



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	390 of 2023
Date of filing:	03.03.2023
Date of first hearing:	04.05.2023
Date of decision:	09.03.2026

1. Ashwani Kumar and,
S/o Jawahar Lal
R/o House no.1077 Sector 14, Sonapat,
Haryana 131001
2. Ashok Makkar
S/o Sukh Dayal
R/o House no.1222 Sector 14, Sonapat,
Haryana 131001

....COMPLAINANT

VERSUS

Parsvnath Developers Ltd through its Director/ Authorised Person
Office: Parsvnath Metro Tower, Near Shahdara Metro Station,
Shahdara, Delhi- 110032

....RESPONDENT

Present: - Mr. Ketan Antil, counsel for the complainant through video conference.

Ms. Neetu Singh, counsel for the respondent through video conference.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint dated 03.03.2023 has been filed by the complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the unit booked by complainants, the details of sale consideration, the amount paid by the complainants 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., 400 sq. yards.
2.	Date of application by original applicant	12.02.2005
3.	Date of endorsement in favour of complainant	09.08.2006
4.	Date of allotment	Not made

5.	Date of builder buyer agreement	Not executed
6.	Basic Sales Price	₹23,00,000/-
7.	Amount paid by complainant	₹11,50,000/-
8.	Due date of possession	Cannot be ascertained
9.	Offer of possession	Not offered till date.

B. FACTS OF THE COMPLAINT:

3. Facts of complainant's case are that on 12.02.2005, original applicant Mr. Rajneesh Aggarwal 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 ₹5,75,000/-. Copy of receipt is annexed as annexure C-1.
4. The original applicant thereafter transferred his booking rights in favor of complainants Mr. Ashwani Kumar and Mr. Ashok Makkar. They made a payment of ₹5,75,000/- against the said plot. Plot was endorsed in favor of complainants on 09.08.2006 wherein payment of an amount of ₹5,75,000/- has been admitted to have been received by the respondent. Said letter is annexed as annexure C-2 of the complaint.
5. That thereafter complainants again made a payment of ₹5,75,000/- on 12.08.2026. Copy of receipt annexed as annexure C-3. In total an amount of ₹11,50,000/- has already been paid against the said plot.

6. That non-execution of the builder buyer agreement in spite of receiving substantial amount from the complainant is grave violation of the provisions of the RERA Act. Complainants thereafter, approached the officials of the respondent a number of times and asked them to execute the builder-buyer agreement and for the allotment of the plot to the present complainants. But the officials of the respondent company made excuses on one pretext or the other.
7. That a direction be issued for the execution of the builder-buyer agreement and further to grant the physical possession of the booked plot. Complainants are ready and willing to deposit all the necessary documents and are ready and willing to make payment as required by law for the delivery of the booked plot.
8. That the action of the respondent in not executing the builder-buyer agreement and further of not handing over of the possession the said booked plot is a violation of the provisions of the Act. That the Hon'ble HRERA, Panchkula in its several judgments has issued the directions to the respondent builder to execute the builder buyer agreement and further, to deliver the possession of the plot to the aggrieved persons. In case titled as **Nishant Bansal Vs M/s Parsunath Developers Ltd. Comp. No. 723 of 2019**, the similar directions have been issued.



9. That present complainants have approached and requested the respondent for the execution of the builder-buyer agreement with regard to the plot measuring 400 sq. yard situated in Parsvnath City, Kundli, Sonapat on payment of balance consideration but the respondent has failed to fulfill his obligation. The cause of action is continuing as till date the respondent has failed to fulfill his obligation. Complainants are suspicious that the respondent has wrongfully and illegally allotted the said plot in Parsvnath City, Kundli, Sonipat to some other person for wrongful gains.
10. That the complainants after getting no response from the respondent, issued a legal notice to the respondent through their counsel for the demand of execution of builder buyer agreement and for delivery of the booked plot and for awarding the delayed interest. The copy of legal notice dated 10.01.2023 annexed as Annexure C-4.
11. That even after receiving the legal notice issued by the present complainants no action has been initiated by the respondent which shows gross negligence on the part of the respondent.
12. That the Respondent has failed to abide by the settled provisions of the Real Estate (Regulations and Development) Act, 2016. The cause of action to file the complaint has arisen firstly on 12.02.2005 and it is still continuing.



13. That a number of reminders and meetings, have been held with respondent/OP for performing the legal obligations but all have gone in vain. The respondent is sitting silently and is not taking any action. As per the present status of construction, the respondents, have not even followed the timeline and the directions issued by the Authority.
14. Therefore, in terms of RERA, the complainants are entitled for the execution of the Builder Buyer Agreement and further for the timely delivery of possession of the above said residential plot situated in Parsvnath City, Kundli, Sonipat on payment of pending consideration and to get the penalty for the delay of possession of the plot at the same rate of interest as is charged by the respondents ,i.c, 24% per annum. Still further, the complainants reserve the right to receive compensation from the opposite party as per the provisions of this Act or any other Act.

C. RELIEFS SOUGHT

15. The complainant in his complaint has sought following reliefs:
- (i) In exercise of powers under section 35, direct the Respondent to place on record all statutory approvals and sanctions of the project;
- (ii) In exercise of powers under Section 35 of RERA and Rule 21 of HIRE (R&D), Rules, 2017, to provide complete details of EDC/IDC



and statutory dues paid to the Competent Authority and pending demand if any;

- (iii) To direct the respondent to produce the original documents with regard to the plot situated in Parsvnath City, kundli, Sonipat;
- (iv) To direct the respondent to execute Builder-Buyer agreement in favour of the present complainants in a time bound manner;
- (v) To direct the respondent to deliver the physical possession of the plot measuring 400 sq. yard to the present complainants in a time bound manner;
- (vi) To compensate the Complainants for the delay in completion of the project and to direct to pay 24% compound interest for the delayed period
- (v) Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 08.05.2023 pleading therein as under:-

16. That, the present complaint is not maintainable before this Hon'ble Authority for the reason that the complainants are not an allottee of

the respondent company and the registration was mere an expression of

interest towards the future project of the respondent.

17. That, as per section 2(d) of the Real Estate (Regulation and Development) Act, 2016, the definition of allottee is reproduced for case 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;

18. That, the present complaint is grossly barred by limitation and this Hon'ble Authority 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

complainants are guilty of delay and laches, therefore, their claim should be dismissed.

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 the complainants have failed to plead cause of action in accordance with law.
23. That initially on 12.02.2005, one Mr. Rajneesh Aggarwal jointly had expressed his interest in the registration/booking of a plot in any of the upcoming project of the respondent company and paid ₹5,75,000/- towards its registration.
24. That the original applicant was well aware of the fact that neither any location nor any site of the project was confirmed at the time of



registration. The original applicant gave an undertaking that in case no allotment is made, then he shall accept refund of the amount deposited by him towards registration.

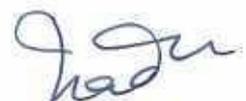
25. That Clause "f" of the Application Form clearly states that while proceeding ahead with the purchase, the original applicant has clearly understood that no allotment was made in his favour and the original applicants had further given the undertaking that in case no allotment is possible in future, he would accept refund with simple interest at the rate of 10% per annum.
26. That on 09.08.2006, the Original Applicants transferred/ endorsed his rights in favour of the Mr. Ashwani kumar and Ashok Kumar. A copy of endorsement letter dated 09.08.2006, is annexed as Annexure R-2.
27. On 17.01.2006, the complainants have signed & executed an Affidavit-Cum-Undertaking and Indemnity, the said Affidavit-Cum-Undertaking and Indemnity clearly stipulates that in case the complainants are not allotted any plot in upcoming project of the Respondent, they 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

28. That the complainants before this Hon'ble Authority were well aware of the fact that there was no allotment in favour of predecessor in interest of the Complainant.
29. That an amount of ₹5,75,000/- had been paid by the original applicant in the year 2005 and another amount of ₹5,75,00/- had been paid by the complainants in the year 2006 at the time of endorsement. A copy of the ledger dated 18.03.2023, is annexed as Annexure R-4. That it is a matter of record that no demand was ever raised by the respondent company from the complainants after the year 2006, which establishes the fact that no plot was allotted to the complainants and registration was merely an expression of interest towards the upcoming project of the Respondent.
30. That in absence of any agreement to sale, the complainants are strictly bound by the terms & conditions of the application form and affidavit cum memorandum of undertaking and indemnity which is duly signed & executed by the complainants.
31. 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 have been annexed by the complainants in the present Complaint, there is no plot number, no plot size and no

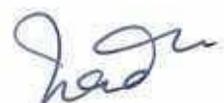


specification of the project and rather, receipts specifically mention advance against present and future project.

32. That the present complaint filed by the complainants before this Hon'ble Authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainants have misdirected themselves in filing the above captioned complaint before this Hon'ble H-RERA, Panchkula as the relief (s) claimed by the complainants do 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.
33. That in view of the submissions made hereinabove it is submitted that no cause of action has arisen in favour of the complainants 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

34. Id. Counsel for the complainants submitted that complainants do not wish to change their relief now and requested that final arguments may be heard in the present case. With respect to the other reliefs, Id. Counsel for the complainants submitted that he seeks to withdraw his relief no. 1, 2 and 3. He further submitted that original allottee booked a plot in the Present and Future project situated in Sonipat on



12.02.2005 after paying an amount of ₹5,75,000/-. Complainant purchased the booking rights of said plot from the allottee and plot was endorsed in favor of the complainant on 09.08.2006. Thereafter, another payment of ₹5,75,000/- was made to the respondent on 12.08.2006. In total an amount of ₹11,50,000/- stands paid to the respondent against the plot. Complainants are seeking possession of the plot along with delay interest. Ld. Counsel for the complainants also submitted that present case is similar to complaint no. 723 of 2019 titled as Nishant Bansal vs. Parsvnath of Developers Ltd. and requested that present case may be decided in same terms.

35. Ld. Counsel for the respondent submitted that respondent is not in a position to offer possession of plot and is ready to refund the amount paid by the complainants along with interest.

F. ISSUES FOR ADJUDICATION

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

G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

37. 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 allottee, Mr. Rajneesh Aggarwal 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 ₹5,75,000/- towards sales consideration. It is also admitted by the respondent promoter that the advance registration was endorsed in favour of the complainants Mr. Ashwani Kumar and Mr. Ashok Makkar on 09.08.2006. There is also no dispute with regard to the fact that no specific plot was allotted to the predecessor in interest of the complainants 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 complainants. Thus, the respondent who has accepted an amount of ₹11,50,000/- 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 complainants are entitled to the relief of possession of plot booked by them 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 complainants are not "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 ₹5,75,000/- 12.02.2005 for purchasing a plot



measuring 400 sq. yards in next project of respondent and it was agreed between the parties that respondent shall allot a residential plot to applicant. Subsequent thereupon the respondent promoter accepted payment of ₹5,75,000/- from Mr. Ashwani Kumar and Mr. Ashok Makkar. The fact that the respondent had accepted subsequent other payments from the complainants 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 Mr. Ashwani Kumar and Mr. Ashok Makkar. Endorsement was made in favour of the complainants by the respondent promoter on 09.08.2006. 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 ₹11,50,000/- ,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 payments from original allottee and subsequent allottees 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 them 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 applicants as an allottee. It is observed that the promoter has 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.'

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 complainants in this case after endorsement in their 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 complainants are not "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 complainantS had executed an affidavit-cum undertaking and indemnity, the said affidavit-cum-undertaking and indemnity clearly stipulates that in case they are 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 complainants were not having equal bargaining power and respondent promoter was in a dominant position. Complainants were bound to sign on dotted lines of undertaking to get the booking endorsed in their favor. Said undertaking is ex-facie one-sided, unfair, and unreasonable. Therefore said undertaking cannot bind the complainants 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

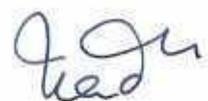
applicability of the Act, even on facts of this case.” “45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought 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 complainants. 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 12.02.2008 (three years from the date of booking i.e., 12.02.2005)

(ix) As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HIRERA 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., 09.03.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.80%.

(xii) The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

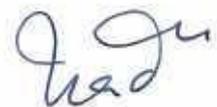
(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

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 10.80% and said amount works out as per detail given in the table below:



Complaint no. 390/2023

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.	11,50,000/-	12.02.2008	22,46,148/-
MONTHLY INTEREST = 10,208/-			

II. DIRECTIONS OF THE AUTHORITY

38. Hence, the Authority hereby passes this order and issue 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 complainants in the project 'Parsvnath City, Sonapat' on payment of balance sale consideration recoverable from them. 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 them 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 complainants 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 ₹22,46,148/-. Respondent's liability for paying monthly interest of ₹10,208/- as shown in above table will commence w.e.f. 10.04.2026 and it shall be paid on monthly basis till valid offer of possession is made to complainants.

(iii) Alternatively, if the allottees wish to purchase equivalent size plots of their own in resale of the colony of the promoter, or equivalent plots in any other project of the appellant in District Sonapat, they are 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., 10.80% 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.



39. **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