



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2064 of 2024
Date of filing:	03.01.2025
Date of first hearing:	17.02.2025
Date of decision:	01.12.2025

Ankit Gupta,

R/o House no.G-27/85, Sector 3,
Rohini, North West Delhi-110085,

....COMPLAINANT

VERSUS

Parsvnath Developers Ltd.

Office: Parsvnath Metro Tower, Near Shahdara Metro Station,
Shahdara, Delhi- 110032

....RESPONDENT

Present: -

Mr. Gaurav Gupta, counsel for the complainant through video conference.

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

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint dated 03.01.2025 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

2. 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., 300 sq. yards.
2.	Date of application by original applicant	18.02.2005
3.	Date of endorsement in favour of complainant	09.06.2008(in favour of mother of the complainant) and 04.12.2024 in favour of the complainant.
4.	Date of allotment	Not made
5.	Date of builder buyer agreement	Not executed
6.	Total sale consideration	₹16,90,500/-



7.	Amount paid by complainant	₹8,67,750/-
8.	Due date of possession	Cannot be ascertained
9.	Offer of possession	Not offered

B. FACTS OF THE COMPLAINT

3. Facts of complainant's case are that on 18.02.2005, original applicants Mr. Deepak Anand and Mr. Aneesh Kohli booked a plot in a township named 'Parsvnath City', under 'Present and Future Scheme' launched by respondent company at Sonapat, Haryana by paying booking amount of ₹ 2,11,312/- and another amount of ₹2,11,312/-, thus making total payment of ₹4,22,624/-. Copies of receipt annexed as annexure C-1. The original applicants thereafter transferred their booking in favor of Ms. Naresh Kumari. She made a payment of ₹4,22,625/- against the said plot vide receipt dated 19.01.2006. Copy of receipt is annexed as annexure C-2. Thereafter, Ms. Naresh Kumari transferred her booking in favor of Smt. Uma Gupta (mother of the complainant) on 19.05.2008 and plot was endorsed in favor of Smt. Uma Gupta on 09.06.2008 wherein payment of an amount of ₹ 8,45,249/- has been admitted to have been received by the respondent. Said letter is annexed as annexure C-4 of the complaint.
4. That after sometime, upon not receiving any communication from the respondent, the mother of complainant and other family members

enquired about the status of the project and were surprised to know that the project is nowhere to completion and a fraud has been played by the respondent. Upon asking, the respondent issued threats as to forfeiture of entire deposited amount upon withdrawal from the project and insisted the mother of the complainant to continue with the booking and to wait till the completion of project and to deposit further payments as per demands.

5. That thereafter, the respondent did not give any update on the status of construction over the project. The family members of Smt. Uma Gupta/ mother of complainant/ erstwhile purchaser, used to visit office of the respondent and would request for the completion of construction activity at the project, to allot a plot, for handing over of possession of the plot and execution of registered sale deed in respect of the plot but no satisfactory response was ever accorded to her and no heed to the genuine requests of the mother of the complainant was ever made by the respondent.
6. That thereafter Smt. Uma Gupta left for her heavenly abode on 06/03/2024, leaving behind Mr. Ankit Gupta (Son), Ms. Himanshi Gupta and Ms. Priyanka Gupta (Daughters) and Mr. Satya Prakash Gupta (Husband) as her only legal heirs. A copy of Death Certificate



is attached herewith as Annexure-C5 and copy of Surviving Member Certificate is attached herewith as Annexure-C6.

7. That after her death, the legal heirs of Late Smt. Uma Gupta, in order to keep the booking intact with the respondent company, intimated the respondent about her death and as per oral family settlement between the LRs of Late Smt. Uma Gupta, that booking with the respondent be transferred in the name of Mr. Ankit Gupta i.e. Complainant herein. Accordingly, an application dated 20/09/2024 signed by Mr. Satya Prakash Gupta was submitted in the office of respondent to Mr. Yogesh on 25/09/2024 wherein request of transfer in blood relation of booking in the name of complainant was made to the respondent. Upon further requirement of the respondent, the Indemnity Bonds, Affidavits, Death Certificate, Receipts etc. were submitted by Mr. Satya Prakash Gupta vide Application dated 04/11/2024 received by respondent on 11/11/2024. Where after satisfying the genuineness of the request of transfer of booking in blood relation in the name of complainant, the booking was finally transferred in the name of complainant on 02/12/2024 and name of complainant was endorsed at the back of the payment receipts. The copy of Application dated 20/09/2024 is attached as Annexure-C7 and copy of Application dated 04/11/2024 is attached as Annexure-C8.



8. That upon such transfer, the complainant not only entered into the shoes of her mother but also of all the erstwhile purchasers and all the rights and liabilities became binding between the complainant and the respondent from the date of booking. The respondent issued a Customer Ledger dated 03/12/2024 in the name of complainant which also suggests acceptance of complainant's rights and liabilities from day one of the booking. In such customer ledger, the booking was shown for a plot measuring 300 sq. yds. at the rate of ₹5750/- with total cost of unit ₹16,90,500/- in Parsvnath City, Sonipat, Haryana. Meaning thereby, the respondent has still deposited the amount towards booking a plot but deliberately has not allotted a specific plot and not handed over possession of the plot. The copy of Customer Ledger dated 03/12/2024 is attached as Annexure-C9.
9. That despite receiving a sum of ₹8,67,750/- since 2006 in respect of the booking, the respondent never gave an update to the complainant/ her mother about development at the project, did not show any willingness to hand over physical possession of the plot and to execute registered sale deed in favour of the complainant. As such, the respondent has miserably failed in discharge of its obligations towards the complainant/ allottee and committed a series of defaults for which the respondent is liable to be punished as per law. The Completion



Certificate in respect of the project Parsvnath City of the respondent has not been issued till date.

10. That till date neither any allotment has been made nor any offer of possession of the plot has been made by the respondent to the complainant and as such the complainant is waiting to get actual physical possession of the plot. It is a well settled law that in the absence of a specific date within which the possession of the unit was to be handed over, a reasonable period of 3 years is to be calculated from the date booking was done, as such, the deemed date of possession comes to 19/02/2008 but the respondent has failed miserably to comply with its part of contractual as well as legal obligations and has committed breach of contract with the complainant.
11. That the cause of action to file this complaint is continuing as till date the possession of the plot has not been handed over to the complainant. Hence, this complaint is within limitation and not barred under the law of limitation.

C. RELIEF SOUGHT

12. The complainant in his complaint has sought following reliefs:



- (i) The respondents be directed to allot a plot measuring 300 sq. yds. at the rate of ₹ 5750/- per sq. yds. in Parsvnath City, Near Tau Devi Lal Park, Sonipat and handover actual physical possession of the plot to the complainant after obtaining completion certificate from the competent authorities and to execute registered sale deed of such plot in the name of complainant.
- (ii) The respondent be directed to deposit an amount of ₹15,83,674/- as interest for delay in delivery of possession of the plot from the deemed date of possession till 31/12/2024 and further interest amount till the date of handing over of actual physical possession of the plot as per Rule 15 of HRERA, Rules.
- (iii) The respondent be directed to provide latest statement of account for receivables and payables in respect of the booking.
- (iv) The respondent be directed to allot, handover possession and execute registered sale deed of alternate unit/ plot of same size and measurement after purchasing from open market, if plot of same size is not available either in the same township or other area at the same rate as well as terms and conditions.



- (v) Any other reliefs) which this Hon'ble Authority may deem fit in the nature of circumstances may also be granted to the complainant, in the interest of justice.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 23.06.2025 pleading therein:-

13. That, 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 future project of the respondent.
14. That, as per section 2(d) of the Real Estate (Regulation and Development) Act, 2016, the definition of allottee is reproduced for ease of the Authority.

"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;

15. That the money receipts attached to the complaint is for the expression of interest shown by the complainant in the present and future project



or new projects of the respondent-company. However, it is a matter of record that the complainant was never allotted any unit/ plot in any of the projects of the respondent-company as he did not meet the criteria so laid down by the respondent-company.

16. 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 present form. In recent judgment by the Hon'ble Supreme Court in the case of '*Surjeet Singh Sahni vs. State of U.P and others*', 2022 SCC online SC 249, the Hon'ble Apex Court has been pleased to observe that mere representations does not extend the period of limitation and the aggrieved person has to approach the court expeditiously and within reasonable time. In the present case the complainant is guilty of delay and laches, therefore, his claim should be dismissed.

17. That initially in the year February' 2005, one Mr. Deepak Anand & Mr. Anesh Kohli jointly had shown their interest towards Present and Future Projects/New Projects of the Respondent-Company. Afterwards, in the year March' 2006 this expression of interest or advance registration was transferred in the favour of Mrs. Naresh Kumari. Once again, in the year June 2008 this expression of interest



or advance registration was transferred in the favour of Mrs. Uma Gupta. Later on, this expression of interest has been transferred into the favour of Mr. Ankit Gupta ("hereafter referred as a legal heir of Mrs. Uma Gupta after submission of all relevant & necessary documents in the records of the Respondent Company. However, there was no allotment by the Respondent-Company in the favor of any party.

18. That the complainant was well aware of the fact that no allotment was made to all previous Applicants, still the Complainant had voluntarily chosen to purchase the expression of interest or said advance registration from open or secondary market. Therefore, at this stage, the prayer as regard to entitlement of plot with other reliefs is not maintainable before this Hon'ble Authority.
19. That, there is no 'Agreement to Sale' between the parties and therefore, relief sought under section 18 of the RERA Act, 2016 is not maintainable before this Hon'ble Authority.
20. That 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.
21. That similar appeal titled as "**Savita Khaturia v. M/s Parsvnath Developers (P) Limited Appeal No.193 of 2019**, the Hon'ble Tribunal had been pleased to dispose of the appeal filed for granting



the possession of plot by an allottee upholding the direction rendered by the Id. regulatory Authority to refund the earnest amount along with interest.

22. That it is apposite to state that RERA Act, 2016 is applicable prospectively rather than retrospectively.
23. That on 18.02.2005, the original applicant expressed his interest in the booking of a plot in any of the new projects of the respondent and paid ₹2,11,312.50/- towards its registration.
24. That it is pertinent to mention that the Complainant was very well aware with the fact that neither any location nor any site of the project was confirmed at the time of registration. Further in this regard, the Complainant while filling up the Application Form gave an undertaking that in case no allotment is made, then he shall accept the refund of the amount deposited by him towards this registration. The relevant clauses of the application form are mentioned hereunder:

(a) That you offer me/us a residential plot which you may promote in the near future within a period of six months.

(b) That the said advance would be adjusted against the booking amount payable by me/us as and when a residential plot is allotted in my/our name.

(c) That in the event the residential plot is allotted after nine months, simple interest @10% per annum shall be paid to me/us for the period delayed beyond nine months on the amount paid by me/us as advance till such the I/We am/are



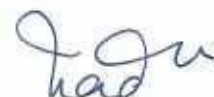
allotted a residential plot or adjusted against the price of the plot to be allotted to me/us.

(d) In case the Company fails to allot a plot within a period of one year from the date of making payment, then I/We would have the option to withdraw the money by giving one-month notice.

(e) That it is understood that the Company shall allot me a residential plot at price which is Rs. 300/- (Rupees Three Hundred Only) per square yard less than the launch price.

(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.

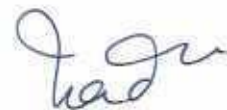
25. That Clause f of the Application Form which clearly states that while proceeding ahead with the purchase, the original applicants have clearly understood that no allotment was made in their favour and the original applicants had further given the undertaking that in case no allotment is possible in future, then they would accept refund with simple interest at the rate of 10% per annum.
26. That on 10.03.2006, the Original Applicants transferred/ endorsed their rights in favour of the Mrs. Naresh Kumari ("hereafter referred as "The subsequent Applicant") after submitting the necessary/ relevant documents in the Office of Respondent Company. A copy of endorsement letter dated 10.03.2006, is annexed herewith as Annexure



R-2. On 19.01.2006, Mrs. Naresh Kumari had signed & executed an Affidavit-Cum-Undertaking and Indemnity, the said Affidavit-Cum-Undertaking and Indemnity clearly stipulates that in case the Mrs. Naresh Kumari is not allotted any plot in upcoming project of the Respondent, she shall accept refund of the deposited amount with 9% simple interest per annum. For ease of appreciation CLAUSE 7 of the undertaking is reproduced hereunder as :

"That I/We agree that if I/We are not allotted any plot in the Present & Future Projects, then I/We will accept the refund of the deposited money with the Company along with simple interest @ 9% per annum from the date of acceptance of our nomination by the Company."

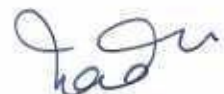
27. That on 09.06.2008, the Mrs. Naresh Kumari transferred/ endorsed her rights in favour of the Mrs. Uma Gupta after submitting the necessary/ relevant documents in the Office of Respondent Company. A copy of endorsement letter dated 09.06.2008, is annexed as Annexure R-4.
28. That on 30.04.2008, Mrs. Uma Gupta had signed & executed an Affidavit-Cum-Undertaking and Indemnity. The said Affidavit-Cum-Undertaking and Indemnity clearly stipulates that in case the Mrs. Uma Gupta is not allotted any plot in upcoming project of the Respondent, she shall accept refund of the deposited amount with 9% simple interest per annum. For ease of appreciation CLAUSE 7 of the undertaking is reproduced hereunder as :



"That I/We agree that if I/We are not allotted any plot in the Present & Future Projects, then I/We will accept the refund of the deposited money with the Company along with simple interest @ 9% per annum from the date of acceptance of our nomination by the Company."

A true copy of Affidavit-Cum-Undertaking & Indemnity dated 30.04.2008 is annexed as Annexure R-5.

29. That on 04.11.2024, on request for the Mr. Satya Parkash Gupta husband of Mrs. Uma Gupta, this registration has been transferred/endorsed into the favour of Mr. Ankit Gupta legal heir, after sudden demise of Mrs. Uma Gupta in the records of the Respondent Company after completing all due formalities.
30. That the Complainant before this Hon'ble Authority was well aware of the fact that even after expiry of 03 year from the date the Original Applicant & Subsequent Applicant applied for expression of interest no plot was allotted to the all previous applicants despite of this the Complainant wilfully moved ahead for the registration in his favour.
31. That it is pertinent to mention that till date Respondent Company had been only received an amount of ₹8,67,750/- (Rupees Eight Lakhs Sixty Seven Thousand & Seven Hundred & Fifty Only) till date. A true copy of the ledger dated 20.06.2025 is annexed as Annexure R-6.
32. That it is a matter of record that no demand was ever raised by the Respondent Company from the Complainant after the year 2008,



which establishes the fact that no project was allotted to the Complainant as well as the all previous Applicants and said registration, was merely an expression of interest/advance registration towards the new projects of the Respondent-Company. The Complainant never approached the Respondent-Company because the Complainant before this Hon'ble Authority was well aware of the fact that there was no allotment in his favour.

33. That it is pertinent to state that in absence of any agreement to sale, the Complainant is strictly bound by the terms & conditions of the Application Form & an Affidavit-Cum-Undertaking and Indemnity which is duly signed & executed by the Complainant.
34. That the money receipts would show that necessary ingredients of an agreement much less a valid contract is conspicuously missing. In the receipts, which have been been annexed by the Complainant in the present Complaint, there is no plot number, no plot size and no specification of the project and rather, receipts specifically mention advance against present and future/new projects.
35. That the present complaint filed by the Complainant before this Hon'ble Authority, besides being misconceived and erroneous, is untenable in the eyes of law. The Complainant had misdirected himself 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.

36. That in view of the submissions made hereinabove, no cause of action has arisen in favour of the Complainant to file the present Complaint. Further, the Complaint is barred by limitation and deserves and outright dismissal on this ground alone.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

37. Ld. Counsel for the complainant submitted that in the present case, Mr. Deepak Anand booked a plot measuring 300 sq. yds. in the respondent's project in 2006. Receipt for payment for booking is annexed as annexure C-1 of the complaint. Thereafter, the said booking was transferred in the name of Mrs. Naresh Kumari on 19.01.2006 and after the said transfer the booking was transferred in the name of Mrs. Uma Gupta (Mother of complainant Ankit Gupta) on 19.05.2008. Mrs. Uma Gupta died on 06.03.2024 and the same was intimated to the respondent and upon oral settlement between the parties the booking was transferred in blood relation in the name of the complainant Mr. Ankit Gupta on 02.12.2024.



38. An amount of ₹ 8,67,750/- stands paid against the booking of said plot however there is no communication with respect to offer of possession from the respondent since 2008. Complainant seeks possession of plot measuring 300 sq. yds in the project Parsvnath City, Sonipat along with delay interest. Ld. Counsel for the complainant also submitted that the present case is similar to complaint no. 723 of 2019 titled as Nishant Bansal vs. Parsvnath Developers Ltd already decided by the Authority and the present case may also be decided in same terms.
39. Ld. Counsel for the respondent submitted that complainant in the present case came into the shoes of the allottee in the year 2024 only and he has no locus to file the present complaint. She also stated that the present case is similar to complaint no. 723 of 2019 titled as Nishant Bansal vs. Parsvnath Developers Ltd and the same is being reviewed by the Hon'ble Punjab and Haryana High Court.

F. ISSUES FOR ADJUDICATION

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

H. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

41. Authority has heard arguments of both parties and has perused the documents available on record. Earlier the Authority was adjourning



the complaint cases similar to complaint no. 723 of 2019 tiled as Nishant Banal vs. Parsvnath Developers Ltd in view of the ongoing appeal pending in those cases in Hon'ble Punjab and Haryana High Court however since there is no stay in the said appeal Authority is proceeding to decide the case on merits. After going through the submissions made by both the parties, Authority observes as under:-

(i) It is an admitted fact that the original allottees Mr. Deepak Anand and Mr. Anesh Kohli made advance registration for a plot in the present and future project of the respondent M/s Parsvnath Developers Ltd. in February 2005 and paid an amount of ₹ 2,11,312/- towards sales consideration. It is also admitted by the respondent promoter that the advance registration was endorsed in favour of the subsequent allottee Ms. Naresh Kumari and the same was endorsed in the name of Mrs. Uma Gupta on 09.06.2008. The plot was transferred in the name of the complainant after the death of his mother Mrs. Uma Gupta by the respondent on 02.12.2024. There is also no dispute with regard to the fact that no specific plot was allotted to the predecessor in interest of the complainant and that no builder buyer agreement was executed between the parties. It is an admitted fact that even after a lapse of 20 years, no allotment of plot has been made by the respondent and Id. Counsel for respondent has stated that even today respondent is not in a position to allot a plot to the complainant. Thus, the respondent who



has accepted an amount of ₹8,45,249/- way back in the year 2005-2006 has been in custody of the money paid for allotment of the plot and has been enjoying benefits out of it. The issue which needs adjudication in this complaint is whether complainant is entitled to the relief of possession of plot booked by him along with interest for delay in handing over the possession in absence of builder buyer agreement and allotment.

(ii) On perusal of record and after hearing both the parties, Authority observes that 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 original applicant had paid a sum of ₹2,11,312.50/- and another payment of ₹2,11,312/- on 18.02.2005 for purchasing a plot measuring 300 sq. yards in next project of respondent and it was agreed between the parties that respondent shall allot a residential plot to applicant and in case he fails to do so for any reason whatsoever, advance money paid by applicant shall be refunded to her with 10% interest per annum. However, subsequent thereupon the respondent promoter accepted payments of ₹4,22,625/- from the original allottee Ms. Naresh Kumari. The fact that the respondent had accepted subsequent other payments from the predecessor of 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. Thereafter the plot was transferred in the name of Mrs. Uma Gupta (mother of the complainant). Endorsement was made in favour of the mother of the complainant by the respondent promoter on 09.06.2008. Acceptance of multiple payments and subsequent transfer by way of endorsement in favour of the complainant shows that the complainant is a subsequent allottee and is



covered within the definition of allottee as provided under Section 2(d) of the RERA Act of 2016.

(iii) Respondent in his reply has contended that there is no "agreement to sale" between the parties and therefore relief sought under Section 18 of RERA Act is not maintainable. If argument of respondent is accepted that there was no "agreement to sale" between the parties, it would imply that respondent, who is into the business of real estate development had accepted payment of ₹ 8,67,750/- ,i.e., approx. fifty percent of the basic sale price and issued receipts to predecessors of the complainant for 'nothing in return', which is impossible and hard to believe. Mere fact that an allotment letter specifying a particular unit no. was not issued to original allottee or a builder buyer agreement was not signed by the original allottee does not mean that he was not an allottee of the respondent. Once respondent has accepted the application form and received multiple payments from original 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 his duty to allot him a specific unit no. and execute a builder buyer agreement within a reasonable time. Failure on its part to do so will not affect the rights of applicant as an allottee. It is observed that the promoter has repeatedly raised demands for a unit ,i.e.,approx.. fifty percent of the



basic sale price of the unit and therefore same cannot be considered as mere 'expression of interest.'

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. 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 in Sonapat. Further, there is nothing on record to show that the allotment will be by way of any draw or first come first serve basis, or by any other mode and the complainant was denied allotment of a specific unit after following that process. Documents available on record, clearly shows that original allottee booked a plot in respondent's present and future project and respondent had agreed for 'sale of a plot'. Accordingly, the original applicant was very much "allottee" for the unit in project of respondent at Sonapat. It is pertinent to mention that the definition of allottee as provided under Section 2(d) of the Act of 2016 does not distinguish between original/erstwhile allottee and subsequent allottee. Therefore, the



complainant in this case after endorsement in his favour stepped into the shoes of the original/erstwhile allottee and complainant is well within the definition of the term allottee as provided in the Act. Hence, objection of respondent that complaint is not maintainable as complainant is not an allottee stands rejected.

(iv) Respondent has also taken objection that complaint is grossly barred by limitation. In this regard Authority places reliance upon the judgement of Apex court passed in Civil Appeal no. 4367 of 2004 titled as **M.P Steel Corporation v/s Commissioner of Central Excise** where it has been held that Indian limitation Act deals with applicability to courts and not tribunals.

Moreover, the promoter has till date failed to fulfil its obligations because of which the cause of action is re-occurring. Thus, the complaint is maintainable as per RERA Act, 2016. The RERA Act, 2016 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.

(v) Further, respondent has averred that complainant had executed an affidavit-cum undertaking and indemnity, the said affidavit-cum-



undertaking and indemnity clearly stipulates that in case he is not allotted any plot in upcoming project of the respondent company, then shall accept refund of the deposited amount with 9% simple interest per annum. To deal with this objection reference is made to **Civil Appeal no. 12238 of 2019 titled as Pioneer Urban Land & Infrastructure Ltd v/s Govindan Raghavan** wherein the Hon'ble Supreme Court has held that the principle that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable clause in a contract entered into between the parties who are not equal in bargaining power.

In the present case, respondent promoter and complainant were not having equal bargaining power and respondent promoter was in a dominant position. Complainant was bound to sign on dotted lines of undertaking to get the booking endorsed in his favor. Said undertaking is ex-facie one-sided, unfair, and unreasonable. Therefore said undertaking cannot bind the complainant with such one-sided terms.

(vi) Another objection taken by the respondent is that the provisions of RERA Act, 2016 cannot be applied retrospectively. Reference can be made to the 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." "45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest." "53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent



legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection. 54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."

The 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 were in the process of the completion though the contract/ agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.



(vii) Another objection of respondent is that there is no proof that booking was made for 'Parsvnath City, Sonapat' and there is no agreement between the parties which can be got executed by the Authority. Said argument of respondent is rejected in same terms as has been dealt in detail in **complaint no. 723 of 2019 titled as Nishant Bansal v/s Parsvnath Developers Ltd.** Relevant paras of the said order are being reproduced below:

"Admittedly, the respondent had already endorsed the transfer rights in favour of the complainants. If the respondent was keen to refund the amount and was not in a position to allot the plots, he should have exercised such option of refunding the already paid amount alongwith interest to the complainants when they had applied for transfer of booking rights. The respondent did not exercise such option and continued to withhold the already paid amount. This would imply that he had agreed to allot plots to the complainants instead of acting upon the clause which entitled him to refund the money alongwith interest. That being so, it does not now lie in the mouth of the respondent to claim at this stage that he does not have plots for allotment to the complainants or that the complainants are entitled only for refund alongwith interest.

11. *Needless to mention that the respondent was under obligation to first allot the plots to those persons from whom he had received the advance money and without satisfying them, he was not permitted to sell the plots to subsequent purchasers. Allotment of plots without adopting a criteria of first come first served has put the complainants to dis-advantage inasmuch as they have been deprived of the money which they could have*



earned due to escalation of prices. So, the complainants deserve to be held entitled for allotment and possession of the plots they had booked.

12. Now the only question requiring determination is whether or not the complainants are entitled to have plots in the project Parsvnath City, Sonipat. The complainant's case in lead case is that the respondent launched a township named Parsvnath City under "Present and Future Scheme" at Sonipat to sell plots and a plot booked by Mr. Santosh Bansal to whom respondent had provided customer code no. PS/S0274, was subsequently purchased by Mr. Gopi Chand and then was purchased by him from said Gopi Chand. The respondent's averment on this point is that he had not launched a township named Parsvnath City under 'Present and Future Scheme' at Sonipat, Haryana.

13. In order to ascertain whether or not any project was in fact launched at Sonipat with the name Parsvnath City, this Authority has enquired the matter from the project section of the Authority. Thereupon, it was revealed that such project indeed was launched by the respondent promoter at Sonipat bearing license no. 878-894 of 2006 dated 25.04.2006. Interestingly, the payments from the original applicants were collected prior to the year 2006. This will manifest that the complainants and their predecessors-in-interest had booked plots in pursuant to the advertisement floated in or around the year 2006. Some of the receipts issued to the complainants conspicuously reflect the name of the project as Parsvnath City, Sonipat. Reference in this regard can be made to the receipts available at page no. 13-14 of complaint no. 1115 of 2019 titled Sunita Jain Versus M/S Parsvnath Developers Ltd. and page no. 35 of complaint no. 1680 of 2019 titled Rekha Talwar & Ors. Versus M/S Parsvnath Developers Ltd.

14. In the backdrop of these circumstances, it can be easily deciphered that the complainants and their

predecessors-in-interest had booked plots in the project named Parsvnath City, Sonipat. Such an inference stands further fortified from the fact that respondent has not been able to produce any material on record to indicate that some project other than Parsvnath City, Sonipat was launched at Sonipat in or around the year 2006. The Authority, in these circumstances has no hesitation to conclude that complainants are entitled to have plots in the project named Parsvnath City, Sonipat"

(viii) In the present case, there is no allotment letter and plot buyer agreement has not been executed between the parties. Authority observes that in absence of clause with respect to handing over of possession in the plot buyer agreement it cannot rightly ascertain 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 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 17.02.2008 (three years from the date of booking i.e, 18.02.2005)

(viii) 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".

(x) 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.

(xi) 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., 01.12.2025 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.85%.

(xii) 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;

(xiii) 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 10.85% and said amount works out as per detail given in the table below:

Sr.no.	Principal Amount(in ₹)	Deemed date of possession i.e. / date of payment whichever is later	Interest Accrued till 01.12.2025(in ₹)
1.	8,67,750/-	17.02.2008	16,75,529/-
MONTHLY INTEREST = 7,738/-			

I. DIRECTIONS OF THE AUTHORITY

42. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act incorporating the modifications made by Hon'ble Appellate Tribunal 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 allot and deliver the possession of booked plot to the complainant in the project 'Parsvnath City, Sonapat' on payment of balance sale consideration recoverable from him. In case, respondent/promoter due to non-availability of plots, is not able to allot any plot and offer of its possession to the complainant, he will be liable to make available to him a plot of the size, as booked, by purchasing it from open market at his own cost. Respondent promoter however will be entitled to recover from the complainant the balance amount payable by him as per the rate agreed by the parties at the time of booking of plot.

(ii) Respondent is directed to pay the complainant upfront amount of ₹ 16,75,529/-. Respondent's liability for paying monthly interest of ₹7,738/- as shown in above table will commence w.e.f. 01.01.2026 and it shall be paid on monthly basis till valid offer of possession is made to complainants.

(iii) Alternatively, if the allottee wish to purchase equivalent size plots of his own in resale of the colony of the promoter, or equivalent plots in any other project of the appellant in District Sonipat, he is at liberty to take refund of the amount paid along with prescribed rate of interest i.e. SBI highest marginal cost of lending rate (MCLR) +2% ,i.e., 10.85% per annum from the



date of deposits till realisation and seek compensation of the excess amount paid in such purchase of plots, along with compensation for mental agony, harassment and legal expenses by way of filing separate complaints before the learned Adjudicating Officer.

(iv) 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.

43. **Disposed of.** 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