



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1644 of 2024
Date of filing:	29.10.2024
Date of first hearing:	16.12.2024
Date of decision:	19.01.2026

Kanta Gupta,
R/o House no. 1, Road no. 78,
West Punjabi Bagh, Punjabi Bagh
New Delhi,COMPLAINANT

VERSUS

Parsvnath Developers Ltd.
Office: Parsvnath Metro Tower, Near Shahdara Metro Station,
Shahdara, Delhi- 110032RESPONDENT

Present: - Ms. Manju Goyal, counsel for the complainant through video conference.

Ms. Rupali S. Verma, counsel for the respondent through video conference.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint dated 29.10.2024 has been filed by the complainant under Section 31 of the Real Estate (Regulation & Development) Act,

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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, details of sale consideration, amount paid by the complainant, proposed date of 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: Sonepat, Haryana.
2.	Name of promoter	Parsvnath Developers I.ltd.
3.	Date of booking	06.09.2005
4.	Unit No. & Unit area	Villa No. A-442, 162.207 sq. mtrs
5.	Date of Villa buyer agreement	10.07.2008
6.	Basic Sale Price	₹17,50,000/-
7.	Amount paid by the complainant	₹16,56,668/-
8.	Due date of possession	Not mentioned
9.	Offer of possession	Not given till date



B. FACTS AS STATED IN THE COMPLAINT

3. The complainant booked Villa No. A-442 in the project namely "Parsvnath City", Sonipat, developed by the respondent, M/s Parsvnath Developers Limited, for a total sale consideration of ₹17,50,000/-. Complainant between the period of September 2005 and July 2008, paid a sum of ₹16,56,668/-, which fact stands duly supported by documentary evidence.
4. The Villa Buyer Agreement was executed on 10.07.2008. As per Clause 8(a) thereof, the respondent was obliged to complete construction and hand over possession within 18 months, extendable by six months. Admittedly, possession has not been offered till date. The delay is inordinate and wholly unexplained.
5. The material on record establishes that the respondent failed to adhere to the agreed timeline and continued to give false assurances regarding delivery of possession. No completion certificate has been obtained from the Director Town and Country Planning Department, Haryana.
6. The complainant has chose not to withdraw from the project and seeks possession along with interest for delay. In terms of Sections 11(4), 12 and 19(3) of the Real Estate (Regulation and Development) Act, 2016, the promoter is statutorily bound to hand over possession within the



stipulated period and, in the event of delay, to pay interest for every month till actual handing over of possession.

7. The cause of action in the present case is a continuing one, subsisting till delivery of possession. This Authority has territorial jurisdiction in view of Notification No. 1/92/2017-DTCP dated 14.12.2017, the project being situated in Sonipat District.
8. The issue involved stands squarely covered by earlier decisions of this Authority, including Complaint Nos. 865-892 and 1177 of 2020, Complaint No. 11 of 2021 (order dated 13.10.2021) and Complaint No. 750 of 2023 (order dated 29.04.2024).
9. Rule 15 of the applicable Rules prescribes the rate of interest payable for delayed possession. The said rate, being statutorily determined, is reasonable and ensures uniformity in adjudication.

C. RELIEFS SOUGHT:-

10. Complainant in his present complaint has sought following reliefs:
 - i) The respondent be directed to deliver the possession of the villa A-442 complete in all respects along with the interest on the monthly basis for delay in handing over of the possession, at such rate as may be prescribed under rule 15 & 16 of the Haryana Real Estate (Regulation and development) rules, 2017 from the deemed date of possession till valid offer of possession



is made to the complainant (as per section 11(4), 12,18 & 19(3) of the RERA Act,2016).

(ii) The respondent be directed to pay compensation of ₹10,00,000/- for causing mental agony, harassment and financial loss to the complainant.

(iii) The respondent be directed to pay the litigation expenses to the tune of ₹ 5,00,000/-.

(iv) The Complainant also demands compensation to the tune of ₹20,00,000/- for the loss of opportunity as the rate land has increased 10x times in 16 years of time.

(v) Any other relief or direction to which the complainant may be entitled in the facts and circumstances of the case be also granted.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

11. Learned counsel for the respondent filed a detailed reply on 25.04.2025 pleading therein as under :-

- (i) That the present complaint is not maintainable in law, before this Hon'ble Authority and is liable to be dismissed.
- (ii) That the Complainant has approached this Hon'ble Authority with the multiple reliefs, thus, this Hon'ble Authority does not have jurisdiction to entertain the claim of the Complainant.



(iii) That as per Section 2(d) of the Real Estate (Regulation and Development) Act, 2016, the complainant does not fall under the category of "Allottee". Hence the definition of allottee is reproduced hereinafter for ease of this Hon'ble Authority.

*"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."*

(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 could not have entertained the complaint in the 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 latches, therefore, its claim should be dismissed.

(v) That the present Complainant is not tenable in law as it has not been filed in the prescribed format as prescribed by this Hon'ble Authority. The Complainant has not mentioned that under what provisions of Real Estate (Regulation and Development) Act, 2016, the present Complaint has been filed.

(vi) That the present Complaint is not maintainable in law, as the relief prayed by the Complainant does not fall within the jurisdiction of this Hon'ble Authority. The project is not registered with this Hon'ble Authority and therefore, this Hon'ble Authority does not have jurisdiction to entertain the present complaint.

(vii) That the Complainant has not disclosed the proper & true facts and concealed that she defaulted in making timely payments resulting into cancellation of the Villa in question way back in the year 2016.

(viii) That despite various reminder letters sent to the Complainant for making payment, she defaulted in making payments therefore, the Villa in question was cancelled.

(ix) That Mrs. Kanta Devi was allotted a Villa of tentative area ad-measuring 194 square yards in the Parsvnath City, Sonepat of the Respondent Company. The Basic Selling Price of said Villa was



agreed at ₹17.50,000 at the time of allotment excluding other charges. That on 10.07.2008, Villa Buyer Agreement was executed between the Mrs Kanta Devi and the Respondent-Company which enumerated terms & conditions with determination to stand & abide with these terms & conditions.

- (x) That the complainant was duly informed about non-payment of instalments or having committed default in making the payments of Instalments/overdue repeatedly through various reminders dated 06.06.2008 & 04.11.2008. That the Complainant had been sent many payment reminder letters regarding the overdue payments; the Complainant neither replied nor paid the overdue amounts to the Respondent with respect to the said booking. That the Complainant had been chronicle defaulter in making timely payments. Copies of payment reminders/overdue letters are enclosed as Annexure-R-2.
- (xi) That on 06.01.2012, the Complainant was sent final statement of account vide letter dated 06.01.2012 for clearing the outstanding amount for issuing no ducs letter. On 21.04.2012, Complainant was sent reminder letter regarding FSA dated 06.01.2012 for clearing the outstanding amount to the respondent company.
- (xii) That on 19.11.2012, the complainant was sent reminder letter regarding final statement of account dated 06.01.2012 & 21.04.2012 for clearing the outstanding amount to the respondent company.



(xiii) That on 01.02.2013, the Complainant was sent reminder letter regarding FSA dated 06.01.2012; 21.04.2012 & 01.02.2013 for clearing the outstanding amount to the respondent company, mentioning that failing which, villa buyer agreement empowers the respondent company to cancel said booking of the Villa and forfeit earnest money @ 15% of the total Basic Cost as per terms of clause 5 (a) of the Villa Buyer Agreement dated 10.07.2008.

(xiv) That on 30.06.2016, a payment reminder of over dues of ₹4,84,077.50 was sent for clearing outstanding overdue amount but there was no response registered by the complainant for making this amount. A copy of reminder dated 30.06.2016 is annexed as annexure R-7.

(xv) That on 07.07.2016, a payment Reminder-II of over dues ₹4,84,077.50 was sent for clearing outstanding overdue amount. But, there was no response registered by the Complainant for making this amount.

(xvi) That on 15.07.2016, a payment Reminder-III of over dues ₹4,84,077.50 was sent for clearing outstanding overdue amount. But neither there was any response by the Complainant for making this amount nor the payment was made.

(xvii) That on 30.07.2016, as a goodwill gesture letter of over dues ₹4,84,077.50 was again sent for clearing outstanding overdue amount mentioning the last & final opportunity to clear the over dues on or before 10.08.2016, However, the Complainant failed to make the



payment and hence, the respondent company was constrained to cancel the allotment.

(xviii) That on 17.09.2016, after giving ample opportunities to make the payments, the Villa allotted to the Complainant was cancelled. A copy of cancellation letter dated 17.09.2016 is annexed as Annexure R-11.

(xix) That the Complainant had paid ₹16,53,668/- till date to the Respondent Company. However, as said Villa had already been cancelled adopting due procedure then the Respondent Company is ready to refund the balance amount ₹13,94,168/- after deducting the earnest money@15% is equivalent ₹2,62,500/- of Basic Cost as per terms & conditions of Villa Buyer Agreement after submitting all original receipts along-with other documents to enable the respondent Company to process the refund.

(xx) That the Complainant has always been irregular in making payments. That in spite of the fact that the Complainant was served with reminders for payment, the Complainant neither responded nor came forward to clear her dues.

(xxi) That in view of the submissions made above, the complainant is no longer the allottee of the said Villa and does not even hold any right, title or interest on the said plot as the booking was cancelled way back in the year 2016.

(xxii) That the Complaint filed by the Complainant before the Hon'ble Authority, besides being misconceived and erroneous, is untenable in the eyes of law. The Complainant has misdirected herself in filing the above captioned Complaint before this Hon'ble Authority as the reliefs being claimed by the Complainant cannot be said to even fall within the realm of jurisdiction of this Hon'ble Authority.

(xxiii) That contrary to the understanding of the Complainant, time is the essence of the contract and she cannot be allowed to seek revival of the allotment, she herself being in default and responsible for breach. That the Complaint filed by the Complainant is abuse and misuse process of law and is liable to be dismissed.

12. The matter had earlier been adjourned on the premise that Case No. 723 of 2019, titled *Nishant Bansal v. Parsvnath Developers Ltd.*, was pending consideration before the Hon'ble High Court of Punjab and Haryana. Learned counsel appearing for the complainant submits that no substantive proceedings have taken place in the said matter for the past two years. He further urges that the present case be taken up for final adjudication, contending that there exists no order of stay operating against the continuation of the present proceedings.



E. WRITTEN ARGUMENTS OF LEARNED COUNSEL FOR RESPONDENT DATED 21.11.2025.

13. Ld. Counsel for the respondent has submitted written arguments wherein the arguments that were advanced in the reply have been reiterated with following additional submissions:

- That the offer for plots in pending Appeal No. 13/2023 (0&M) & other connected cases as "Parsvnath Developers Ltd Vs. Nishant Bansal & Ors." before Hon'ble Punjab & Haryana High Court, Chandigarh was given way long back in year 2023 during the adjudication of those pending Appeals. That offer was never accepted by the concerned parties. Therefore, the Complainant has interpreted this statement incorrectly & wrongly.
- That without prejudice in respectful submission of the respondent it is further submitted that the ratio of the judgment Comp. No. 723/2019 as "Nishant Bansal vs. Parsvnath Developers Ltd" must not made applicable to the facts and circumstances of the present case. Moreover, it is pertinent to state that the facts, findings & circumstances of said Complaint No. 1644-2024 as Kanta Gupta vs. Parsvnath Developers Ltd. is completely different & unique from of Comp. No. 723/2019 as "Nishant Bansal vs. Parsvnath Developers Ltd". Therefore, it is sincerely requested to Hon'ble Authority that the order may not be



pronounced on the terms of Comp. No. 723/2019 as "Nishant Bansal vs. Parsvnath Developers Ltd".

- That the complainant, initially, was an allottee of a Villa in Parsvnath City, Sonepat. This villa was cancelled due to non-payment of the complainant whereas in case of Nishant Bansal, neither he was an allottee nor any unit was allotted.
- That in this circumstance, it is respectfully submitted that the complainant was allotted unit earlier, however, the same was cancelled due to callous & chronic payment defaulter after adopting standard operational procedure being defined into executed villa buyer agreement between both the parties.
- That in view of the facts and circumstances of the present case, it is humbly prayed that said complaint may kindly be rejected and the respondent company may kindly be given liberty to pay the remaining balance after deducting earnest money.

14. On the hearing dated 27.10.2025, both parties were given time for filing written submissions on or before 28.11.2025 and it was recorded in the order that failure to do so will result in non-consideration of said document while passing the final order. Complainant has filed her written submissions on 17.12.2025 but the same is not being considered as time for filing written submissions lapsed on 28.11.2025. Further, after going through the written



submissions it is revealed that no new facts or submissions are brought into notice of the Authority through such submissions.

F. ISSUES FOR ADJUDICATION

15. Whether the complainant is entitled to the relief of possession of plot booked by him along with interest for delay in handling over the possession in terms of Section 18 of the RERA Act of 2016?

G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

16. 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. In this regard it is stated that Authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E.1 Territorial Jurisdiction

As per notification no. 1/92/2017/ITCP 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 Sonipat 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(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act of 2016 quoted above, the Authority has complete jurisdiction to decide the complaint and complaint is maintainable 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 this complaint is grossly barred by limitation. Limitation Act is not applicable on RERA Act as



RERA Authority is a quasi-judicial Authority and is applicable only on Courts. This view gets strength from the judgement of Apex court **Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise** wherein the Hon'ble Apex Court had held that Limitation Act applies only to the courts and not to the Tribunals. RERA 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 Courts.

iii) 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, it is important to refer to the definition of allottee as provided in Section 2(d) of the Act. Said provision is reproduced below for reference:

"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.”

On 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 plot was booked by the complainant on 06.09.2005 and plot buyer agreement was executed between the parties on 10.07.2008 for villa no. A- 442 having super built up area of 162.207 sq. mtrs. Complainant has paid an amount of ₹16,56,668/- out of the basic sales price of ₹17,50,000/-. The fact that the respondent had executed the plot buyer agreement dated 10.07.2008 and has accepted a sum of ₹16,56,668/- clearly shows that respondent had recognised the applicant as his allottee and therefore the complainant is covered within the definition of allottee as provided under Section 2(d) of the RERA Act of 2016.

iv) Admittedly factual matrix of the case is that, the complainant booked a plot of 194 sq. yards yards and initially deposited ₹5,00,000/-. A receipt for payment of ₹5,00,000/- was issued on 07.09.2005. On 10.07.2008, a plot buyer agreement regarding plot no. A-442, at Parsvnath City, Sonepat was executed by respondent in



favour of complainant. An amount of ₹ 16,56,668/- stands paid against the basic sales price of ₹17,50,000/-.

v) Complainant's grievance is that respondent has not received completion certificate from Department Town and Country Planning till date and possession has not been offered to the complainant. Respondent's stance in this regard is that it is the complainant who has always been irregular in making payments. Numerous letters and reminder letters were sent to the complainant between the period of 06.06.2008 up till 30.07.2016, however the complainant neither responded to such letters and reminders nor came forward to clear her dues. At last complainant's allotment was cancelled way back on 17.09.2016 and complainant is no longer an allottee of the villa no. A-442 and does not hold any right, title or interest on the said plot as the booking has already been cancelled.

vi) As per clause 8(a) of the builder buyer agreement dated 10.07.2008, respondent was under an obligation to hand over possession of the flat within 18 months from the commencement of construction with an extended period of 6 months. Both parties have not provided the date of commencement of construction therefore deemed date of possession is calculated from the date of execution of builder buyer agreement. Deemed date of handing over of possession works out to 09.01.2010(18 months from the date of execution of



agreement). It is matter of fact that complainant made payment of ₹16,56,668/- towards the sale consideration till 2008 before the deemed date occurs.

(vii) Upon perusal of the reply filed by the respondent, it is revealed that the respondent had, from time to time, issued several letters and reminders to the complainant at her recorded address at Rohini, Delhi, calling upon her to discharge the outstanding payment obligations. The record reveals that a letter dated 06.06.2008 was issued to the complainant demanding payment, pursuant to which the final statement of accounts was forwarded on 06.01.2012. Thereafter, further reminders dated 21.04.2012, 19.11.2012, and 01.02.2013 were dispatched to the complainant, none of which elicited any response. It is further evident that on 30.06.2016, yet another reminder was sent to the complainant, which was again followed by reminders dated 07.07.2016 and 15.07.2016. As no payment was forthcoming, the respondent issued a final notice dated 30.07.2016, calling upon the complainant to clear the outstanding dues on or before 10.08.2016, failing which the allotment was liable to be cancelled. The complainant admittedly failed to respond to the said notice as well. Consequently, the respondent cancelled the allotment vide letter dated 17.09.2016, wherein it was specifically communicated that a sum of ₹2,62,500/-, being 15% of the basic cost and treated as earnest money,



stood forfeited in accordance with the terms and conditions of allotment, and that the balance amount was refundable. The complainant was also called upon to submit the original receipts and requisite documents to enable processing of the refund. However, the complainant did not take any steps in this regard. The material on record further discloses that the complainant remained completely silent and did not engage in any correspondence with the respondent from the year 2008 till the filing of the present complaint, despite repeated communications and reminders. Having failed to respond to the reminder letters as well as the cancellation notice, the complainant has now approached this forum seeking possession of the allotted plot along with interest, which conduct *prima facie* lacks bona fides.

(viii) It is pertinent to mention here that present complaint is filed on 16.10.2024, that is after nearly 8 years of receiving the cancellation notice from the respondent. Complainant did not take any steps nor raised any objection regarding the alleged cancellation. At that time complainant had the cause of action against the respondent and she could have approached the appropriate forum then only, however, complainant chooses to remain silent from date of cancellation till filing of present complaint. As per the terms and provisions of the agreement it is the duty of buyer to comply with the terms of payment and other terms and conditions of agreement. As per terms and

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conditions of agreement buyer/complainant defaulted in making payments without any justifiable reasons.

(ix) As per clause 2(b) of the builder buyer agreement, buyer is liable to forfeiture of the amount of earnest money being 15% of the basic price in case of breach of agreement. Authority observes that in case of **Godrej Projects Development Ltd. v. Anil Karlekar & Ors. (Civil Appeal No. 3334 of 2023, decided on 3 February 2025)**, the Apex Court reiterated that forfeiture beyond a reasonable sum is penal in nature and subject to scrutiny under Section 74 of the Indian Contract Act, 1872. Further referring to Maula Bux v. Union of India, the Court noted that 10% is generally considered a reasonable cap for earnest money forfeiture. Here the complainant has breached agreement as she has not paid her due installments even after receiving several reminders. Considering the observations of the Supreme Court in the aforementioned case, respondent is allowed to forfeit the amount of earnest money up to 10% of the sales consideration.

(x) Authority further observes that in the present case, no documents or written communications have been attached by the complainant to substantiate the claim that complainant approached the respondent for making the payments or replied to the letters or communications sent



by the respondent. This shows that complainant fails to fulfill its duty as embodied in the provisions of the RERA Act of 2016.

(xi) The Hon'ble Supreme Court in Civil Appeal No. 3826 of 2020 titled as "Mansi Brar Fernandes v. Shubha Sharma and Anr", while examining the nature of agreements between developers and allottees, has dealt at length the distinction between a genuine homebuyer contract and a speculative or purely financial arrangement. The Court reiterated the principle laid down in Pioneer Urban Land and Infrastructure Ltd. v. Union of India, wherein a clear distinction was drawn between speculative investors and genuine homebuyers. The Hon'ble Apex Court observed as under:

"15.3 The decision of this Court in Pioneer Urban Land and Infrastructure Ltd v. Union of India (supra) drew a distinction between speculative investors and genuine homebuyers. The present case affords an opportunity to reinforce that distinction through a principled intelligible differentia."

The Hon'ble Supreme Court has clearly delineated the parameters for distinguishing a genuine homebuyer transaction from one that is purely financial in nature and unconnected with the intent of purchasing a residential unit. The following parameters were laid down to identify whether a person is a genuine homebuyer or a speculative investor:



"18.1. The determination of whether an allottee is a speculative investor depends on the facts of each case. The inquiry must be contextual and guided by the intent of the parties. Indicative factors include: (i) the nature and terms of the contract; (ii) the number of units purchased; (iii) presence of assured returns or buyback clauses; (iv) the stage of completion of the project at the time of investment; and (v) existence of alternative arrangements in lieu of possession. Possession of a dwelling unit remains the sine qua non of a genuine homebuyer's intent."

It is further added that "Unlike financial markets - where speculation may sometimes serve a liquidity function - speculation in residential housing undermines stability, fairness, and the very object of housing development. Schemes of assured returns, compulsory buybacks, or excessive exit options are in truth financial derivatives masquerading as housing contracts."

The court also stated that -

"Criteria to identify speculative investors

18.4. "Speculation" has been defined in P. Ramanatha Iyer's Law Lexicon (6th edition) as "a risky investment of money for the sake of and in expectation of unusually large profits". A "speculator" is "one who practices speculation in trade or business". Two elements emerge: (i)expectation of unusually high profits; and (ii)activity in the nature of business or trade. These elements accord with the ratio of Pioneer Urban, which described speculative investors as those seeking refund or profit without an intention to occupy.

18.4.1. In Duni Chand Rataria v. Bhuvalka Brothers Ltd. this Court considered the validity of an ordinance of the State of West Bengal prohibiting speculative transactions in the jute trade. A Constitution Bench (four Judges) held that constructive delivery by intermediate parties would be valid provided that it

culminated in actual delivery to the end purchaser. The Court observed:

"The mate's receipts or the delivery orders as the case may be, represented the goods. The sellers handed over these documents to the buyers against cash payment. The constructive delivery of possession which was obtained by the intermediate parties was thus translated into a physical or manual delivery of possession in the ultimate analysis eliminating the unnecessary process of each of the intermediate parties taking and in his turn giving actual delivery of possession of the goods."

Thus, where there is an actual chain of delivery ending with possession by a genuine buyer, the transaction is not speculative. Conversely, in the present context, where there is no intention to take possession, the onus to find another buyer and effect resale is cast on the developer. Delivery in such cases is more in the nature of a lien or an option. For a genuine allottee, however, delivery and possession are a sine qua non."

Applying the above decision of the Hon'ble Apex court, is amply clear that the complainants never intended to occupy the apartments in question. With no timelines for delivery, no specifications and nothing containing to the delivery of apartments, it was obvious that the contract was only a masquerade for a housing contract.

(xii) Thus, consequent upon the considerable consideration, the Authority is constrained to conclude that present complaint is nothing but a ill-advised luxurious litigation and a classic example of litigation to enrich oneself at the cost of another and to waste the precious time of this Authority. The Real Estate (Regulation and Development) Act,



2016 is a beneficial /social legislation enacted by the Parliament to put check on the malpractices prevailing in the real estate sector and to address the grievance of the allottee who have suffered due to the dominant position of the promoter. However, it is a moral obligation on the part of complainant to invoke the provisions of the Act with a clear and bonafide intent and not as a tool/instrument for enrichment.

17. In view of above explanations, Authority observes that no cause of action survives in favour of the complainant and therefore, present complaint is **dismissed.**

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



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NADIM AKHTAR
MEMBER