

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

**Complaint No. : 62 of 2018**  
**First date of hearing: 17.04.2018**  
**Date of Decision : 13.09.2018**

1. Mrs. Neelam Khurana  
2. Mr. Rajesh Khurana,  
Both R/o. flat no. 1418A,  
The Magnolias, DLF Golf Course Road,  
DLF-IV, Gurugram, Haryana.

**Complainant**

Versus

M/s ParsvnathHessa DevelopersPvt. Ltd.  
Office Address: Parsvnath Metro  
Tower, near Shahdara Metro Station,  
Shahdara, Delhi-110032.

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar  
Shri Subhash Chander Kush

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri Sukhbir Yadav  
Ms. Divya Gupta  
Shri Namit Jain  
Shri Krishan Joshi

Advocate for the complainant  
Senior Manager on behalf of the  
respondent  
Advocate for the respondent  
Junior Draftsman, Office of STP,  
Gurugram

**ORDER**

1. A complaint dated 26.03.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and



Development) Rules, 2017 by the complainants Mrs. Neelam Khurana and Mr. Rajesh Khurana, against the promoter M/s Parsvnath Hessa Developers Pvt. Ltd., on account of violation of the clause 10.(a) of the flat buyer agreement executed on 06.01.2007 in respect of flat number B5-402, 4<sup>th</sup> floor, block/tower 'B5' in the project 'Parsvnath Exotica' for not handing over possession on the due date which is an obligation under section 11(4)(a) of the Act *ibid*.

2. The particulars of the complaint case are as under: -

1.	Name and location of the project	"Parsvnath Exotica", Sector 53/54, Gurugram
2.	RERA registered/ not registered.	<b>Not registered</b>
3.	Flat/unit no.	402 on 4 <sup>th</sup> floor, block/tower 'B5'
4.	Flat measuring	3390 sq. ft.
5.	Date of execution of apartment buyer agreement	06 <sup>th</sup> January 2007
6.	Payment plan	Construction linked payment plan
7.	Basic sale price of the said unit	Rs.1,97,29,800/-
8.	Total amount paid by the complainant till date	Rs.1,93,66,994/-
9.	Percentage of consideration amount	Approx. 97.9 percent
10.	Date of delivery of possession as per clause 10.(a) of flat buyer's agreement (36 months + 6 months grace period from the date of commencement of construction, i.e. 02.02.2010 (on start of foundation-annexure R-10) on receipt of sanction of building plans and other approvals)	02 <sup>nd</sup> August 2013



11.	Delay in handing over possession till date	5 years 1 month and 11 days
12.	Penalty clause as per flat buyer agreement dated 06.01.2007	Clause 10.(c) of the agreement i.e. Rs.10/- per sq. ft per month of the super area of the said flat.

3. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. A flat buyer agreement is available on record for the aforementioned flat according to which the possession of the aforesaid unit was to be delivered on 02.08.2013. The respondent company made an offer of possession on 23.03.2018 for fit outs along with a rebate offer of Rs.14,00,000/- for carrying out finishing work. The flat builders being in a dominating position have made a one-sided agreement. The promoter has not fulfilled his committed liability by not giving possession as per the terms of the flat buyer agreement. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent through his counsel appeared on 03.05.2018. The case came up for hearing on 17.04.2018, 03.05.2018, 22.05.2018, 29.05.2018, 26.06.2018, 05.07.2018, 12.07.2018,



21.08.2018, 29.08.2018 & 13.09.2018. The reply filed on behalf of the respondent has been perused.

### **Facts of the complaint**

5. Briefly stated, the facts of the complaint are that family members of complainants always insisted to buy a flat as the complainant and his family members were anxious to buy of their own independent flat and that was the right time to own it as someone close to the complainant suggested to get a flat at 'Parsvnath Exotica' project situated at Golf Course Road, Sector - 53/54, Gurugram promoted by a reputed Parsvnath Developers Limited (PDL later-on form a joint venture namely "Parsvnath Hessa Developers Private Limited" and transferred the said project to PHDPL) i.e. the respondent party.
6. The complainants submitted that thereafter the complainants along with their family members visited the site. The location was excellent, and they consulted the local representative of the developer. The local representative directed the complainants to contact with the company's registered and corporate office situated at: 6<sup>th</sup> floor, Arunachal Building, 19, Barakhamba, New Delhi -110001. There the complainants met with company executive and they allure to them to book a flat.



7. The complainants submitted that vide allotment letter dated 6.12.2010 unit no. B5-402 (measuring 3390 sq. ft.) in the township i.e. (Prasvnath Exotica, Sector – 53/54, Gurugram) constructed /developed by the respondent party for sale consideration of Rs.2,01,29,800/- was allotted to the complainants. Thereafter, a flat buyer agreement was executed between complainants and respondent on 06.01.2007. The complainants took loan from Deutsche Bank to make the payment / demands raised by respondent. The complainant continued to pay the remaining installment as per the payment schedule and have already paid the more than 95% amount i.e. Rs.1,93,66,904/- along with interest and other charges of actual purchase price.
8. The complainants submitted that since 2014, complainants were regularly visiting at the office of respondent as well as on construction site and made efforts to get the possession of allotted flats but all in vain. The complainants have never been able to understand/know the actual state of construction though towers seem to be built up, but no progress was observed on finishing and landscaping work.
9. The complainants submitted that the main grievance of the complainants in the present complaint is that in spite of payment of more than 95%, till 16.08.2013, of the actual



amounts of flat and the complainants being ready and willing to pay the remaining amount, the respondent party has failed to deliver the possession of flat.

10. The complainants submitted that it was promised by the respondent party at the time of receiving payment for the flat that the possession of fully constructed flat would be handed over to the complainants as soon as construction completes i.e. thirty-six (36) months as per flat buyer agreement. The complainants submitted that there is a deficiency of service on the part of the respondent and as such they are liable to be punished and compensate the complainants.
11. The complainants submitted that cause of action for the present complaint arose in or around 2007 when the buyer agreement containing unfair and unreasonable terms was, for the first time, forced upon the allottees. The cause of action further arose in 2009-2010, when the respondent party failed to handover the possession of the flat as per the buyer agreement. The cause of action again arose on various occasions, including on: a) Dec. 2013; b) May 2014; c) June, 2014, d) April, 2016; e) Feb. 2017, f) December, 2017, g) Feb. 2018 and on many time till date, when the protests were lodged with the respondent party about its failure to deliver the project and the assurances were given by it that the



possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as this hon'ble authority restrains the respondent party by an order of injunction and/or passes the necessary orders.

**12. Issues raised by the complainants are as follow:**

- i. Whether the respondent has violated the terms and conditions of the said agreement?
- ii. Whether there is any reasonable justification for delay in handing over possession of the flat?
- iii. Whether there has been deliberate or otherwise, misrepresentation on the part of the developers for delay in giving possession?
- iv. Whether complainant(s) are entitled for refund of all money paid to Respondent?
- v. Whether complainant(s) are entitled for compounding interest @ 24% per annum from date of booking /January 2010 to till date?
- vi. Whether complainant(s) are entitled for compensation for mental agony and harassment? If yes, what amount?

**13. Relief sought:**



The complainants are seeking the following reliefs:

- i. Direct the respondent parties to compensate with interest @24% from January 2010 till date of possession on paid amount by the complainant to the respondent party.
- ii. The respondent party may kindly be directed to hand over the possession of flats to the allottees immediately and not later than three months from the date of judgment, complete in all respects and execute all required documents for transferring / conveying the ownership of the respective flats.

### **Respondent's reply**

Preliminary Objections:

14. The respondent submitted preliminary objections upon the maintainability of the complaint and also filed an application for rejection of the complaint on the ground of jurisdiction. The respondent stated that the present complaint is not maintainable in law or facts and the hon'ble regulatory authority has no jurisdiction whatsoever to entertain the present complaint. The complaints pertaining to compensation and interest for a grievance under sections 12, 14, 18 and section 19 of the Real Estate (Regulation and





Development) Act,2016 are required to be filed before the adjudicating officer under rule 29 of the Haryana Real Estate (Regulation & Development) Rules, 2017 read with section 31 and section 71 of the said Act and not before this hon'ble regulatory authority under rule 28.

15. The respondent submitted that even though the project of the respondent is covered under the definition of "ongoing projects" and the respondent has already applied for the registration of the project with RERA vide application dated 23.04.2018, and as per the disclosure in the said application for grant of RERA certificate the project wherein the present tower is situated will be completed within the time specified therein or granted by the authority. The complaint, if any, is still required to be filed before the adjudicating officer under rule 29 of the said rules and not before the hon'ble authority under rule 28.

Reply on merits

16. The respondent submitted that the statement of objects and reasons of the said Act clearly states that the RERA is enacted for effective consumer protection. The RERA is not enacted to protect the interest of investors. As the said Act has not defined the term consumer, therefore the definition of "consumer" as



provided under the Consumer Protection Act, 1986 has to be referred for adjudication of the present complaint. The complainant is an investor and not a consumer.

17. It is submitted by the respondent that the hon'ble regulatory authority has no jurisdiction to entertain the present complaint as the complainant has not come to the authority with clean hands and has concealed the material fact that the complainants have been wilful defaulters, having deliberately failed to make the payment of various instalments as and when it became due or upon the demand raised as per the payment schedule.
18. The respondent submitted that the complainant approached the respondent and submitted an application form on 31.10.2006 wherein apartment no. B5-402 with the super area of 3390 sq. ft. in the project, "Parsavnath Exotica" being developed in Sector 53, Gurugram, was allocated to the complainant at the rate of Rs.6000/- per sq. ft. at a basic price of Rs.2,03,40,000/- plus Rs.4,00,000/- as two covered car parking charges. An amount of Rs.29,59,470/- was paid at the time of booking. At the time of submission of that application form with the company, the company offered 3% discount on the basic price as such the basic price was reduced and the new basic price of the said apartment was Rs.1,97,29,800/-.



19. The respondent submitted that as per the agreed payment schedule, the next instalment within 45 days of the booking, the complainant had to pay instalments as per construction linked payment plan, however the complainant had been negligent since beginning in payment of the instalment as agreed between the parties. The respondent issued letter dated 02.02.2010 (on start of foundation) asking the complainant to pay amount towards the instalment. The reminder of this letter was issued on 19.02.2010, 31.03.2010, 10.04.2010, 29.06.2010, 14.08.2010, 27.08.2010, 06.09.2010, 04.10.2010, 05.10.2010, 11.10.2010, 15.11.2010, wherein the outstanding amount has raised upto Rs.60,20,604/-.
20. The complainant issued letter on 30.11.2010 requesting the respondent to balance transfer from ICICI Bank to Standard Chartered Bank and a tripartite agreement was executed between the parties on 30.11.2010 itself. However, even after that no instalment was paid in time.
21. The respondent submitted that the complainant issued letter dated 31.07.2012 informing the respondent that they have got the loan amount of Standard Chartered Bank foreclosed and have applied with Deutsche Bank for enhancement of the loan amount and Deutsche Bank disbursed the amount of Rs.46,84,356/-, issued receipt on 06.08.2012. after scrutiny of



the account of the complainant, it was found that the complainant was in default of payment of Rs.1,72,733/- and letter to this effect was sent to the complainant on 14.08.2012. the respondent has submitted that the complainant has defaulted in making timely payment on various occasions.

22. Vide letter dated 05.07.2013, the respondent informed the complainant about opening of ESCROW account of the respondent and requested to deposit and issue cheques in the name of ESCROW account.

23. The complainants were issued a letter dated 23.03.2018 wherein the flat was offered to the complainant for fit outs and were also offered a rebate of Rs.14,00,000/- for carrying out finishing work but the complainants have not taken any action in taking the possession of the said flat.

24. The respondent submitted that the authority is deprived of the jurisdiction to go into the interpretation of or rights of the parties and no such agreement as referred to under the provisions of said Act or said Rules has been executed. The flat buyer agreement dated 06.01.2007 was executed much prior to coming into force of said Act or said Rules. The adjudication of the complaint for interest and compensation, has to be in reference to the agreement for sale executed in terms of said



Act and said Rules and no other agreement. Thus, no relief can be granted to the complainant.

25. The respondent submitted that they have made huge investments in obtaining approvals and carrying on the construction and development of 'Parsvnath Exotica' project and despite several adversities is in the process of completing the construction of the project and have already applied for registration of the project and also had to incur interest liability towards its bankers.

26. The respondent submitted that the delay and modifications, if any, have been caused due to the delay caused by the appropriate government authorities in granting the requisite approvals, which act is beyond the control of the respondent. The respondent has been diligently pursuing the matter with various authorities and hence no delay can be attributed to the respondent.

27. The respondent submitted that the complainants have made false and baseless allegations with a mischievous intention to retract from the agreed terms and conditions duly agreed in form of the agreement.

28. The respondent is not liable to pay any interest on the refund being claimed by the complainants. As the interest of 24% per



annum compounding as claimed by the complainants is exorbitant and as per the clause 10(c) of the agreement, the respondent is not liable to pay any interest to the complainants as time is not of the essence of the agreement.

## 29. Written arguments

- i. The delay of more than 8 years is not an ordinate delay and till date also flat is not fully ready for occupancy.
- ii. The complainant is not a wilful defaulter. As per oxford dictionary defaulter means "A person who fails to fulfil a duty, obligation or undertaking". The complainant paid fully the demanded money with interest etc till date when construction work was in progress.
- iii. The project of respondent comes under the definition of 'ongoing projects' and it is still unregistered in HARERA. As acknowledged by the respondent that application for the RERA registration is applied on 23.04.2018. It is pertinent to mention here that as per section 3(1) first proviso of the Real Estate (Regulation and Development) Act 2016, respondent need to get register the project within three months from the date commencement of this Act. And section 3 came into force w.e.f. 01.05.2017. The



said act of respondent also indicates towards his irresponsible and unprofessional behaviour.

- iv. That as on the date the respondent does not have occupation certificate of tower B-5. Fire Department N.O.C., Environmental N.O.C. etc is also not with respondent and common amenities are yet to be installed.
- v. It is nowhere written in agreement that time is not of the essence. It is pertinent to mention here that grace period can be given subject to force majeure and as far as knowledge/ information of complainant, there was, nor is any force majeure, which restricts the completion of project.
- vi. That the respondent issued a letter of offer for fit outs of flat. In this letter respondent increased the area of flat by 105 sq. ft. there is no description, where they increased their area. Hence, it is requested to the Hon'ble Authority to direct the respondent to submit that offer for fit does not amount to offer of possession. The complainants did not place any request for allowing them to do interior and finishing work. Complainants bought the said flat with bundle of services with specification mentioned in flat buyer agreement.



- vii. The flat buyer agreement was one sided, unilateral, arbitrary and biased agreement, which was forcefully imposed on complainant. If complainant fails to execute the said unilateral agreement, respondent would forfeit 15 % earnest money. The respondent never discussed terms of agreement before drafting of agreement. Agreement was in pre printed form and under undue influence and coercion complainant signed the said agreement. Hence the terms which are unilateral, arbitrary, one sided and biased are voidable.
- viii. The builder has charged 24% interest on delay payments, hence complainant/allottee are also entitled for 24% compoundable interest. That respondent failed to perform duly as given in section 17 of the RERA Act.

### **Determination of issues**

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

30. In regard to the first issue raised by the complainants, the promoters have violated the agreement by not giving the possession on the due date as per clause 10(a) of the said





agreement. The clause regarding the possession of the said unit is reproduced below:

*“10(a)- Construction of the flat is likely to be completed within a period of 36 months of commencement of construction of the particular block in which the flat is located, with a grace period of 6 months, on receipt of sanction of building plans/revised building plans and approvals of all concerned authorities...”.*

Thus, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

*“11.4 The promoter shall—*

*(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:*

*Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”*



31. Regarding the second issue raised by the complainants, the MD of the respondent company, Sh. Sanjeev Jain submitted that the delay on their part has been due to the beneficiary interest

policy(BIP) laid down by the government wherein due to the fault on the part of the licensee company, their project got delayed and such delay was beyond their control. However, despite this contention, there has been an inordinate delay in handing over the possession.

32. Regarding the third issue in the complaint, the complainants have not furnished anything to prove any misrepresentation on the part of the respondent company.

33. In regard to fourth issue in the complaint, the respondent submitted before the authority that they will be applying for the RERA registration and the tower in question shall be completed in another 9-12 months' time period. Keeping in view the interest of other allottees and the completion of the project, the authority is of the view that the time committed by the respondent must be granted for handing over the possession. Accordingly, refund cannot be allowed at this stage. By granting right to one party, rights of others shall not be jeopardised as refund at this stage shall adversely affect completion of the project and consequently all other allottees who intends to continue in the project will suffer. However, in case of default on the part of the respondent in delivery of possession on the committed date, the complainants will be entitled to claim refund.



34. In regard to the fifth issue raised by the complainants, as the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay to the complainant interest, at the prescribed rate i.e. 10.45%, for every month of delay till the handing over of possession.

Section 18(1) is reproduced below:

*“18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

35. In regard to sixth issue in the complaint, the complainants can seek compensation from the adjudicating officer under the RERA.



36. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

*“34 (f) Function of Authority –*

*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.”*

37. The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act which is reproduced below:

*“37. Powers of Authority to issue directions-*

*The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.”*

### **Findings of the authority**

38. **Jurisdiction of the authority:** The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s***



**EMAAR MGF Land Ltd.** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

39. The delay compensation payable by the respondent @ Rs.10/- per sq. ft. per month for the period of delay as per clause 10(c) of the builder buyer agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)**, wherein the Bombay HC bench held that:

*“...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements.”*

40. Keeping in view the present status of the project and intervening circumstances, the authority is of the view that Shri Krishan Soni, junior draftsmen who appeared on 13.09.2018 from the office of STP Gurugram submitted the photocopies of approval of building plans of the project bearing memo no. 3180 dated 10.04.2009 and occupation



certificate bearing no. 15958 dated 31.10.2011 and 3254 dated 17.03.2011 and as per the respondent represented by Shri Sanjeev Jain, Managing Director of the respondent company, there are 18 towers out of which 11 are fully developed and occupation certificate has been obtained and possession is offered to buyers and occupation certificate w.r.t. 5 towers has also been applied and w.r.t. remaining 2 towers, they are in the process of completing the construction of the project and should be able to complete it by 31.12.2019 as per the date mentioned in the registration application submitted with the registration branch. Thus, in view of the interest of other allottees as well as the endeavour of the authority to get stalled projects completed, the respondent must be granted time to complete the project till the date committed by the complainants must wait till the date committed by the respondent. However, the respondent is bound to give interest at the prescribed rate, i.e. 10.45% on the amount deposited by the complainants for every month of delay on the 10<sup>th</sup> of every succeeding month from the due date of possession till the handing over the possession of the unit. The respondent is also directed to pay the amount of interest at the prescribed rate from the due date of possession till the date of this order on the deposited amount within 90 days from the day of this



order. In case of any default in the handing over of possession, penal consequences may follow and the complainants can approach this authority for redressal of their grievance. Further, the complainants must also complete the payment due on their part.

41. The complainants by an application for amendment of complaint reserve their right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

#### **Decision and directions of the authority**

42. The Authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:

- (i) The respondent is directed to give the physical possession of the said flat to the complainants on the date committed by the respondent for handing over the possession.
- (ii) The respondent is directed to give interest to the complainants at the prescribed rate of 10.45% on the amount deposited by the complainants for every month of delay from the due date of possession till 13.09.2018 within 90 days of this order and thereafter



on 10<sup>th</sup> of every month of delay till the handing over of possession in their application for registration with Haryana Real Estate Regulatory Authority.

- (iii) If the possession is not given on the date committed by the respondent then the complainants shall be at liberty to further approach the Authority for the remedy as provided under the provisions, i.e. Section 19(4) of the Act *ibid*.

43. The order is pronounced.

44. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

**(Dr. K.K. Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

