



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no:	1825 of 2024
Date of filing:	02.12.2024
First date of hearing:	10.02.2025
Date of decision:	26.05.2025

Mrs. Shashi Bala D/o Mr. K.K. Diwan,
R/o HNo. B-132, MIG Flats, Pocket B,
Ashok Vihar, Phase-4,
Delhi-110052.

...COMPLAINANT NO.1

Mrs. Ruchi Bajaj W/o Mr.Sudhir Bajaj,
R/o HNo. B-132, MIG Flats, Pocket B,
Ashok Vihar, Phase-4,
Delhi-110052.

.... COMPLAINANT NO. 2

VERSUS

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

...RESPONDENT

CORAM:

Nadim Akhtar
Chander Shekhar

Member
Member

Present: - Mr. Om Prakash Singh, Id. counsel for the complainants through VC.

Ms. Nectu Singh proxy counsel for Adv. Rupali Verma for the respondent through VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed on 02.12.2024 by the complainants 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 Preston Location: Sonapat, Haryana.
2.	Name of promoter	Parsvnath Developers Ltd.
3.	Date of booking	21.08.2007



4.	Unit No. & Unit area	T5-704, 7 th floor & 1265 sq ft.
5.	Date of allotment	Allotment not made so far
6.	Date of Flat buyer agreement	04.12.2007
7.	Basic Sale Price	BSP -₹20,64,480/- TSP-21,39,480/-
8.	Amount paid by the complainants	₹ 17,88,518/-
9.	Due date of possession	As per clause 10(a) of Flat Buyer Agreement " <i>...Within a period of thirty six (36) months from the date of start of foundation of particular Tower in which flat located with grace period of six (6) months, on receipts of sanction of building plans/revised building plan and approvals of all concerned authorities...</i> "
10.	Offer of possession	Not given till date.

B. FACTS AS STATED IN THE COMPLAINT

3. That the complainants booked a residential flat of 2 BHK admeasuring area 1265 sq. ft in the project "Parsvnath Preston" unit no. T5-704 and paid an amount of ₹1,07,525/-on 21.08.2007 vide cheque no. 687282 to the respondent. Copy of Booking Application Form along with payment receipt are annexed as P/1.

4. That the complainants after the above said booking of the flat further paid a sum of 16,80,993/- through cheque no.903727, 489548, 687285, 140413, 415066, 141627, 904647, 141630 dated 05.10.2007, 06.10.2007, 08.10.2007, 04.12.2007, 20.12.2007 and the respondent issued valid payment receipts to the complainants. That the total cost of the said Flat is ₹21,39,480/- (Basic Cost ₹2064480, Car Parking charge ₹75000/-) and sum of ₹17,88,518/- have already been paid by the complainants in time bound manner. Copy of payment Receipts are annexed as P/3.
5. That Flat Buyer Agreement was executed between both the parties on 04.12.2007 just to create a false belief that the project shall be completed in time bound manner. Copy of FBA is annexed as P/2.
6. That as per clause 10(a) of the Flat Buyer Agreement, respondent was liable to handover the possession of the said unit before 03.10.2010 as far from completion.
7. That complainants also wrote an email dated 20.09.2020 to the respondent, regarding refund of amount but no response was given by the respondent till date. Copy of such email dated 20.09.2020 is annexed as P/4.
8. That on 30.09.2021, complainants also sent a legal notice to the respondent regarding refund of amount paid with interest but still did not



get any response/reply from the respondent. Copy of legal notice dated 30.09.2021 along with delivery proof is attached as P/5.

9. That in a similar matter in the same project "Parsvnath Preston", Hon'ble Real Estate Regulatory Authority, Panchkula passed various refund Judgment in complaint No. RERA-PKI.-1056-2023 order dated 15.11.2023 and RERA-PKI.-2337-2023 order dated 08.07.2024. In view of above facts and judgement of Hon'ble Authority, complainants are requesting to give the same direction & decision in this matter. Copy of Hon'ble HRERA judgement/order copies are annexed as P/6

C. RELIEFS SOUGHT:-

10. That the complainants seeks following reliefs to the respondent:-
- i. To direct the respondent to refund the paid amount of ₹17,88,518/- along with interest as per RERA Act, rate of interest per annum from the date of payment till the actual realization.
 - ii. Pass such other or further orders, which Hon'ble Authority may deems fit and proper in the facts and circumstances of the present case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

11. Learned counsel for the respondent filed a detailed reply on 13.05.2025 pleading therein as under:-



- (i) That the present complaint is not maintainable as the relief prayed by the complainants does not fall within the jurisdiction of this Hon'ble Authority.
- (ii) That if the relief of refund as prayed by the complainants are allowed then it will affect the project of the respondent company.
- (iii) That the present complaint is not maintainable in law.
- (iv) That, the present complaint is grossly barred by limitation and this Hon'ble Court does not have jurisdiction to entertain a time barred claim. Moreover, in absence of any pleadings regarding condonation of delay, this Hon'ble Court 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, his claim should be dismissed.
- (v) That on 22.08.2007, Mr. Shashi Bala & Mrs. Ruchi Bajaj jointly booked a flat bearing no. T5-704 ad-measuring 1265 sq. ft. in the project named as 'Parsvnath Preston, Sonapat. That the complainants



proceeded with the booking after conducting proper due diligence and being aware about the status of the project.

- (vi) That on 04.12.2007, flat buyers agreement was executed between the parties as per which the basic selling price of the flat was fixed at ₹20,64,480/-, after availing the special discount of ₹2,06,480/- i.e. 4% of basic sales price. The complainants had opted to make further payment as per the construction linked payment plan. Copy of FBA dated 04.12.2007, is annexed as Annexure R-1.
- (vii) That till date complainants have paid only ₹17,88,518/- towards basic price/cost of the said flat and has failed to make the timely payments. Copy of ledger is annexed as Annexure R-2.
- (viii) That the project is being developed in terms of statutory approvals granted by the competent authority. In this regard, license no. 1205-1206 of 2006 has been issued by the Department of town & Country Planning, Haryana and that the renewal of license has been applied for the period from 06.10.2019-05.10.2024.
- (ix) That all statutory dues in the form of EDC, IDC, conversion charges etc. have been paid in full to the competent authority.



E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

12. During oral arguments, ld. counsel for complainants reiterated the facts as were submitted in the complaint. Learned counsel for complainants submitted that complainants are interested in seeking refund of the amount deposited by them along with interest. Further, they also mentioned that amount paid by them had already been admitted by the respondent in his reply.

F. ISSUES FOR ADJUDICATION

13. Whether the complainants are 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

14. 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. 1/92/2017TTCP 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 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(1) 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 judgement of Apex court 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, that complainants booked a flat in the respondent's project "Parsvnath Preston", Sonipat on 21.08.2007. Flat buyer agreement was executed between the parties on 04.12.2007 for flat no. T5-704, 7th floor, Tower-5. Basic sales price of



the flat is ₹20,64,480/- against which the complainants have paid an amount of ₹17,88,518/-.

(iv) That complainants have mentioned in their complaint, that in clause 4.1 of PBA, delivery date of possession of the unit has been mentioned but perusal of PBA reveals that delivery of possession is mentioned in clause 10(a) not in clause 4.1. However, possession has not been offered to the complainant till date.

(v) Perusal of receipts attached with complaint as P/3 reveals that complainants till date have paid an amount of ₹17,88,518/- and respondent has also admitted the same in his reply by attaching a copy of ledger as R-2.

(vi) As per clause 10(a) of the builder buyer agreement executed between the parties, construction of the unit was to be completed within 36 months from the start of foundation of particular tower which was initially Tower 9 in the present case. However, respondent has not placed on record any document to show when the construction of the tower in which the unit of the complainants is located was started. Also, nothing is placed on record placed by the respondent to show as to whether the factum of start of construction was ever communicated to the complainants. In absence of any such document, exact date of start of construction cannot be ascertained. Further, the aforementioned clause is



heavily loaded in favour of respondent. In such circumstances, Authority has placed reliance upon the judgement of Hon'ble Supreme Court in the case of **M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr** wherein 3 years' time has been held as reasonable time where the exact date for handing over possession cannot be ascertained. Accordingly, the respondent was to handover the possession of the unit within 3 years of date of builder buyer agreement i.e., by 03.12.2010 . Perusal of clause 10(a) also reveals that respondent is entitled to grace period of 6 months for circumstances beyond control of the respondent. However, respondent has failed to explain/prove any situation which can justify grace period.

(vii) Complainants in their complaint have referred to the orders of the Authority passed in complaints no. 1056 of 2023 and 2337 of 2023. In both complaints, Authority allowed the relief of refund as sought by complainants with interest. Perusal of orders of both complaints reveals that the flat of the complainants in present complaint is also located in the same project and hence the quoted orders of the Authority dated 15.11.2023 and 08.07.2024 holds well in present complaint.

(viii) With regard to the averment of the respondent that refund may not be allowed as it will affect the project of the respondent company. Authority observes that respondent has admitted that there are various



approvals pending before the competent Authority. Also no timeline for completion of the project has been provided. Thus, it can easily be inferred from the given circumstances of the project that there is no scope of completion of the project in the near future. Complainants who have booked their unit in year 2007 cannot be made to wait endlessly for possession of the unit.

(ix) Furthermore, 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 allottees 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 allottees such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. The complainants' wishes to withdraw from the project of the respondent, therefore, Authority finds it fit cases for allowing refund in favour of complainants.

(x) 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".

(xi) 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.

(xii) 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. 26.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.

(xiii) The definition of term 'interest' is defined under Section 2(z) 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 complainants interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainants, the paid amount of ₹17,88,518/- 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 ₹52,87,842 /- as per detail given in the table below:

Complaint no. 1825/2024

Sr.no.	Principal Amount	Date of payment	Interest Accrued till 26.05.2025
1.	₹1,07,525/-	22.08.2007	₹2,12,154/-
2.	₹40,000/-	06.10.2007	₹78,375/-
3.	₹30,000/-	06.10.2007	₹58,781/-
4.	₹2,85,000/-	06.10.2007	₹5,58,423/-
5.	₹1,50,000/-	06.10.2007	₹2,93,907/-
6.	₹6,00,000/-	08.10.2007	₹11,75,262/-
7.	₹2,78,393/-	08.10.2007	₹5,45,308/-
8.	₹2,00,000/-	07.12.2007	₹3,88,105/-
9.	₹22,600/-	20.12.2007	₹43,766/-
10.	₹75,000/-	20.12.2007	₹1,45,243/-
TOTAL=	₹17,88,518/-		₹34,99,324/-
Total amount to be refunded to the complainant = ₹17,88,518/- + ₹34,99,324/- = ₹52,87,842/-			

II. DIRECTIONS OF THE AUTHORITY

15. 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 ₹17,88,518/- with interest of ₹34,99,324/- 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) 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.

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


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]