



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no:	63 of 2023
Date of Re-filing:	08.02.2023
First date of hearing:	13.04.2023
Date of decision:	19.05.2025

Mrs. Reema Malik, W/o Mr. Ajeet Malik
R/O HNo. 1794-A, Sector-6,
Karnal, Haryana

....COMPLAINANT No. 1

Mr. Ajeet Malik, S/o Mr. Prahlad Singh
R/O HNo. 1794-A, Sector-6,
Karnal, Haryana

....COMPLAINANT No. 2

VERSUS

M/s Parsvnath Developers Ltd.

Registered office:-

Parsvnath Tower, Near Shahdra Metro Station,
Shahdara, Delhi-110032

Corporate Office:-

6th Floor, Arunachal Building,
19, Barakhamba Road
New Delhi-110001

...RESPONDENT

CORAM:**Nadim Akhtar
Chander Shekhar****Member
Member****Present: -**Mr. Tarun Singhal, Id. Counsel for the complainants.
Ms. Rupali Verma, Id. counsel for the respondent through
VC.**ORDER (NADIM AKHTAR - MEMBER)**

1. Present complaint has been filed by the complainant on 08.02.2023 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

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: Karnal, Haryana.
2.	Name of promoter	Parsvnath Developers Ltd.
3.	Date of booking	30.07.2016



4.	Unit No. & Unit area	Nursery School Site, Block – C and measuring 968 sq. yds.
5.	Date of allotment	Allotment not made
6.	Date of MOU	20.09.2016
7.	Total Sale Price	₹55,82,456/-
8.	Amount paid by the complainants	₹38,91,200/- as per complainant
9.	Due date of possession	Not mentioned
10.	Offer of possession	Not given till date

B. FACTS AS STATED IN THE COMPLAINT

1. That the Complainants, Mrs. Reema Malik and Sh. Ajeet Malik booked a Nursery School available at Parsvnath City, Sector 35, Karnal Haryana.
2. That the said site was available for the setting up of a nursery school admeasuring approximately 968 sq. yds. at Block-C Parsvnath City Karnal Which was booked by the complainants against the customer id. C37/R0061 for the total sale consideration of ₹55,82,456/- to be paid as per the payment plan.
3. That complainants had paid ₹22,91,000/- between 30.07.2016 to 05.08.2016, before the signing of the Memorandum of Understanding. Copies of receipts of payments made before MOU is annexed as Annexure C-1.



4. That on 20.09.2016 Memorandum of Understanding was signed between the complainants and the respondent company. And as per the M.O.U. the rest of the payment, i.e., ₹32,91,256/- was to be paid in installments. As per the clause 2(ii) of the M.O.U., the complainants had to pay one installment of ₹16,45,628/- on or before 03.11.2016 and another installment of ₹16,45,628/- was to be paid on the date of possession or within 6 months from the date of execution of M.O.U. whichever is later. A copy of M.O.U. is annexed as Annexure C-3.
5. That the total amount paid by the complainants are ₹38,91,200/- till date and the complainants have never defaulted in paying their installments, all the cheques were given on time and on the date fixed by the respondent. Copies of receipts of payments made after signing of MOU are annexed as Annexure C-2.
6. That the complainants requested the respondents several times through telephonic messages, reminders and by sending a personal messenger to respondent's workplace for the possession of the said plot but the proper answer or fixed date was never been given by any of respondent's officials and they always ignored them.
7. That it has been 6 years since the signing of M.O.U. and paying the consideration amount but still no fixed date for handing over the possession was given by your company.

8. That having no other option the complainants sent the legal notice to the respondent builder on 14.12.2022 but till date no response has been given by the respondent. Copy of legal notice dated 14.12.2022 is annexed as Annexure C-4.

C. RELIEFS SOUGHT:-

9. Complainant in his present complaint has sought following reliefs:
- i) The actual physical possession of the plot may kindly be given.
 - ii) The interest @ 11% on the delayed possession to the complainants from the date of delay, till to the date of handing over the actual possession be given to the complainant.
 - iii) That the compensation on account of harassment, pain and suffering should also be given to the complainant at the tune of ₹10,00,000/-.
 - iv) That the litigation expenses at the tune of ₹1,00,000/- should also be given.
 - V) Any other relief which this Hon'ble Authority deem fit and appropriate in view of the facts and circumstances of this complaint.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

10. Learned counsel for the respondent filed a detailed reply on 24.07.2023 pleading therein as under :-

- (i) That the present complaint is not maintainable being premature and further, relief being sought is not maintainable before this Hon'ble Authority.
- (ii) That further, firstly, the Complainants are not an 'Allottee' in terms of the Real Estate (Regulation and Development) Act, 2016 and secondly, without prejudice, the complaint is premature. The cause of action to seek possession would arise only after payment of the entire sale consideration and execution of the conveyance deed. It is an admitted fact that the Complainants have not paid or offer to pay the complete sale consideration of the plot in question.
- (iii) That the Memorandum of Understanding (MOU) is not even an contract and thus it is not enforceable in law.
- (iv) That the present complaint is not maintainable for the reason that the complainants themselves stated that there is no Builder Buyer Agreement between the Complainants and the Respondent, therefore, there is no agreement to sale, which is enforceable by this Hon'ble Authority. Hence, the present complaint deserves dismissal.
- (v) That the complainants before this Hon'ble Authority have made a speculative investment in the project of the Respondent-Company wherein Complainants invested knowingly and willingly.
- (vi) That it is respectfully submitted that the RERA Act, 2016 is applied prospectively rather than retrospectively.



- (vii) That in the year July' 2016, Mrs. Reema Malik & Mr. Ajeet Malik ("The Complainants") entered into a MoU, whereby, the terms and conditions were settled between the parties. However, it is a matter of record that the Complainants failed to make the payments as per the understanding. True copy of MOU dated 20.09.2016 is annexed herewith as Annexure R- 1.
- (viii) That the Basic Selling Price was fixed at ₹55,82,456/-(Rupees Fifty Five Lakhs Eighty Two Thousand Four Hundred & Fifty Six Only) @ ₹5767/sq. yards. Further, the Complainants opted to make further installment(s) as per the SPL Plan for Nursery School willingly. The Complainants till date have not made the complete payments and hence, are not entitled for possession at this stage.
- (ix) That on 11.07.2012, respondent for developing the residential plotted colony has obtained the license no. 73 of 2012 for the area ad-measuring 50.564 acres from the Director Town and Country Managing (DTCP), Haryana, Chandigarh which was valid up to 10.07.2015. Copy of license no. 73 of 2012 dated 11.07.2012 is annexed as Annexure R-2. That there was an increase in area of project measuring 30.572 acres in the principal layout plan area measuring 50.564 acres which come out to be 81.136 acres On 29.08.2014, Respondent received license no. 141 of 2014 for area ad measuring 30.572 acres which was valid up to 28.08.2019 An application for approval of revised Layout Plan of area measuring 81.136 acres was submitted before the Directorate Town & Planning. Haryana

had

(DTCP) and the same was approved in-principal by the DTCP vide office memo no. LC-1226-B/SD(BS)/2014/20564 dated 29.08.2014. Copy of license no. 141 of 2014 is annexed Annexure R-3 & copy of application for approval of revised layout plan is annexed Annexure R-4.

- (xi) That project is registered with HRERA vide Registration No. HRERA-PKL-KRL-270-2021, which has been issued on 12.10.2021 and is valid till December, 2023. A copy of HRERA Registration is annexed as Annexure R-5. That the Respondent Company till date has not received full consideration as per the understanding. A copy of latest ledger is herewith annexed as Annexure R-6.
- (xii) That on 17.03.2021, the revised lay-out plan was approved by the Competent Authority, i.e., DTCP, Haryana after kind intervention & indulgence of the Hon'ble H-RERA, Authority. A copy of letter of this effect is annexed as Annexure R-7. That on 18.03.2021 & 21.03.2021, the Respondent Company has already applied for approval of demarcation and zoning plan before the competent Authority, i.e., DTCP, Haryana which is still pending for approval. Further, it is sincerely requested to Hon'ble Authority that DTCP may be directed for approving & releasing demraction and zoning plan by which the possession can be offered. Copies of letter dated 18.03.2021 & 21.03.2021 are annexed as Annexure. R- 8 & Annexure R-9.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

11. During oral arguments complainants reiterated the facts of the complaint. Learned counsel for complainants submitted that he is seeking possession along with delayed interest from the respondent. He further stated that respondent is unable to offer the possession of said plot till date. Ld. counsel for respondent submitted that respondent has not received the part CC of the project. She further stated that she is ready to give the possession after obtaining the part CC.

F. ISSUES FOR ADJUDICATION

12. Whether the complainants are entitled to the relief of possession of plot booked by them along with interest for delay in handing over the possession in terms of Section 18 of the RERA Act of 2016?

G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

13. 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 present complaint is not maintainable for the reason that complainants are not "allottees" of the respondent company. Before adjudicating upon said issue, it is pivotal to refer to the definition of an allottee as provided in Section 2(d) of the Act. Said provision is reproduced below for reference: means



"Section 2(d): Allottee: in relation to a real estate project, case may be, person to whom a plot, apartment or building, as the leasehold) has been allotted, sold (whether as freehold or includes or otherwise transferred by the promoter, and allotment the through person who subsequently acquires the said include sale, transfer or otherwise but does not the case may person to whom such plot, apartment or building, as be, is given on rent."

Upon bare perusal of the definition of "allottee", it is clear that the transferee of an apartment, plot or building is an allottee. The mode of transfer may include issuance of booking receipts, issuance of allotment letter, exchange of development rights etc. Upon careful perusal of documents on record, it is revealed that complainants have paid a sum of ₹38,91,200/- for purchasing a nursery school measuring 968 sq. yards in present and future project of respondent and respondent issue receipts against such paid amounts. Thus, complainants are allottees of the promoter.

(ii) 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.

(iii) Factual matrix of the case is that admittedly, the complainants booked a nursery school site available at Parsvnath City, Sector-35, Karnal, Haryana. The said site measures approximately 968 sq. yds. at Block-C Parsvnath City Karnal. The site was booked by the complainants against the customer id. C37/R0061 for the total sale consideration of ₹55,82,456/- to be paid as per the payment plan. That on 20.09.2016, Memorandum of Understanding was signed between the complainants and the respondent company.

(iv) As per the complainants, the total amount they have already paid to the respondent is ₹38,91,200/- towards the total sale consideration of the plot and the same fact has been admitted by the respondent in his reply by attaching a ledger as Annexure R-6. Perusal of receipts (Annexure C-1&C-2) attached by the complainants and the ledger attached with the reply (Annexure R-6), proves that the complainants have paid ₹38,91,200/- to the respondent till date. Therefore, for considering the total amount paid to the respondent till date, an amount of ₹38,91,200/- is taken into consideration by the Authority.

(v) Respondent has also taken an objection that MOU is not even a contract. Upon bare perusal of the MOU, it is evident that the respondent in clause E of the MOU has himself considered this "MOU" as an "development agreement". Secondly, the intent of this clause specifically reveals that the respondent held the project in capacity of a developer. As per clause H, it is clear that complainants approached the respondent for purchase of school site which clearly shows that complainants are allottees of the respondent. In clause I, stipulates the total sale consideration and at what rate property will be sold. In clause 2(i), respondent agreed that complainants have paid ₹22,91,200/- against total sale consideration. It is pertinent to mention here that mere referring of agreement as an MOU does not mean that it is not enforceable. The Builder-Buyer Agreement, is legal document in real estate transactions,

outlining the rights and responsibilities of both the builder and the buyer. BBA is a key document that comes under scrutiny when developers register their projects and when disputes arise between buyers and builders. All the essential clauses of BBA already incorporated in the MOU executed between complainants and respondent which clearly establish the relationship between builder and buyer.

(vi) Regarding the contention of the respondent that he has not received the approval of demarcation and zoning plans from the competent authority, it is pertinent to mention here that respondent has already got in principal approval of revised layout plan of the project on 17.03.2021 and has clearly admitted in his reply that colony has been developed and all the necessary facilities and infrastructure are available. Respondent has also admitted that in the first phase of 50.64 acres, possession has been offered to 280 allottees, however, no evidence has been placed on record in this regard. Authority considers that it is duty of the respondent to fulfill its part of obligations and take all approval from the concerned Authority prior to collecting money from the allottees. Thus, complainants cannot be allowed to suffer on account of default of the respondent, as they already paid 70 % of the total sale consideration of the plot.

(vii) Respondent in his reply has also contended that both the parties are bound by the terms and condition of MOU. In this reference, clause 3 of the executed MOU is being reproduced below:



"Clause 3:-The Intending Vendor (The Respondent Company) affirms and agrees that the above-mentioned payment of Sale Consideration would be towards full and final payment in respect of absolute and unencumbered sale & conveyance of the School Site to the Intending Vendee (The Complainants) and no claim in that regard shall ever be raised at any point of time against the Intending Vendee by the Intending Vendor".

The Authority observes that on one hand the respondent has contended that he has not received the approval of demarcation and zoning plans due to which he was unable to offer the possession to the allottees and on the other hand he is compelling complainants to make full and final payment towards the total sale consideration. It is the primary duty of the respondent/promoter to fulfill its part of obligation and get all the approvals and only then approach the allottees to fulfill their part of obligations. In the present case, the complainants have already paid 70 % of the total sale consideration of the plot and still have not received a valid offer of possession of the plot. Even if complainants pay 100% total sale consideration, there is still no chance that the respondent can offer legal valid possession to the complainants as till date no part CC or CC has been granted by the Competent Authority. Therefore, complainants are entitled to the relief of possession alongwith delayed interest.

(viii) Authority vide its order dated 07.11.2023, directed respondent to submit the status of Occupation Certificate, payables and receivables as per RERA Act and complainant was directed to place on record the affidavit of complainant no. 2. In compliance, complainant has placed on

record the affidavit of the complainant no. 2 on 09.12.2024. Despite giving 3 opportunities and passing of approx. 559 days, respondent has failed to comply with the orders of the Authority which clearly shows the intention of respondent for not performing its part of obligations.

(ix) In the present case, Memorandum of Understanding was executed between the parties on 20.09.2016 but it does not stipulate any time frame for handing over possession. Authority observes that in absence of clause with respect to handing over of possession in the MOU, it cannot rightly ascertain as to when the possession of said plot was due to be given to the complainants. It has been observed that period of 3 years is reasonable time for development of a project and handing over the possession as held by **Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr.** Therefore, deemed date of possession works out to be 20.09.2019.

Since complainants are not interested to withdraw from the project and want to continue with the project, respondent is directed to pay the complainant upfront interest on the amount paid by them from deemed date of possession till date of the order and also future interest for every month of delay occurring thereafter till the handing over of legally valid possession of the plot.



(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. 19.05.2025 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;

(xiv) 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. 63/2023

Sr.no.	Principal Amount	Deemed date of possession i.e. 20.09.2019 / date of payment whichever is later	Interest Accrued till 19.05.2025
1.	₹4,50,000/-	20.09.2019	₹2,83,141/-
2.	₹5,00,000/-	20.09.2019	₹3,14,601/-
3.	₹5,50,000/-	20.09.2019	₹3,46,062/-
4.	₹7,91,200/-	20.09.2019	₹4,97,825/-
5.	₹2,30,000/-	20.09.2019	₹1,44,717/-
6.	₹2,20,000/-	20.09.2019	₹1,38,425/-
7.	₹6,50,000/-	20.09.2019	₹4,08,982/-
8.	₹5,00,000/-	20.09.2019	₹3,14,601/-
TOTAL=	₹38,91,200/-		₹24,48,354/-

Total amount to be refunded to the complainant = ₹38,91,200/- + ₹24,48,354/- = ₹63,39,554/-
MONTHLY INTEREST = ₹35,501/-

- (xv) Further, complainants are seeking compensation of 10,00,000/- on account harassment, pain, suffering and compensation on account of legal expenses of ₹1,00,000/-. 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

14. 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 legally valid offer possession to the complainants within 30 days from the date of obtaining part completion Certificate or Completion Certificate.
- (ii) Respondent is further directed to pay upfront delay interest of ₹24,48,354/- to the complainants towards delay already caused in handing over the possession within 90 days from the date of this order. Further, on the entire amount of ₹38,91,200/- monthly interest of ₹35,501/- shall be payable by the respondent to the complainants up to the date of actual handing over of the possession after obtaining part Completion Certificate or Completion Certificate.

15. **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]