



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no:	380 of 2024
Date of filing:	12.03.2024
First date of hearing:	29.07.2024
Date of decision:	28.04.2025

Mr. Ganesh Singh Rana S/o Sh. Jagdish Prasad

R/O C-171, Summit, Golf Links,

DLF City Phase-5

Gurgaon. Haryana-122009

....COMPLAINANT

VERSUS

M/s Parsvnath Developers Ltd.

Parsvnath Tower, Near Shahdra Metro Station,

Shahdara, Delhi-110032

...RESPONDENT

CORAM:

Nadim Akhtar

Member

Chander Shekhar

Member

Present: -

Mr. Aakash Bhatt, Id. Counsel for the complainant through
VC.

None for the respondent.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by the complainant on 12.03.2024 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 Location: Sonapat, Haryana.
2.	Name of promoter	Parsvnath Developers Ltd.
3.	Date of booking	23.08.2004
4.	Unit No. & Unit area	Plot No. B-3219 & 402 sq. yds.
5.	Date of allotment	Allotment not made
6.	Date of Plot buyer agreement	23.11.2010.
7.	Basic Sale Price	₹14,47,200/-
8.	Amount paid by the complainants	₹23,09,490/-
9.	Due date of possession	Not mentioned
10.	Offer of possession	Not given



B. FACTS AS STATED IN THE COMPLAINT

3. That the complainant had purchased a Plot no. B-3219 in the project of the promoter having an area measuring 402 sq. yard in Block-B situated in Parsvnath City, near Tau Devi Lal Park, Sonapat, Haryana.
4. That on 23.11.2010, the Plot Buyer Agreement was executed between the parties wherein total sale consideration was stipulated as ₹14,47,200/- out of which an amount of ₹7,23,600/- was paid at the time of registration for booking of plot which has been adjusted towards the sale price. Copy of Plot Buyer Agreement is annexed as Annexure-8.
5. Till date complainant had paid total amount of ₹23,09,490/- in 13 installments to the respondent. Copies of receipts of all installments are annexed as Annexure 1,2,5,6,7,9 – 17 of the complaint.
6. That on 30.10.2019, the complainant sent a legal notice to the promoters requesting for either allotment of the said plot or to refund the money along with 12 % interest from date of payments amounting to ₹23,89,490/- paid for said plot to the promoters and ₹5lacs as compensation and ₹1,00,000 for legal costs incurred by the complainant. Copy of legal notice is annexed as Annexure-18.
7. That the Respondent in order to induce the complainant in the project and siphon off hard earned money of the complainant and has not offered possession of the said plot.



8. That despite several representations as made to the respondent to deliver the unit as booked by the complainant, the respondent preferred to evade in delivering the unit to the complainant and cause wrongful loss to the complainant.
9. That the respondent in order to ensure that the complainant does not seek refund of his hard earned money, did not raise any new demand to the complainant.
10. That the Hon'ble Apex Court while dealing with the provisions of Section 18 of the RERA Act, 2016, in the case of M/S Imperia Structures Ltd. Vs. Anil Patni & Anr. in Civil Appeal Nos.3581-3590 of 2020, decided on 02.11.2020, in Para 23, observed as under:-

"In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In



that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment".

11. That the Hon'ble Supreme Court in Pioneer Urban Land Infrastructure Ltd. Vs. Govind Raghwan Civil Appeal No.12238/2018 dated 02.04.2019 has observed as follows:-

"We see no illegality in the Impugned Order dated 23.10.2018 passed by the National Commission. The Appellant Builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the Respondent Purchaser within the time stipulated in the Agreement, or within a reasonable time thereafter. The Respondent-Flat Purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the Agreement expired. During this period, the Respondent - Flat Purchaser had to service a loan that he had obtained for purchasing the flat, by paying Interest @10% to the Bank. In the meanwhile, the Respondent - Flat Purchaser also located an alternate property in



Gurugram. In these circumstances, the Respondent Flat Purchaser was entitled to be granted the relief prayed for i.e. refund of the entire amount deposited by him with Interest."

12. That the Hon'ble Supreme Court in Civil Appeal No. 62 of 2021 M/S Nexgen Infracon Pvt. Ltd. Vs. Manish Kumar Sinha & Anr. vide judgement dated 11th January, 2021, while examining the issue of non willingness of the allottee to take possession of the apartment and his willingness to be satisfied in taking refund of the amount deposited by him with interest at such rate as may deem appropriate by the Court, pleased to observe that:-

"we see no reason to take a different view in respect of the entitlement of the respondents to seek refund of the amount deposited by them. We, therefore, hold that the respondents were justified in seeking refund."

13. That the failure on the part of the Respondent in complying with the agreement has caused financial, mental and emotional injuries to the Complainant and the Complainant is not left with any other option but to approach this Hon'ble Authority against the atrocities committed by the Respondent.

C. RELIEFS SOUGHT:-

14. Complainant in his present complaint has sought following reliefs:



- i) That the Complainant should be refunded their amount to the tune of ₹23,09,490/- paid by him from 23.08.2004 till 10.08.2011 to promoters and the interest thereon amounting to ₹34,18,496/-.
- ii) Thereby total amount to be refunded by the Promoter is ₹57,27,986/-.
- iii) That the said amount of ₹57,27,986/- is inclusive of the interest accrued till the institution of the present case before the Hon'ble HIRERA, as Section 18 of the Real Estate (Regulation and Development) Act, 2016 and Rule 15 of HIRERA clearly indicates that refund to be provided to the Complainant along with the interest and the present calculation requested to be revised by this Hon'ble Authority as per latest rules.
- iv) That the Complainant prays for refund of their amount because the Promoter despite of so many requests made to him denied the possession of the said plot to the Complainant, moreover denied for the refund of the amount to the complainants.
- (v) That the complainant also prays for ₹6,00,000/- as legal expenses and compensation for mental and physical harassment by the act of the respondents.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 17.01.2025 pleading therein as under :-



15. That the present complaint is not maintainable in law, before this Hon'ble Authority and is liable to be dismissed.
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, his claim should be dismissed.
17. That the Complainant before this Hon'ble Authority had made a speculative investment in the project of the respondent-company, wherein Complainant invested knowingly and willingly.
18. That the provisions of Real Estate (Regulation and Development) Act, 2016 cannot be applied retrospectively.
19. That the brief fact as regards to the project is that on 10.07.2010, respondent company applied for issuance of LOI for the land admeasuring 51 acres. However, the same was rejected by the competent authority



(DTCP) vide letter dated 19.02.2013. Pursuant to that on 19.09.2019, associate company of the respondent company applied for license for the land as measuring 25.344 acres falling under in the revenue village Rajpura, Sector 10 & 11, District- Sonapat, Haryana to develop a residential plotted colony. That the inability of the respondent company to develop the project is primarily the encroachments by the local farmers on the part of project land for which they have already been paid the sale consideration. That despite all sincere efforts to get the project land vacated, the local farmers have failed to agree and rather they are coercing the respondent company to agree to their unreasonable demands.

20. That further, with effect from 11.01.2022, Government of Haryana has taken a policy decision that where the outstanding dues against the statutory dues in the nature of EDC etc. are more than ₹20 Crore, fresh license shall not be issued to the landowner/ developer/its associate companies etc. till the clearance of all the outstanding EDC. Hence despite making all sincere steps, the respondent company is not able to get the LOI of the said project land.
21. That despite all the efforts made by the respondent company towards the completion of the said project as well as for getting the LOI, the project could not be regularized and this has caused the abandoning of the project.



22. That for the reasons beyond the control of the respondent company, it could not develop the land in question and it is ready and willing to refund the amount received from the complainant in terms of clause 5 (b) of the buyer's agreement applicable from the date of endorsement. Without prejudice, it is further stated that the project cannot be delivered due to the unforeseen circumstances and therefore in terms of Section 18(1), the relief of refund is only a plausible solution.

E. REJOINER FILED BY THE COMPLAINANT

23. Complainant filed a rejoinder on 25.04.2025 in which he denies all the contentions made by the respondent in his reply.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

24. During oral arguments complainant reiterated the facts of the complaint. Learned counsel for complainant submitted that the respondent in his reply clearly admitted that the total amount paid by the complainant is ₹23,09,490/- as well as ready to refund the paid amount of complainant as respondent is unable to deliver the possession of said plot.

F. ISSUES FOR ADJUDICATION

25. Whether the complainant is entitled for refund of amount deposited by him along with interest in terms of Section 18 of the RERA Act of 2016?



G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

26. 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 taken an 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.
- (ii) Further, the respondent has taken a stand that the complainants are speculative buyers who have invested in the project for monetary returns and taking undue advantage of RERA Act 2016 as a weapon during the present downside conditions of the real estate market and therefore not entitled to the protection of the Act of 2016. In this regard, Authority observes that "any aggrieved person" can file a complaint against a



promoter, if the promoter contravenes the provisions of the RERA Act, 2016 or the rules or regulations as the case may be. In the present case, the complainants are aggrieved persons who have filed a complaint under Section 31 of the RERA Act, 2016 against the promoter for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here, it is important to emphasize upon the definition of term allottee under the RERA Act of 2016, reproduced below: - Section 2(d) of the RERA Act: (d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent. In view of the above-mentioned definition of "allottee" as well as upon careful perusal of builder buyer agreement dated 23.11.2010, it is clear that complainant is an "allottee" as plot bearing no.3219, Block B measuring 402 sq. yards in the real estate project "Parsvnath City", Sonipat was allotted to him by the respondent promoter. The concept/definition of investor is not provided or referred to in the RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there will be "promoter" and "allottee" and there cannot be a



party having a status of an investor. Further, the definition of "allottee" as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as **M/s Srushti Sangam Developers Ltd. Vs. Sarvapriya Leasing (P)Ltd. And Anr.** had also held that the concept of investors not defined or referred to in the Act. Thus, the contention of promoter that allottees being investor are not entitled to protection of this Act also stands rejected.

(iii) Further, the respondent has objected that the provisions of RERA Act, 2016 cannot be applied retrospectively. This has been already decided by the Hon'ble Supreme Court in 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".

In view of the aforementioned judgment, it is now settled that 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 are in the process of the completion though the contract/agreement might have been entered into before the Act and the Rules became applicable. Hence, this objection raised by the respondent is negated.

(iv) Factual matrix of the case is that admittedly, the complainant namely Ganesh Singh Rana had booked a residential plot no. B-3219 having an area tentatively admeasuring 402 sq. yards in the township "Parsvnath City at Sonapat" having basic selling price of said plot was fixed at ₹14,47,200/-. On 23.11.2010, Plot Buyer Agreement was executed between the parties. Copy of PBA dated 23.11.2010 is attached as Annexure-8. Complainant till date had made payment of ₹23,09,490/- to the respondent. It is pertinent to mention here that receipts attached with the complaint proves that the complainant had paid ₹23,09,490/- till date to the respondent and the same fact has been clearly admitted in the reply filed by the respondent. Perusal of reply as well as ledger attached



with the complaint proves that complainant till date had paid ₹23,09,490/- to the respondent against the basic sale price.

(v) Respondent in his reply also contended that he is not able to get the LOI for the project and is not in position to develop the same. Reference is also made to para 3 of the letter dated 19.02.2013 written by DTCP, Haryana to the respondent (Annexure R-3 of the reply). Relevant part of the said letter is being reproduced:

"Since, you did not attend the personal hearings on two occasions, therefore, it can be concluded that you are making lame excuse as the application for renewal of original license is yet to be filed and license for an additional area can be considered only if the mail license is valid. It is therefore regretted that the grant of license for an additional area measuring 51.50 acres is hereby refused due to the reason mentioned above".

Perusal of this para shows that respondent had no intention of honoring his obligations and complainant cannot be made to suffer because of the repeated and deliberate defaults on the part of the respondent. Therefore, complainant is entitled to the relief of refund alongwith interest.

(vi) It is an admitted fact that even after passing of more than 14 years, no allotment of plot has been made in favor of complainant by the respondent and Id. Counsel for respondent has stated even today that respondent is not in a position to allot a plot to the complainant. After paying his hand earned money, legitimate expectations of the complainant would be that possession of the unit will be delivered within a reasonable period of time. However, respondent has failed to



fulfill its obligations as promised to the complainant. Thus, complainant is at liberty to exercise his right to withdraw from the project on account of default on the part of respondent to offer legally valid possession and seek refund of the paid amount along with interest as per section 18 of RERA Act.

(vii) Further, Hon'ble Supreme Court in the matter of "*Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others* " in Civil Appeal no. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the



project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. The complainant wishes to withdraw from the project of the respondent, therefore, Authority finds it fit cases for allowing refund in favour of complainant.

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

(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. 28.04.2025 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;

The Authority directs respondent to refund the paid amount of ₹23,09,490/- 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 ₹64,20,782/- as per detail given in the table below:-

Complaint no. 380/2024

Sr.no.	Principal Amount	Date of payment	Interest Accrued till 28.04.2025
1.	₹2,25,000/-	23.08.2004	₹5,16,880/-
2.	₹4,95,000/-	13.12.2005	₹10,65,331/-
3.	₹4,70,925/-	11.08.2010	₹7,69,769/-
4.	₹6,84,405/-	16.10.2010	₹10,97,699/-
5.	₹48,900/-	10.08.2011	₹74,518/-
6.	₹48,310/-	10.08.2011	₹73,619/-
7.	₹48,300/-	10.08.2011	₹73,604/-
8.	₹47,800/-	10.08.2011	₹72,842/-
9.	₹46,800/-	10.08.2011	₹71,318/-
10.	₹48,650/-	10.08.2011	₹74,137/-
11.	₹48,200/-	10.08.2011	₹73,452/-
12.	₹48,500/-	10.08.2011	₹73,909/-
13.	₹48,700/-	10.08.2011	₹74,214/-
TOTAL=	₹23,09,490/-		₹41,11,292/-
Total amount to be refunded to the complainant = ₹23,09,490/- + ₹41,11,292/- = ₹64,20,782/-			

(xii) Further, complainant is seeking compensation of ₹6,00,000/- on account of mental and physical harassment and legal expenses. 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 mental harassment and legal expenses.

H. DIRECTIONS OF THE AUTHORITY

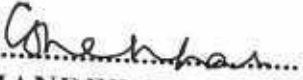
27. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to refund the entire amount of ₹23,09,490/- with interest ₹41,11,292 /- to the complainant in present complaint No.380/2024. It is further clarified that respondent will remain liable to pay the interest to the complainant till the actual realization of the above said amounts.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.



28. Disposed of. File be consigned to the record room after uploading of the order on the website of the Authority.


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]