



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no:	1444 of 2020
Date of filing:	11.12.2020
First date of hearing:	24.02.2021
Date of decision:	07.04.2025

Smt. Savita Thukral W/o Sh. Rajinder Thukral ,
R/o C-83, Panchsheel Enclave,
New Delhi

...COMPLAINANT

VERSUS

M/s Parsvnath Developers Pvt. Ltd.
Parsvnath Towers, Near Shahdara Metro Station,
Shahdara, Delhi-110032

...RESPONDENT

CORAM:

**Nadim Akhtar
Chander Shekhar**

**Member
Member**

Present: -

None for the complainant.
Ms. Rupali Verma, Id. counsel for the respondent through
VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint was filed on 11.12.2020 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 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	08.12.2006
4.	Unit No.	GF-147,148&149(three units)
4.	Unit area	1082.83 sq. ft. as stated by complainant in her pleadings.
5.	Date of allotment	08.12.2006
6.	Date of builder buyer agreement	Not executed
7.	Basic Sale Price	Not mentioned
8.	Amount paid by the complainants	₹ 12,50,000/- (for three units)
9.	Due date of possession	Within 2 years

10.	Offer of possession	Not given.
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B. FACTS AS STATED IN THE COMPLAINT

3. Facts of complainant's case are that in the year 2006, the complainant had applied for allotment of commercial showroom bearing Plot no. GF-147, 148 & 149 measuring 1082.83 sq. ft. in a mall named, "TDI City Mall". The same was allotted to the complainant vide letter dated 08.12.2006.
4. That respondent agreed to give the possession of same shops within a period of 2 years. The complainant has made payments as per the contract agreed. Complainant had paid an amount of Rs. 12,50,000/- vide cheque no. 46403 & 464039 dated 08.12.2006 and 18.12.2007, receipt of which is annexed as Annexure P-1. The project has been taken over by respondent company from Vardaan Buildtech Pvt. Ltd. and name of the mall has been changed to Parsvnath City Centre, Sonipat
4. That complainant requested the respondent for possession of commercial plot allotted to her but respondents kept on giving false assurances saying that the same would be given very soon. The possession of the said commercial space has not been given to the complainant till date. That the respondent promoter has failed to develop the project as promised at the time of initial booking/allotment.



5. The complainant petitioner has invested her lifelong earnings in the project based on assurances given by the respondent, however she has been cheated and harassed. The respondent have misappropriated the amount paid by the petitioner and amount has not been put to use for timely development of the project, thus the complainant has lost faith. That since the respondent promoter is unable to develop the project and handover physical possession of the unit, the petitioner is entitled to refund of the entire sales consideration and other charges along with 18% compound interest from the date of respective payments.

C. RELIEFS SOUGHT:-

6. The complainant in his complaint has sought following reliefs:
- (i) In the event that the registration has been granted to the respondent company for the project namely "Parsvnath Developers Ltd." under RERA Act read with relevant Rules, it is prayed that the same may be revoked under Section 7 of the RERA Act, 2016 for violating the provisions of the RERA Act, 2016.
 - (ii) In exercise of powers under section 35 of RERA Act, 2016, direct the opposite party to place on record all statutory approvals and sanctions of the project;



- (iii) To compensate the Complainant for the delay in completion of the project and refund the entire amount of ₹12,50,000/- along with interest @ 18% compound interest from dates of respective installments/realization of the sales consideration by the respondent.
- (iv) To pay compensation of ₹5,00,000/- on account of harassment, mental agony and undue hardship caused to the complainant petitioner on account of deficiency in service and unfair trade practices;
- (v) The complaint may be allowed with costs and litigation expenses of ₹50,000/-.
- (vi) Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

7. Learned counsel for the respondent filed a short reply dated 25.01.2021 wherein respondent had taken following preliminary objections:

- (i) Present complaint is liable to be dismissed on the ground that the complainant has approached the Hon'ble Authority for the reliefs which are not tenable in accordance with law.



(ii) Complainant is seeking multiple reliefs and thus Hon'ble Authority lacks jurisdiction to decide the present complaint.

8. Thereafter a detailed reply was filed on 22.07.2022. The respondent has stated that in the present case, the respondent has already refunded the amount received against the unit once allotted to the complainant which now stands cancelled on the request of the complainant.
9. That on 08.12.2006, Mr, Savita Thukral (the Complainant) had applied for an advance registration for commercial shop Nos. GF-146, 147 & 148 (Ground floor) area ad-measuring 545.69 sq. ft., 268.57 sq. ft. and 268.57 sq. ft. respectively in the proposed TDI City Mall, Sonapat.
10. That on 10.09.2008, the Complainant was duly informed that the development rights of the commercial mall had been taken over by the respondent Company and the name of the Mall has been changed to "Parsvnath City Centre", Sonapat. Letters communicating the same are annexed as Annexure R-1(i), (ii) &(iii).
11. That on 14.08.2012, on the request of the complainant, the commercial plot nos. GF-147, 148 & 149 were cancelled after refunding the entire amount deposited by the complainant alongwith interest. Copies of request letters dated 14.08.2012 are annexed as Annexure R-2(i), (ii) &(iii) respectively.



12. That pursuant to the requests submitted by the complainant, respondent refunded an amount of ₹6,69,818/- towards Unit No. GF-147 along with interest ₹6,62,020/- towards Unit No. GF-148 and ₹6,65,517/- towards Unit No. GF-149 along with interest to the complainant. Copies of ledger dated 29.04.2022 are annexed as Annexure R-3(i), (ii), & (iii).
13. That the present Complaint is a result of gross misuse of judicial process and therefore, an exemplary cost may be imposed upon the Complainant for deterrence.
14. That the Complainant is not an allottee of the respondent. Therefore, complaint against the respondent is not maintainable in law.
15. That since the units in question have already been cancelled; complainant has no locus to approach this Hon'ble Authority.
16. That due to various reasons beyond the control of the respondent, the project could not pick up the pace as was expected when the project was launched.
17. That, in view of the submissions made under preliminary objections, preliminary submissions and reply on merits, it is respectfully prayed that the present complaint may be dismissed with exemplary cost in the interest of justice.



E. REJOINDER FILED BY COMPLAINANT.

18. Complainant filed a rejoinder on 01.02.2023 wherein it is submitted that the calculations done by the respondent are incorrect as the amount of interest payable works out to ₹3,19,181/-. It is mentioned that draft no. 008013 dated 13.02.2015 is not credited to the account of the complainant, Annexure R-4 of the reply itself mentions that the said draft has been received back for cancellation. That averments in the reply that the amount of ₹6,69,818/- is payable is incorrect. Copy of ledger attached as Annexure R-1.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

19. During oral arguments on various dates both parties reiterated their arguments as were submitted in writing. However, today none is present on behalf of the complainant.

F. ISSUES FOR ADJUDICATION

20. Whether the complainant is 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

21. 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) Factual matrix of the case is that admittedly Ms. Savita Thukral on 8.12.2006 made an advance registration for commercial shop numbers GF-147,148 &149, admeasuring 1082.83 sq ft. in the proposed "TDI City Mall Sonipat". That the payment of ₹12,50,000/- was made as registration deposit for the said shops. However, the respondent has averred that on the request of the complainant the units were cancelled on 14.08.2012 and in pursuant to the said request the respondent refunded principal amount alongwith interest @11% to complainant. It is an admitted fact that in the year 2008, the respondent promoter, i.e, Parsvnath Private Limited had taken over the development rights of commercial mall in question from Vardaan Buildtech Private Limited. Accordingly, respondent issued a letter dated 10.09.2008 duly informing the complainant about the fact that it has taken over the development rights to develop the commercial mall from the erstwhile developer, i.e., Vardaan Buildtech Private Limited and also the fact that the name of mall has been changed from, "TDI City Mall" to "Parsvnath City Centre" Sonipat.
- (ii) The complainant had pleaded in the complaint that respondent has neither handed over the possession nor has refunded the deposited amount. Per contra the respondent has pleaded that all three "units" were cancelled on the request dated 14.08.2012 of the complainant and the principal amount of all three units along with the interest component was



refunded to the complainant. Thus, the entire controversy in the matter revolves around the fact that as to whether the respondent had already refunded the amount to the complainant or not? Perusal of applications/letters dated 14.08.2012 made by the complainant, Annexure-R2 (i), (ii) & (iii) shows that the complainant had requested the respondent to cancel "all three units" and refund the amount. Perusal of copy of payments schedule as well as copy of cheques given to the complainant (Annexure-R4) shows that the complainant had received the amount from the respondent. Not only this, but also the complainant had filed an replication (same is written as rejoinder) but, in that also, she has accepted the case of the respondent and has given death knell to her own case, as in the replication, she has not disputed receiving of the amount as claimed to have been paid by the respondent. Thus, it is a classic example of misuse of the quasi-judicial proceedings put into motion on the basis of false and misleading facts.

(iii) Though, the complainant has claimed that the calculation was wrong but this was not her case in the complaint. In replication, she cannot be allowed to develop a case and that too when his case in complaint is totally false and baseless. Furthermore, looking at it from another angle, when the complainant received the amount (on cancellation at her request) till 2013, then, thereafter, the cause of action



cannot be said to have survived. If the complainant was having any grievance against the respondent then she should have approached the appropriate forum then and there only. The gap of 8 years between the refund date and filing of this complaint has not been explained/proved by the complainant with any documentary evidence. Accordingly, at this juncture, complainant cannot be allowed to awake and agitate the non-existent issues.

(iv) It is pertinent to mention here that vide order dated 19.07.2023, both parties were directed to prove their case based on documents. In compliance, respondent has filed additional documents on 19.10.2023. However, complainant has failed to prove her contention mentioned in rejoinder that an amount of ₹3,19,181/- remains to be paid by the respondent. After that, from 9th hearing onwards of the case, held on 29.01.2024 to 12th hearing of the case dated 20.01.2025 and today is the 13th hearing of the case, almost a period of 1years 3months has passed, none present on behalf of complainant. Authority gave various opportunities to the complainant to appear and prove her case but despite that, complainant failed to appear and prove her case.

(v) After considering the facts, Authority is of the view that there is a clear case of concealment of facts by the complainants as the respondent had already refunded the principle amount along interest @11% and



Further, the cancellation of units was done only on the request of complainant on 14.08.2012 but the complainant did not mentioned the above facts in her pleadings and same has also not been admitted in the rejoinder. However, in the ledger annexed with rejoinder as Annexure R-1, it is clearly mentioned that total principal amount is nil. It clear that principal amount has been received by the complainant. Complainants contention that respondent has neither handed over the possession nor has refunded the deposited amount does not substantiate her claim, The Authority observes that, "who seeks equity must come with clean hands". The Hon'ble Apex court in its recent criminal Appeal no. 303 of 2024 title as Kusha Duruka Vs. States of Orissa has upheld their previous judgment operative part of which is as under :-

In K.D. Sharma Vs. Steel Authority of India Limited and others (2008) 12 SCC 481, it was observed by this Court: If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."



In Moti Lal Songara Vs. Prem Prakash @ Pappu and another (2013) 9 SCC 199 , this Court, considering the issue regarding concealment of facts before the Court, observed that "court is not a laboratory where children come to play", Anyone who takes recourse to method of suppression in a court of law, is, in actuality, playing fraud with the court, and 4 (2013) 9 SCC 199 6 the maxim *supressio veri, expressio fasis* , i.e., suppression of the truth is equivalent to the expression of falsehood, gets attracted.

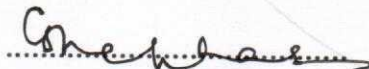
In a recent matter, this Court again came across a litigant who had tried to overreach the Court by concealing material facts;

*In Saumya Chaurasia v. Directorate of Enforcement 2023 INSC 1073*as under: It cannot be gainsaid that every party approaching the court seeking justice is expected to make full and correct disclosure of material facts and that every advocate being an officer of the court, though appearing for a particular party, is expected to assist the court fairly in carrying out its function to administer the justice. It hardly needs to be emphasized that a very high standard of professionalism and legal acumen is expected from the advocates particularly designated Senior advocates appearing in the highest court of the country so that their professionalism may be followed and emulated by the advocates practicing in the High Courts and the District Courts.

Due to concealment of facts, misleading the Authority and non-representation of complainant for more than one year, no case in her favour is made out by the complainant.



- (vii) Consequent upon the considerable consideration, the Authority is constrained to conclude that the present complaint is nothing but an ill-advised luxurious litigation and a classic example of litigation to enrich oneself at the cost of another and to waste the precious time of this Authority. The Real Estate (Regulation and Development) Act, 2016 is a beneficial/social legislation enacted by the Parliament to put a check on the malpractices prevailing in the real estate sector and to address the grievance of the allottees who have suffered due to the dominant position of the promoter. However, it is a moral obligation on part of a complainant to invoke the provisions of this Act with a clear and bona-fide intent and not as a tool/instrument for enrichment.
22. Thus, Authority decides to dispose of the captioned **complaint as dismissed**. The complaint is accordingly **disposed of** in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]