



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no:	351 of 2023
Date of filing:	09.02.2023
First date of hearing:	04.05.2023
Date of decision:	17.03.2025

Smt. Suman Kariwal W/o Sh. Yogesh Kariwal,

R/o II.No. 258 &259, Second floor,

Pocket 8, Sector 23, Rohini, Delhi-110085.

...COMPLAINANT No. 1

Sh. Yogesh Kariwal S/o Sh. Om Prakash Kariwal

R/o II.No. 258 &259, Second floor,

Pocket 8, Sector 23, Rohini, Delhi-110085.

...COMPLAINANT No. 2

VERSUS

M/s Parsvnath Developers Ltd.

through its Authorised Signatory

Registered & Corporate Office:-

Parsvanth Tower, Near Shahdara Metro Station,

Shahdara, Delhi-110032

...RESPONDENT

CORAM:

Nadim Akhtar

Chander Shekhar

Member

Member

Present: - Mr. Amit Kumar, Ld. Counsel for the complainants.
Ms. Rupali Verma, Ld. counsel for the respondent through VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by the complainants on 09.02.2023 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 complainants, 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	"Parsvnath Preston"
2.	Name of promoter	Location: Sonapat, Haryana. Parsvnath Developers Pvt. Ltd.
3.	Date of booking	05.06.2008
4.	Unit No.	T11- 1804, 18 th Floor
5.	Unit area	1765 sq. ft.



6.	Date of allotment	Allotment not made
7.	Date of builder buyer agreement	23.07.2008
8.	Basic Sale Price	₹42,73,090/-
9.	Amount paid by the complainants	₹7,30,795/- as per statement of account which is annexed as Annexure C-2.
10.	Due date of possession	23.07.2011 as per FBA
11.	Offer of possession	Not Given till date

B. FACTS AS STATED IN THE COMPLAINT

3. That the complainants booked a flat by paying an amount of ₹2,13,654/- through a cheque no. 602443 dated 05.06.2008 of ICICI Bank, Delhi, ₹4,27,309/- by cheque no. 692791 dated 05.07.2008 of ICICI Bank Delhi and ₹33,472/- by cheque no. 454324 dated 06.08.2008 of ICICI Bank Delhi. The total paid amount at the time booking works out of ₹6,74,435/-. Copies of the receipts of said total paid amount are annexed as annexure A.
4. That vide Flat Buyer Agreement dated 23.07.2008, complainants were allotted Unit No. T11-1804 at Parsvnath Preston, Sonapat, Haryana having super area of 1765 sq. ft. for a basic sale consideration of ₹42,73,090/-. According to Flat Buyer Agreement, the possession of the said flat was to be provided to the complainants on before July, 2011. Copy of Flat Buyer Agreement is annexed as Annexure B.



5. That in furtherance of Flat Buyer Agreement dated 23.07.2008, an agreement was also executed between the complainants and the respondent company. In terms of which it was agreed between the parties that the respondent would make the Pre EMIs payments to the bank on behalf of the complainants upto the date of Offer of Possession. Copy of the said agreement is annexed as Annexure C.
6. That the complainants applied for a Housing Loan from the Axis Bank Ltd. for the purchase of the said flat subsequent to which vide sanction letter dated 11.07.2008, bank sanctioned a loan of ₹33, 85,000/-. Copy of said sanction letter dated 11.07.2008 is annexed as Annexure D.
7. That the respondent company failed to deliver the possession till 23.07.2011 as per conditions of the Flat buyer Agreement.
8. That the complainants again approached the officials of the respondent company to inquire about the stage of construction of the Flat, they demurred and did not provide any concrete response to the complainants. Axis bank disbursed the total loan amount of ₹33,85,000/- in one go whereas bank can't do it as per RBI guidelines. As per tripartite agreement, the loan amount was to be disbursed by bank as per RBI norms.
9. That complainants were shocked and surprised to note that in the month of April 2018, Axis Bank deducted amounts of ₹34,940/- and ₹21,420/- from the complainant's account. Complainants informed the respondent for refund of above mention amount and officials of the respondent company



assured for refund of above mention amount but till now they have not refunded the same to the complainants.

10. That to the utmost shock and surprise, till 1st week of July, 2022, despite numerous telephonic conversations, personal visits made in this regard, the respondents company failed to refund the paid amount of ₹7,30,795/-and refund the loan amount which was disbursed on behalf of the complainants to the respondent company by the Axis Bank. Respondent is delaying the same on one pretext or the other.
11. That the facts and circumstances clearly shows, the respondent failed to provide requisite services as agreed, which is apparent on the face of it. The respondent has accordingly causing financial loss to the complainants against the wrongful gain.

C. RELIEFS SOUGHT:-

12. Complainants in their complaint have sought following reliefs:
 - i) Directing the respondent no.1 to refund the amount of ₹730,795/- @18 percent rate of interest to the complainants w.e.f 23.07.2008 till realization.
 - ii) Directing the respondent to refund the entire loan amount of ₹33,85,000/- of the flat in question along with cost, interest and other charges to the Bank;
 - iii) Directing the respondent to pay to the complainants cost of the complaints, litigation charges of ₹50,000/.



iv) Any other order or relief which this Ld. Authority deems fit and proper in the facts and circumstances of the case, may kindly be passed in favour of the Complainants and against the Respondent.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 24.08.2023 pleading therein as under :-

13. That the present complaint is liable to be dismissed as FBA (Flat Buyer Agreement) was executed in the year of 2008 before the Real Estate (Regulations & Development Act), 2016 came into force. The Real Estate (Regulations & Development Act), 2016 cannot be said to have retrospective application and impose limits.
14. That the complaint pertains to an unregistered project of the respondent therefore, in view of the latest judgment of the Hon'ble Supreme Court in the case titled as '**Newtech promoters and developers Pvt. Ltd. Versus State of UP and others**' reported as (2021) SCC Online SC 1044, this Hon'ble Authority would not have the jurisdiction to entertain the present complaint filed under the Real Estate (Regulations and Development) Act, 2016.
15. 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.

16. That the present complaint is not tenable in law as it has not been filed in the format prescribed by the Authority as the complainant has not mention under which provisions, the present complaint has been filed.
17. That the complainants have failed to implead Financial Institutions/bank which has granted loan facility, as necessary party.
18. That the complainants booked a flat bearing no. T11-1804 with an area of 1765sq. ft. tentatively in the project namely Prasvnath Preston on 06.06.2008.
19. That on 23.07.2008, Flat Buyers' Agreement was executed between the parties as per which the Basic Selling Price of the flat was fixed at ₹42,73,090/- and the Complainants had opted to make further payment as per EMI Subvention Scheme Plan willingly. Copy of Flat Buyers Agreement dated 23.07.2008, is annexed as Annexure R-1 and the copy of ledger dated 10.08.2023, is annexed as Annexure R-2. A copy of the Supplement Agreement dated 23.07.2023 is annexed as Annexure R-3.



20. That, the Complainants for their own benefit took loan from bank. The Respondent Company has paid ₹50,82,059/-(Rupees Fifty Lakhs Eighty Two Thousand & Fifty Nine Only) till date to the Complainants albeit, the Respondent Company has been putting all its best endeavors to pay balance amounts to the Complainants.
21. That the respondent shifted allotted unit no. of complainant from T11-1804 to T2-12A04 by written communication to the complainant due to certain modifications in plans, however, the other terms and conditions of Flat Buyer Agreement, Tripartite Agreement etc. remained the same. Copy of this letter is attached as Annexure R-5.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

22. During oral arguments complainant reiterated the facts of the complaint. Learned counsel for the complainants submitted that the complainants have filed a statement of loan account in office registry on 10.03.2025. Complainants are seeking refund of amount paid by them to the respondent. I.d. counsel for the respondent stated that she is ready to refund the amount but not interest as the loan is still alive. Authority asked the respondent about status of Occupation Certificate of the unit and she apprised that no Occupation Certificate has been received by the respondent till date.



F. ISSUES FOR ADJUDICATION

23. Whether the complainants are entitled to refund of the amount deposited by them and reimbursement of EMIs paid by them to the Axis Bank, along with interest in terms of Section 18 of Act of 2016?

G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

24. 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 present 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/ITCP 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.

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) Another objection taken by the respondent is that the provisions of RERA Act, 2016 cannot be applied retrospectively. Reference can be made to the case titled **M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. (supra)**, wherein the Hon Apex Court has held as under:-



"41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case." "45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest." "53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot



shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection. 54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."

The provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the Rules applicable to the acts or transactions, which were in the process of the completion though the contract/agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

(iii) Respondent has also taken an objection that the present complaint is grossly barred by limitation. In this regard, Authority places reliance upon the judgment of Hon'ble Apex Court passed 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.

iv) Factual matrix of the case is that admittedly, the complainants had booked a flat bearing no. T11-1804, measuring 1765 sq. ft. in the project named 'Parsvnath Preston, Sonapat. Flat buyer agreement was executed between the parties on 23.07.2008. Basic selling price of the flat was fixed at ₹42,73,090/-. The complainants had taken home loan from Axis Bank of an amount of ₹33,85,000/-. Complainants had paid ₹7,30,795/- from their own pocket to the respondent company and the copies of receipts has been annexed with the complainants file. Perusal of the said receipts revealed that amount mentioned by the complainants as total paid amount has been proved by the receipts, passbook and email, which clearly substantiate their claim. Respondent has also admitted the fact of payment in his reply dated 24.08.2023.



v) Another plea of respondent is that the respondent had already paid EMIs of ₹50,82,059/-. As per reply dated 24.03.2023, respondent has claimed to have paid an amount of ₹50,82,059/- to the bank. However, as per attachments of application of proof of payments of EMI, the paid amount is ₹52,68,513/-. Further, in application dated 07.03.2024, respondent has admitted that EMI payment of ₹15,55,934/- is still pending on behalf of respondent. However, no proof has been attached to prove this amount.

vi) That the complainants in their relief have claimed refund of entire loan amount. It is pertinent to mention here that vide application dated 10.03.2025, the complainants have placed on record statement of loan account in which it is clearly mentioned that principal amount paid is ₹11,64,030/- and interest amount paid is ₹40,78,010/-. As per statement of loan account, total amount of loan paid is ₹52,42,040/- and amount pending is ₹24,77,917/- Thus, for the purpose of pending loan amount, the amount yet to be paid by the respondent works out ₹24,77,917/- and not ₹15,55,934/-. Similarly, already paid amount by the respondent works out as ₹52,42,040/- not ₹52,68,513/- as claimed by the respondent.

vii) It is an admitted fact that even after a lapse of more than 15 years, no allotment of flat has been made in favour of complainants by the respondent. Thus, the respondent who has accepted total paid amount of ₹7,30,795/- way back in the year 2008 has been in custody of the money



paid for allotment of the flat and has been enjoying the benefits out of it and is liable to refund the same with interest to the complainant particularly in view of the fact that project is still not complete as respondent could not place on record a copy of Occupation Certificate of the project. Hence, complainants are entitled for refund of paid amount with interest. It is pertinent to mention here that as the loan is still alive, it is an obligations towards the respondent to pay the pending Pre EMIs to the bank and not the complainants. Hence, Complainants claim of refund of loan amount to the complainants are rejected.

(viii) As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HIREA 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".

(ix) The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the HIREA Rules, 2017, 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.

(x) 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. 17.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.

(xi) 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 ₹7,30,795/- 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 ₹20,22,642/- as per detail given in the table below:

Complaint no. 351/2023:-

S.No.	Principal Amount paid by complainant	Date of payment	Interest Accrued till 17.03.2025
1.	2,13,654	06.06.2008	₹3,98,227/-
2.	4,27,309	09.07.2008	₹7,92,168/-
3.	33,472	06.08.2008	₹61,767/-
4.	34,940	26.04.2008	₹26,755/-
5.	21,420	11.10.2019	₹12,930/-
TOTAL	₹7,30,795/-		₹12,91,847/-
Total amount to be refunded to the complainant = ₹7,30,795/- + ₹12,91,847/- = ₹20,22,642/-			

(xii) 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

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(I) of the Act of 2016:

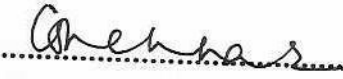
- (i) Respondent is directed to refund the entire paid amount of ₹7,30,795/- with interest ₹12,91,847/- to the complainants. It is further clarified that respondent will remain liable to pay the interest to the complainants till the actual realization of the above said amounts.
- ii) Respondent is directed to pay the pending pre EMIs of loan to the bank.
- iii) 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.

26. **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]