



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

Complaint no:	2109 of 2023
Date of filing:	12.10.2023
First date of hearing:	16.11.2023
Date of decision:	17.03.2025

Mrs. Ritu Jain W/o Late Sh. Ankur Jain

R/O H.No. 9/2794, Gali No. 4,

Kailash Nagar, Gandhi Nagar,

East Delhi-110031

**Legal Representatives of the deceased (Sh. Ankur Jain):-**

Smt. Rachna Jain (Mother) W/o Late Sh. Sushil Kumar Jain

R/O H.No. 9/2794, Gali No. 4,

Kailash Nagar, Gandhi Nagar,

East Delhi-110031

Ms. Ishika Jain (Minor Daughter) D/o Late Sh. Ankur Jain

R/O H.No. 9/2794, Gali No. 4,

Kailash Nagar, Gandhi Nagar,

East Delhi-110031

Mr. Aadi Jain (Minor Son) S/o Late Sh. Ankur Jain

R/O H.No. 9/2794, Gali No. 4,

Kailash Nagar, Gandhi Nagar,

East Delhi-110031

....COMPLAINANTS

VERSUS

M/s Parsvnath Developers Pvt. Ltd.

Office:- 6<sup>TH</sup> Floor, Arunachal Building,

19, Barakhamba Road,

Member  
Member

**Present:**

Mr. Savinder Singh, Ld. counsel for the complainant.  
Ms. Rupali Verma, Ld. counsel for the respondent through VC.

1. Present complaint has been filed by the complainants on 12.10.2023 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.

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” Location: Sonapat, Haryana.
2.	Name of promoter	Parsvnath Developers Pvt. Ltd.
3.	Date of booking	23.01.2008

had



4.	Unit No.	T5-101
5.	Unit area	1265 sq. ft.
6.	Date of allotment	Allotment letter not attached
7.	Date of builder buyer agreement	09.05.2008
8.	Basic Sale Price	₹28,93,180/-
9.	Amount paid by the complainants	₹ 26,03,703/- as per statement of account which is annexed as Annexure C-2.
10.	Due date of possession	As per clause 10(a) of BBA, within 36 months + 6 months grace period.
11.	Offer of possession	Not Given till date

**B. FACTS AS STATED IN THE COMPLAINT**

3. That the complainants have booked a flat measuring 1265 sq. ft. in the respondent project on 23.01.2008. Copy of application form is annexed as Annexure C-1.
4. That the complainants were allotted flat No. T5-101 with basic sale consideration of the said flat was fixed at ₹28,93,180/-, out of which complainants have already paid an amount of ₹26,03,703/-. A copy of account statement is annexed as Annexure C-2.
5. That the complainants have taken a loan of ₹23,14,000/- from PNB Housing Finance Limited for purchasing of this flat. Said flat was booked under Subvention Scheme in which respondent undertake to bear Pre-EMI



interest till offer of possession. The Flat Buyer Agreement (FBA) executed between the parties on 09.05.2008 is annexed as Annexure C-2.

6. As per clause 10(a) of the said agreement the respondent was to complete the construction of the said flat within 36 months from the date of start of foundation of particular tower in which flat is located with a grace period of 6 months.
7. During the pendency of the present complaint, complainant no. 2 (Sh. Ankur Jain) has expired on 30.01.2023 and the present complaint is being pursued through legal representatives of the deceased complainant. Copy of death certificate of complainant no. 2 is attached as Annexure C-4.
8. That the respondent failed to fulfill the commitment made by him to pay the Pre-EMIs to the bank on behalf of the complainants and to offer possession of the flat. Due to default of the respondent, bank has issued notice to the complainants for making payments of Pre EMIs. The complainants have already paid 95% dues towards the basic sale consideration of the flat, but still did not get the possession of flat. The complainants also sent various letters to the respondents for seeking refund but no response has been given by the respondent. Copies of letters sent by the complainants to respondent are annexed as Annexure C-5.

**C. RELIEFS SOUGHT:-**

7. Complainants in their complaint have sought following reliefs:





- i) To refund the amount of ₹26,03,703/- along with interest as contemplated under rule 16 of the Real Estate (Regulation & Development) Rules, 2017, till date of payment.
- ii) Directing the respondent to clear the outstanding loan towards the said apartment.
- iv) Directing the respondents to pay ₹1,00,000/- towards the cost of litigation.
- vi) Any other order or relief which I.d. 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 09.11.2023 pleading therein as under :-

- 8. 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.
- 9. 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.

10. 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 complainants are guilty of delay and laches; therefore, their claim should be dismissed.
11. That the present complaint is not tenable in law as it has not been filed in the format prescribed by the Authority as the complainants have not mention under which provisions, the present complaint has been filed.
12. That the complainants have failed to implead Financial Institutions/bank which has granted loan facility, as necessary party.
13. That the complainants booked a flat in the project namely, Parsvnath Preston, Sonapat after due diligence. The Flat Buyer Agreement was executed between the parties on 09.05.2008 with basic sale price of





₹28,94,180/- and the complainants voluntarily opted to make further payments as per EMI Subvention Scheme Plan. Copy of Flat Buyer Agreement, copy of ledger dated 25.10.2023 and copy of supplement Agreement dated 05.06.2008 are annexed as Annexure R-1, Annexure R-2 and Annexure R-3 respectively.

14. That the original allottee was duly informed about the non-payment of Installments through letters dated 20.03.2008, 16.04.2008 & 13.05.2008. Copy of ledger statement is annexed as Annexure R-4
15. That the respondent company has already paid EMIs of ₹30,45,633/- to complainants but due to liquidity crunch the respondent company could not pay the remaining EMI on time.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT**

17. During oral arguments complainants reiterated the facts of the complaint. Learned counsel for the complainants submitted that the 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**

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

**G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY**

19. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes as follows:

(i) Respondent has raised an objection regarding maintainability of the complaint on the ground that Authority does not have jurisdiction to decide the complaint. In this regard it is stated that Authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

**E.1 Territorial Jurisdiction**

As per notification no. 1/92/2017/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.*

So, in view of the provisions of the Act of 2016 quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by learned Adjudicating Officer if pursued by the complainant at a later stage. .

ii) 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'ble 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 complainant booked a flat measuring 1265 sq. ft. in the project named 'Parsvnath Preston, Sonapat on 23.01.2008. Flat buyer agreement was executed between the parties on 09.05.2008. Basic selling price of the flat was fixed at ₹28,93,180/-. The complainant has opted to make payment as per the EMI Subvention Scheme Plan and complainant had paid ₹26,03,703/- to the respondent company. Complainant has taken loan of ₹23,14,000/- from the PNB Housing Finance Ltd. Perusal of complaint file revealed that the complainants had not attached any receipts of payments made to the respondent. However, a ledger has been annexed as Annexure C-2 which is dated 05.09.2008. Respondent has also attached a copy of ledger dated 25.10.2023 as Annexure R-2. Since, the ledger attached by the





respondent contains latest updated figures, Authority considered it for the purpose of paid amount. As per latest ledger (R-2), complainants had made a total payment of ₹27,48,747/- out of which ₹23,14,000/- have been paid by the bank to the respondent. In cases of refund, only the amount paid by complainant from its own sources is considered. As per latest ledger, it works out of ₹4,34,747/-. However, as per amount claimed by complainants in relief clause, it works out to ₹2,89,703/- only. Since the respondent has attached latest updated ledger with its reply wherein paid amount admitted is ₹27,48,747/-, excluding loan amount, the amount complainants are entitled to get refund is taken as ₹4,34,747/- from the respondent.

v) Another plea of respondent is that the respondent had already paid EMIs of ₹39,53,220/- to the complainants under EMIs Subvention Scheme. For proving this statement, Authority vide order dated 08.07.2024, directed the respondent to file details of the alleged EMIs amount paid. In compliance, respondent has filed an application along with affidavit on 07.11.2024 for placing on record proof of payments which proves that respondent had paid an amount of ₹39,53,220/- and only an amount of ₹11,74,448/- is pending to be paid .

vi) Further vide order dated 08.07.2024, complainants was directed to file the loan payment details in the office registry. Case was adjourned to 11.11.2024. On 11.11.2024, complainant was directed to comply with the



previous order of the Authority dated 08.07.2024, but nothing has been filed by the complainant till date. Hence, for the purpose of considering the pre EMIs paid, the application dated 07.11.2024 filed by the respondent is considered as correct.

vii) It is an admitted fact that even after a lapse of more than 15 years, no possession of flat has been made offered to the complainants by the respondent. Thus, the respondent who has accepted total paid amount of ₹27,48,747/- including amount paid by the complainants from their own sources, i.e., ₹4,34,747/-, 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. Respondent is liable to refund the paid amount with interest to the complainant, excluding the loan amount, 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 amount paid by them from their own sources 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.

(viii) 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".*

(ix) The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the IIRERA 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 ₹4,34,747/- 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 ₹12,52,758/- as per detail given in the table below:

Complaint no. 2109/2023

S.No.	Principal Amount paid by complainant	Date of payment	Interest Accrued till 17.03.2025
1.	1,44,659/-	15.02.2008	₹2,74,555/-



2.	1,45,044/-	17.05.2008	₹2,71,228/-
3.	1,45,044/-	17.05.2008	₹2,71,228/-
TOTAL	₹4,35,747/-		₹8,17,011/-
Total amount to be refunded to the complainant = ₹4,35,747/- + ₹8,17,011/- = ₹12,52,758/-			

(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

20. 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:

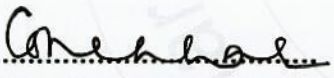


(i) Respondent is directed to refund the entire paid amount of ₹4,34,747/- with interest ₹8,17,011/-, total ₹12,52,758/- to the complainants. It is further clarified that respondent will remain liable to pay the interest to the complainants till the actual realization of the above said amounts.

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.

21. **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]