



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no:	13 of 2024
Date of filing:	05.01.2024
First date of hearing:	12.02.2024
Date of decision:	07.04.2025

Mrs. Namita Tripathi W/o Sh. Rahul Tripathi,
R/o Shiv Kutir, 268/256, Ram Nagar,
Aishbagh, Lucknow (U.P)

....COMPLAINANT

VERSUS

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

...RESPONDENT NO.1

M/s Marksmen Facilities Pvt. Ltd.
(Through its Director/Managing Director)
Parsvnath Tower, Near Shahdra Metro Station,
Shahdara, Delhi-110032

...RESPONDENT NO.2

CORAM: **Nadim Akhtar** **Member**
 Chander Shekhar **Member**

Present: - Mr. Arjun Kundra, Id. Counsel for the complainant.
Ms. Rupali Verma, Id. counsel for the respondent through VC.

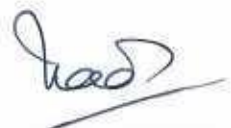
ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by the complainant on 05.01.2024 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	Parsvnath City
2.	Name of promoter	Location: Sonapat, Haryana. Parsvnath Developers Ltd.
3.	Date of booking	2012
4.	Unit No. and Area	Plot No. 0485, Block -A and 402 sq. yds.
5.	Date of allotment	Allotment not made



6.	Date of builder buyer agreement	01.09.2011
7.	Basic Sale Price	₹14,87,400/-
8.	Amount paid by the complainant	₹21,24,420/- as per complainant and 21,25,450/- as per respondent.
9.	Due date of possession	Not mentioned in Plot Buyer Agreement
10.	Date of offer of possession	10.12.2011 (provisionally)

B. FACTS AS STATED IN THE COMPLAINT

3. That the complainant become the allottee by virtue of the endorsement made by the original buyer Mr. Vivek Garg in favour of the complainant vide endorsement receipt dated 28.06.2012. The erstwhile allottee has issued a letter dated 28.06.2012 to the respondent no. 1, intimating him regarding change of the right to purchase the plot. Copy of letter dated 28.06.2012 is annexed as Annexure C-1.
4. That the endorsement was duly acknowledged and recorded in the Plot Buyer Agreement. Copy of Plot Buyer Agreement dated 01.09.2011 is annexed as Annexure C-2.
5. That the erstwhile allottee Sh. Vivek Garg had already made the payment to the tune of ₹21,19,270/- to the Respondent no.1. The payment receipts have been transferred in the name of the Complainant. Copy of the payment receipts are annexed as Annexure C-3 and copy of the account



statement dated 03.07.2012 issued by the Respondent no.1 to the Complainant is annexed as Annexure C-4.

6. That in the deceitful manner in which the Respondent no.1 had conducted its business is very much apparent from the reading of the Plot Buyer's Agreement. At the time of the booking of the unit, complainant was promised to grant possession within a fixed time frame, i.e., within 36 months but there is no such term in the agreement. There is no promised date of possession as to when the Respondent no.1 shall deliver the possession of the plot. Although, respondent no.1 and its officials had orally assured the complainant that the possession will be given within 36 months.
7. That such a huge delay is seldom committed by any developer or service provider. The sale price of the unit is ₹14,87,400/-and the complainant has already made the payment for the sum of ₹21,24,420/- (Rupees Twenty-One Lakhs Twenty-Four Thousand Four Hundred and Twenty Only) to the Respondent no.1 till date but there is no sign of grant of legal possession of the unit even today.
8. That the complainant has inspected the webportal of the DTCP Haryana and till date the respondent no.1 has not received the completion certificate in respect of the mentioned project. In one of the connected/similar matters, this Hon'ble Tribunal has held the respondents are guilty of deficiency in services and awarded upfront delay penalty along with



monthly prescribed rate of interest. Copy of the order dated 13.10.2021 as passed by this Hon'ble Tribunal in the complaint no. 865 of 2020 titled as Deepak Gupta Vs M/s Parsunath Developers Ltd is annexed as Annexure-C-5.

9. That the unfair trade practice of the respondent no.1 is also evident from the other actions engaged by the respondent. The Respondent no.1 illegally tried to impose the possession of the incomplete plot upon the erstwhile allottee in 2011. Copy of the offer of possession letter dated 10.12.2011 has been annexed as Annexure C-6. The letter nowhere states whether or not the development work is complete or not. This letter was not within the knowledge of the complainant, but only came to her knowledge and possession when the respondent no.1 herein started demanding holding charges from the complainant in 2013. The complainant was in shock, as she was not aware as to the aspect of offer of possession. She was under the impression that the development work is going on in the project. The demand letters are annexed herewith as Annexure C-7.
10. The complainant has been chasing the respondent no.1 for the past several years now. The respondent no.1 herein has not completed the development works in the project till date, but has engaged one entity, with the name of Marksmen Facilities Pvt. Ltd, who is harassing the complainant to make the payment of the maintenance dues. This entity is apprehended to be the sister concern of the Respondent no.1. That it has no agreement with the



complainant for the maintenance of the plot the locality yet it had the audacity to issue the demand letters. There is no question of payment of the maintenance dues when the project is incomplete. The copy of the demand letters issued by the maintenance agency/respondent no.2 have been annexed herewith as Annexure C-8 (colly).

11. The complainant was constrained to seeking information from authorities to actually unearth the status of the project since the Respondent and its agents continue to harass the complainant for payment, whereas, the actual situation at the site would tell a different story. The complainant made the application under Right to Information Act, 2005 on 17.10.2023 to District Town Planner, Sonapat. The copy is attached herewith as Annexure C-9.
12. The complainant was shocked to know that till date STP (Sewage Treatment Plant) and Underground Water Storage Tanks have not been constructed or developed by the Respondent in the project. Further, only part-completion certificate with respect to 38.195 acres out of 84.155 acres has been obtained by the developer. The copy of the response received by the complainant to the RTI application has been annexed as Annexure C-10. The copy of the part-completion certificate with respect to only 38.195 acres out of 84.155 acres has been annexed as Annexure C-11. Part-Completion is no completion in the eyes of law, as the aforesaid project was to be developed in 84.155 acres and only to back track from the legal



obligations to complete the project partial completion certificate has been only obtained by the developer.

13. That the basic amenities and facilities were not operational at the site, and the respondent no.1 had no right to offer possession in an incomplete, under-development project. The respondent no.1 has acted in bad faith and has tried to dupe the complainant of her hard earned money.

C. RELIEFS SOUGHT:-

14. Complainant in his complaint has sought following reliefs:

- (i) Pass an order directing the Respondent no.1 to deliver the immediate legal possession of the Plot/Unit bearing no. A-0485, Block-A, admeasuring 402 sq yards located at Project Parsvnath City, Sonapat to the Complainant upon receipt of the Completion Certificate and completion of all the amenities as per the Plot Buyer's Agreement dated 1st September 2011;
- (ii) Pass an order quashing/setting aside the alleged offer of possession letter dated 10.12.2011 issued by the Respondent no.1 to the Complainant & other alleged illegal, arbitrary & one-sided communication/letters/demands/maintenance charges/holding charges, etc., issued by the Respondents no.1 and 2 to the Complainant as illegal and unsustainable under law;
- (iii) Pass an order directing the Respondent no. 1 to issue fresh legal offer of possession & also to execute the conveyance



deed/sale deed in respect of the mentioned Plot/unit in favour of the Complainant after its completion and development;

(iv) Pass an order directing the Respondent no.1 to make the payment of the delay interest at prescribed rate of interest as per the Act to the Complainant from the due date of possession i.e., 01.09.2014 until the actual delivery of the unit.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 13.05.2024 pleading therein as under :-

15. That the present complaint is not maintainable in law, before this Hon'ble Authority as this Hon'ble Authority does not have jurisdiction to entertain the present complaint.
16. 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, her claim should be dismissed.

17. That, initially Mr. Vivek Garg (hereinafter referred to as "The Original Allottee") was allotted a Plot of tentative area ad-measuring with 402 square yards in the Parsvnath City, Sonapat of the Respondent Company. The Basic Selling Price of said Plot was agreed at ₹14,87,400/- at the time of allotment. That on 01.09.2011, Plot Buyer Agreement (PBA) binding with the terms & conditions of PBA, was executed between both the parties, i.e., the Original Allottee & the Respondent Company. A copy of Plot Buyer Agreement (PBA) dated 01.9.2011, is attached as Annexure R-2.
18. That on 10.12.2011, the original allottee was offered possession of said plot. The copy of offer of possession is herewith annexed as Annexure R-1. That on 28.06.2012, said Plot was transferred/endorsed in the favour of Mrs. Namita Tripathi ("The Complainant"). That the complainant was aware of the possession status of the said Plot which was purchased by her own willingness & readiness from open or secondary market after mutual approval & agreement of both the parties, i.e., the original allottee & the complainant.
19. That the complainant has paid ₹21,25,450/-(Rupees Twenty One Lakhs Twenty Five Thousand Four Hundred & Fifty Only) till date to the respondent company. A copy of latest ledger is annexed as Annexure R-



3. That all Development Works, Basic Infrastructure & Facilities had already been laid down at the project-site. Respondent company has already obtained part Completion Certificate from the competent authority, i.e., DTCP, Haryana and the rest of part Completion Certificate is in process for getting obtained from the concerned authority, i.e., DTCP, Haryana. On 13.12.2012, the complainant was sent a letter with request of depositing the Registration Fee, Amount towards Stamp Duty etc. for further process of Conveyance Deed/Sale Deed in the favour of the complainant. A copy of letter dated 13.12.2012 is annexed as Annexure R-4.
20. That on 17.06.2013, complainant was sent another letter requesting to deposit the Registration Fee, amount towards Stamp Duty etc. for further process of Conveyance Deed/Sale Deed in the favour of the Complainant. A copy of letter dated 13.12.2012 is herewith annexed as Annexure R-5.
21. That complainant is not coming forward for getting Conveyances Deed/Sale Deed executed in her favour. The respondent company is always committed for the same. It would give the impression that the complainant has been adopting the delay tactics for obtaining the exaggerated & excessive profit & gain from the respondent company. Further, it is requested to the Hon'ble Authority that the complainant is to be directed for getting executed the Conveyance Deed/Sale Deed in her favour after completing all formalities for this process.



E. REJIONDER FILED BY COMPLAINANT

22. Complainant has filed rejoinder to the reply of the respondent dated 14.10.2024, denying all the averments of the respondent

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

23. During oral arguments complainant reiterated the facts of the complaint. Learned counsel for complainant submitted that the complainant is interested in seeking physical possession along with delayed interest. Authority asked the respondent about the status of Occupation Certificate of the project. In response, ld. counsel for respondent stated that respondent has not received the Occupation Certificate of the said plot till date.

G. ISSUES FOR ADJUDICATION

24. Whether the complainant is entitled to get the possession of booked plot along with interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

25. 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/TCP 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 Sonapat 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



allotees 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) Respondent has also taken objection that complaint is grossly barred by limitation. In this regard, Authority places reliance upon the judgment of Apex Court 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.



(iii) Factual matrix of the case is that admittedly initially Mr. Vivek Garg was allotted a plot in the Parsvnath City and the basic selling price was agreed at ₹14,87,400/-. On 01.09.2011, Plot Buyer Agreement was executed between both the parties. On 10.12.2011, Mr. Vivek Garg was offered with the possession of said plot. The said plot was transferred/endorsed in the favour of complainant on 28.06.2012. Till date complainant has made payment of ₹21,25,450/- to the respondents as per ledger annexed as Annexure R-3 dated 15.01.2024. However, as per the ledger annexure as C-4 dated 03.07.2012, attached with the complaint, the total amount paid to the respondent is ₹21,24,420/-. For the purpose of total paid amount to the respondent, the latest updated ledger dated 15.01.2024, annexure R-3, is taken into consideration as per which the total paid amount works out of ₹21,25,420/-.

(iv) Respondents have also contended that complainant had purchased said plot from open and secondary market despite of knowing the present status of the said project. Further, the predecessor of the complainant was already offered possession of the said plot on 10.12.2011. It is pertinent to mention here that respondent has not received the Part Completion Certificate/completion certificate of the said plot till date. Respondent has admitted in the preliminary submissions of the reply that "the project is at the verge of completion". However, respondent in reply has also mentioned that part completion certificate has already been from the



competent Authority and rest of part completion certificate is in process for getting obtained. However, respondent has nowhere mentioned about the completion status of complainant's plot and has also not attached any proof to show that rest of part completion certificate is in process. The complainant in its complaint has also filed copies of information sought through RTI applications to establish the status of her plot. Vide reply dated 08.11.2023(annexure C-9), DTP Sonipat has informed that Part Completion of 38.195 acres has been issued by the department and no OC has been granted for plot no. 0485 Block A. The respondent has offered the possession of the plot on 10.12.2011 which was not accompanied with a copy of occupation certificate received from the competent Authority. A valid offer of possession under Haryana RERA (Real Estate Regulatory Authority) requires the unit to have an Occupation Certificate or Completion Certificate, be in habitable condition and be free from any outstanding charges beyond those agreed in the buyer's agreement. The Occupation/Completion certificate confirms that basic infrastructural facilities like water, electricity, and roads are operational. A valid offer also means that the plot buyer is not obligated to pay any additional charges beyond what was initially agreed upon in the agreement. Thus, the Authority presumes the offer of possession dated 10.12.2011 is not a valid offer of possession by applying above principle on the basis of facts of this case.



(v) Respondents have also mentioned that the complainant is not coming forward for getting Conveyance Deed/Sale Deed in her favour. As per Section 17 of the Real Estate (Regulation and Development) Act, 2016 (RERA), the promoter is obligated to execute a registered conveyance deed in favor of the allottee once the occupancy certificate (OC) has been obtained. As per provisions of this section, it is essential for the respondent to firstly obtain Occupation Certificate of the particular plot/ flat for valid Conveyance deed/Sale Deed. In the case of plot in question in the present complaint, no Occupancy Certificate/Part Completion certificate has been received by the respondent till date and hence it does not validate the contentions of the respondent.

(vi) As per the 2 clause of relief para, complainant has requested to set aside the alleged offer of possession letter dated 10.12.2011. It is pertinent to mention here that as neither Occupation certificate has been received by the received of the complainant plot nor proof of any part completion certificate of said plot has been attached by the respondent which clearly indicates that alleged offer of possession is not valid in all aspects and hence Authority deems it fit to set aside the same.

(vii) That in the present case, plot buyer agreement was executed between the original allottee and respondent on 01.09.2011. Now with regards to due date of possession, Authority observes that in absence specific timeline for handing over of possession in plot buyer agreement,



exact date for offering the possession of said plot to complainant cannot be ascertained. Therefore, reference is made to observation of **Hon'ble Apex Court is 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) &Anr.** wherein it has been observed that a period of 3 years is a reasonable time for completion of development works in a project. In the matter in hand plot buyer agreement was executed on 01.09.2011, taking a period of 3 years from the date of agreement as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 01.09.2014. Accordingly, possession of the unit should have been handed over to the allottee by 01.09.2014. Here, complainant is subsequent allottee. Section 2(a) of RERA act, 2016 does not distinguish between an allottee and subsequent allottee. The term subsequent allottee has been used synonymously with the term allottee in the RERA Act, 2016. Authority observes that when a project is delayed inordinately then it is but natural that the anxious allottee wish to wriggle out from such project. However, it does not mean that the subsequent allottee will be barred from claiming delayed possession interest. In present situation, respondent failed to honour its contractual obligations without any reasonable justification.

(viii) Till date possession has not been offered to complainant. In such circumstances, as per section 18(1) of RERA Act, allottee may either



choose to withdraw from the project and demand refund of the amount paid or may continue with the project and seek interest on account of delay in handing over possession. In the present case complainant wish to continue with the project, therefore, complainant is entitled to interest on account of delay in handing over possession. Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date, i.e., 01.09.2014 till the date on which a legally valid offer of possession is made to complainant after obtaining part completion certificate.

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

(x) The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is



reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

(xi) 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. 07.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.

(xii) 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;

Authority has got calculated the interest on total paid amount from the deemed date of possession till the date of this order at the rate of 11.10% till and said amount works out as per detail given in the table below:



Complaint no. 13 of 2024

Sr.no.	Principal Amount	Deemed date of possession/ date of payment whichever is later	Interest Accrued till 07.04.2025
1.	2,25,000	01.09.2014	₹2,64,940/-
2.	4,15,000	01.09.2014	₹4,88,668/-
3.	1,00,000	01.09.2014	₹1,17,751/-
4.	4,85,214	01.09.2014	₹5,71,345/-
5.	21,306	01.09.2014	₹25,088/-
6.	5,24,290	01.09.2014	₹6,17,358/-
7.	30,150	01.09.2014	₹35,502/-
8.	2,23,110	01.09.2014	₹2,62,715/-
9.	40,200	01.09.2014	₹47,336/-
10.	50,000	01.09.2014	₹58,876/-
11.	5,150	01.09.2014	₹6,064/-
12.	2500	01.09.2014	₹2,944/-
13.	2500	01.09.2014	₹2,944/-
14.	1030	01.09.2014	₹1,213/-
TOTAL	Total principle amount ₹21,25,450/-		Total ₹25,27,044/-
MONTHLY INTEREST - ₹19,391/-			

H. DIRECTIONS OF THE AUTHORITY

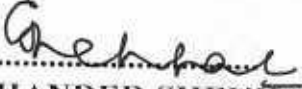
26. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to issue fresh offer possession of the plot to complainant within 30 days from the date of obtaining occupation certificate.



(ii) Respondent is directed to pay upfront delay interest of ₹25,27,044/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order. Further, on the entire amount of ₹21,25,450/-monthly interest of ₹19,391/- shall be payable by the respondent to the complainant up to the date of actual handing over of the possession after obtaining occupation certificate.

27. **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]