



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	714 of 2023
Date of filing:	29.03.2023
Date of first hearing:	19.07.2023
Date of decision:	15.05.2025

Usha Rani w/o Sh. Inderpal Singh,
R/o H.no. 316, Near Church, Sector 46-A,
Chandigarh-160047

....COMPLAINANT

VERSUS

Parsvnath Developers Ltd.
(Through its Chairman/ Managing Director)
Regd Office: G-2, Ground Floor, "ARUNACHAL", 19,
Barakhamba Road, New Delhi-110001

....RESPONDENT

Complaint no.:	715 of 2023
Date of filing:	29.03.2023
Date of first hearing:	19.07.2023
Date of decision:	15.05.2025

Prabjot Singh S/o Sh. Inderpal Singh,
R/o H.no. 318, Sector 44-A,
Chandigarh.

....COMPLAINANT

VERSUS

Parsvnath Developers Ltd.
(Through its Chairman/ Managing Director)
Regd Office: G-2, Ground Floor, "ARUNACHAL", 19,
Barakhamba Road, New Delhi-110001

....RESPONDENT

CORAM:	Parneet S Sachdev	Chairman
	Nadim Akhtar	Member
	Dr. Geeta Rathee Singh	Member
	Chander Shekhar	Member

Present: - Mr. Manjinder Kumar, proxy counsel for Adv. Munish Gupta, counsel for the complainant through VC.
Ms. Neetu Singh, proxy for Adv. Rupali Verma, counsel for the respondent through VC.

ORDER (PARNEET S SACHDEV- CHAIRMAN)

1. Above captioned complaints are taken up together for hearing as these complaints involve similar issues and are related to the same project of

the respondent. This final order is being passed by taking the Complaint No. 714/2023 as the lead case.

2. Present lead complaint dated 29.03.2023 has been filed by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

3. The particulars of the unit booked by complainant, the details of sale consideration, the amount paid by the complainant and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Present and Future projects; Location: Parsvnath City, Sonapat
2.	Date of application by complainant	08.02.2005
3.	Unit area	300 sq. yards (Pg-4 complaint)
4.	Date of allotment	Allotment not made
5.	Date of builder buyer agreement	Not executed



6.	Amount paid by complainant	₹7,87,500/-
7.	Due date of possession	Cannot be ascertained
8.	Offer of possession	Not made

B. FACTS AS STATED BY THE COMPLAINANT

4. Facts of the complainant's case are that the complainant having been allured by the representations made by the respondent's agent booked a residential unit admeasuring 300 square yards in the "present and future" project of the respondent company. The copy of the registration form is annexed as **Annexure - C/1**.
5. That the complainant made payment of ₹3,93,750/- , i.e., 25% of the total amount of the unit by way of cheque against receipt no. PH 000040 dated 08.02.2005. The copy of receipt dated 08.02.2005 is annexed as **Annexure C/2**.
6. That it is the case of the complainant that the respondent has since very inception from the date of booking and receiving the booking amount engaged in deceptive trade practices and failed to give mandatory specifications such as no firm date of handing over of possession was conveyed to the complainant. Furthermore, respondent stipulated that other charges will remain as applicable but it intentionally did not specify the details of other charges for taking the undue advantage of



the situation. Additionally, it is alleged that no payment schedule or details regarding maintenance charges were furnished, effectively vesting the respondent with unbridled discretion to levy maintenance charges arbitrarily and without any rationale. Hence, there is complete deficiency on part of Respondent.

7. Thereafter, the respondent company vide demand letter dated 04.01.2006, raised a demand of ₹3,93,750/- towards the alleged allotment of the residential unit and compelled the complainant to remit the same by 19.01.2006. The complainant duly complied and made the payment via cheque on the said date. Copies of the demand letter and Receipt No. PI1002717 dated 19.01.2006 are annexed herewith as **Annexures C-3 and C-4** respectively.
8. It is alleged that the complainant made repeated efforts to ascertain the status of the unit but received no formal communication from the respondent company, except for vague and false assurances regarding allotment and execution of builder buyer agreement.
9. That it is averred by the complainant that despite the lapse of more than 17 years, neither any communication regarding the status of the allotted unit has been furnished by the respondent, nor has the amount paid been refunded. Hence, the complainant has approached this Hon'ble Authority seeking redressal and the reliefs as prayed for herein.

C. RELIEFS SOUGHT

10. The complainant in his complaint has sought following reliefs:-

- i. To give necessary directions to the respondent for refund of the payment made in lieu of plot till date along with the prescribed rate of interest as per the provisions of RERA Act.
- ii. To issue direction to pay the cost of litigation to the tune of Rs. 55,000/-.
- iii. To direct respondent to pay compensation to the tune of Rs 10 Lacs on account of mental harassment and torture suffered by the complainant at the hands of respondent.
- iv. Any other relief which this Hon'ble Authority deem fit and appropriate in view of the facts and circumstances

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 01.08.2023 pleading therein:-

11. The present complaint is not maintainable before this Hon'ble Authority for the reason that the complainant is not an allottee of the respondent company and the registration was mere an expression of interest towards the upcoming project of the respondent.
12. That the complaint is barred by limitation and this hon'ble court does not have jurisdiction to entertain a time barred claim and in absence of



any pleadings regarding condonation of delay, this Hon'ble court could not have entertained the complaint in present form.

13. There is no 'agreement to sale' between the parties and therefore, relief sought under section 18 of the RERA, Act, 2016 is not maintainable.
14. There is no contravention of the Real Estate (Regulation and Development) Act, 2016 on behalf of the Respondent, hence the present complaint is not maintainable.
15. That the Hon'ble Tribunal in a similar appeal titled as "Savita Khaturia v. M/s Parsvnath Developers (P) Limited Appeal No. 193 of 2019", was pleased to dispose of the appeal filed for granting the possession of plot by an allottee upholding the direction rendered by the I.d. Regulatory Authority to refund the earnest amount along with interest.
16. That the name of Chairman and Managing Director ought to be omitted from the arrays of the complainant because they both are not functioning in their personal capacity in the organization.
17. That, on 08.02.2005, Ms. Usha Rani (complainant cum original applicant) expressed her interest in the booking of a plot in any of the new/upcoming project of the respondent and paid ₹3,93,750/- towards the registration.
18. That, neither location nor site of the project was confirmed therefore, the original applicant, while filling the application form gave



undertaking that in case no allotment is made, and she shall accept the refund of the amount deposited by him. The relevant clause of the application form is mentioned here under:-

"(f) Though the company shall try to make an allotment but in case it fails to do so for any reason whatsoever, no claim of any nature, monetary or otherwise would be raised by me/us except that the advance money paid by me/us shall be refunded to me/us with 10% simple interest per annum."

A copy of the application form dated 08.02.2005 signed by the original applicant is annexed with reply as Annexure R-1.

19. That, perusal of clause 1' of the application form would show that while proceeding ahead with the purchase, the original applicant has clearly understood that no allotment was made in her favour and she has further given the undertaking that in case no allotment is possible in future, she would accept refund with simple interest at the rate of 10% per annum.
20. That, the complainant had paid ₹7,87,500/- till date to the respondent company. A copy of the latest ledger is annexed as Annexure R-2.
21. That it is averred by the respondent that no demand was raised by the respondent company from the original applicant after the year 2006 which establishes the fact that no project was allotted to the complainant and registration was merely an expression of interest in any of the upcoming project of the respondent.



22. That, in absence of any agreement to sale, the complainant is bound by the terms & conditions of the application form duly signed by the complainant.
23. That it is averred that the money receipts relied upon do not disclose the essential elements of a concluded agreement, much less a valid and enforceable contract. The receipts annexed with the present complaint do not mention any specific plot number, plot size, or identification of the project. On the contrary, they explicitly state that the payment is made as an advance against 'present and future projects'.
24. That, the complaint filed by the complainant before this Hon'ble Authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainant has misdirected themselves in filing the above captioned complaint before this Hon'ble H-RERA, Panchkula as the relief(s) claimed by the complainant does not even fall within the realm of jurisdiction of this Hon'ble Authority, Panchkula as there is neither any allotment nor any agreement to sale which can be adjudicated by this Hon'ble Authority.
25. That, the complainant is not an allottee of the respondent company as per Section 2 (d) of the RERA Act of 2016 as the registration was mere an expression of interest towards the upcoming project of the respondent.



26. That, the respondent has prayed that the complaint may kindly be dismissed in view of above said submissions.

E. REJOINDER ON BEHALF OF THE COMPLAINANT

Learned counsel for the respondent filed a rejoinder on 02.11.2023 pleading therein:-

27. That it is contended by the complainant that upon receipt of 25% of the total consideration amount, it was incumbent upon the respondent to issue an allotment letter, and failure to do so constitutes a clear violation of Section 13 of the Real Estate (Regulation and Development) Act, 2016. The plea taken by the respondent that the complainant is not an allottee is, therefore, misconceived and unsustainable. In light of the above, the complainant is well within her rights to invoke Section 18 of the Act and seek appropriate reliefs under the provisions thereof.
28. That the contention regarding the complaint being barred by limitation is denied. It is a settled position of law, as held by the Hon'ble Supreme Court in a catena of judgments, that where a developer wrongfully retains the money of a homebuyer without delivering possession or refund, such retention constitutes a continuing cause of action in favour of the allottee.



F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

29. During oral arguments, proxy counsel appeared on behalf of both parties who reiterated their arguments as were submitted in writing. Learned counsel for complainant submitted that complainant is willing to accept refund of the amount deposited by him along with interest. Learned counsel for respondent also stated that respondent does not have any plot available with them to be offered to complainant, but is ready to refund the amount.

G. ISSUES FOR ADJUDICATION

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

H. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

The Authority has gone through the rival contentions. In light of the background of the matter as raptured in this order and also the arguments submitted by both parties, Authority observes as follows:

31. The respondent has taken a stand that present complaint is not maintainable for the reason that complainant is not an allottee of the respondent company and registration was mere an expression of interest towards future project of respondent. Before adjudicating upon said issue, Authority has referred to the definition of allottee.

“Section 2(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.”

32. A bare perusal of the definition of the term “allottee”, it is clear that the transferee of an apartment, plot or building who acquired it by “any mode” is an allottee. This may include allotment, sale, transfer, as consideration of service, by exchange of development rights, or by any other similar means. Upon careful perusal of all the terms and conditions of application form annexed as Annexure R-1 in reply, it is revealed that original applicant had paid a sum of ₹3,53,750/- for purchasing a plot measuring 300 sq. yards in the present and future project of respondent and it was agreed between the parties that respondent shall allot a residential plot to complainant and in case he fails to do so for any reason whatsoever, advance money paid by complainant shall be refunded to her with 10% interest per annum. Meaning thereby she is an allottee of respondent.
33. The fact that the respondent had accepted subsequent other payments from the complainant apart from the initial booking amount which was paid by the original allottee and had issued receipts for the same clearly shows that respondent had recognised the original applicant as his



allottee. If argument of respondent is accepted that there was no "agreement for sale" between the parties, it would imply that respondent, who is into the business of real estate development, was accepting the payments and issuing receipts to the complainant for 'nothing in return', is impossible and hard to believe. Mere fact that allotment letter for a "particular/specific unit" was not issued to original allottee does not mean that she was not an allottee of the respondent. Once respondent has accepted the application form and certain amount from allottee for purchase of a unit in his project and has agreed to sell the plot as per price mentioned in application form, it was its duty to allot her a unit no. within a reasonable time. Failure on part of the respondent promoter to do so will not affect the rights of applicant as an allottee.

34. Even an application form which specifies the details of unit such as area of the plot, price and concession in price etc, booked by complainant will be treated as agreement for selling the property. The definition of "agreement for sale" as provided in Section 2(c) means an agreement entered into between the promoter and the allottee. The definition is not restricted to execution of a builder buyer agreement. The agreement may be in any form/mode. Accepting the payment towards a unit in present and future project shows there was a meeting of minds on the point that the promoter will give possession in any present or future



project developed by respondent. It is natural that in a situation where promoter agreed in the application form to give a plot in a "future project", it would not have been possible to allot a specific plot no. in the application form itself. Furthermore, there is nothing in the application form to show that the allotment will be by way of any draw, first come first serve basis, or by any other mode and the complainant was denied allotment of a specific unit after following that process.

35. Therefore, as per documents available on record, clearly shows that complainant booked a plot in respondent's present and future project and respondent had agreed for 'sale of a plot'. Accordingly, the complainant was very much an allottee. Hence, objection of respondent that complaint is not maintainable as complainant is not an allottee stands rejected.
36. That in this complaint booking was made in 'present and future' scheme in the year 2005; no builder buyer agreement has been executed till date nor has possession of plot been handed over. Therefore, no specific time period has been provided for handing over possession of the plot. Authority observes that in absence of clause with respect to handing over of possession in the plot buyer agreement it cannot rightly ascertained as to when the possession of said plot was due to be given to the complainant. It has been observed that period of 3 years is reasonable time by Hon'ble Apex Court in 2018 STPI, 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 08.02.2008. However, possession has not been offered till date. Respondent has also expressed its inability to offer possession. For these reasons, that possession was not offered by the deemed date of possession, complainant as per section 18(1) is entitled on demand refund of the amount paid along with interest. Section 18(1) of the RERA Act of 2016 is reproduced below:

18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

37. Complainant is interested to withdraw from the project and wants refund of the amount deposited; respondent has expressed its inability to offer plot to the complainant and is agreeable to refund the amount

deposited. For these reasons, a case is clearly made out to allow relief of refund as sought by complainant. Therefore, as per provisions of Section 18 of the Act, relief of refund as sought by the complainant deserves to be granted.

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

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. 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. 15.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.

39. 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;

Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainant the paid amount of 7,87,500/- in complaint no. 714 of 2023 as well as in complaint no. 715 of 2023 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%



(8.75% + 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 ₹ 25,18,866/- in both complaints as per details given in the tables below:

Complaint no. 714/2023

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 15.05.2025
1.	3,93,750	08.02.2005	8,86,339
2.	3,93,750	19.01.2006	8,45,027
3.	Total= 7,87,500/-		Total= 17,31,366/-
	Total Payable to complainant	7,87,500 + 17,31,366	25,18,866/-

Complaint no. 715/2023

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 15.05.2025
1.	3,93,750	08.02.2005	8,86,339
2.	3,93,750	19.01.2006	8,45,027
3.	Total= 7,87,500/-		Total= 17,31,366/-
	Total Payable to complainant	7,87,500 + 17,31,366	25,18,866/-

40. The complainant is seeking compensation on account of mental agony, torture and harassment. 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 complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

I. DIRECTIONS OF THE AUTHORITY

41. 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(1) of the Act of 2016:

(i) Respondent is directed to refund the entire paid amount with interest to the respective complainants as calculated in Para 39 and aforementioned tables of this order. 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.

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


CHANDER SHEKHAR
[MEMBER]


DR. GEETA RATHEE SINGH
[MEMBER]


NADIM AKHTAR
[MEMBER]


PARNEET S SACHDEV
[CHAIRMAN]