4,64,393/-
Total	4,65,000/-		8,53,338/-	13,18,338/-



H. DIRECTIONS OF THE AUTHORITY


28. 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 amounts along with interest of @ 11.10 % i.e. **Rs. 13,18,338/-** to the complainant as specified in the table provided in para 27 of this order.

(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.

29. Captioned complaint is, accordingly, **disposed of**. File be consigned to the record room after uploading orders on the website of the Authority.


.....
CHANDER SHEKHAR
[MEMBER]


.....
DR. GEETA RATHEE SINGH
[MEMBER]