

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

**Complaint No. : 244 of 2018**

**Date of Institution : 10.05.2018**

**Date of Decision : 13.09.2018**

Kish Export Limited  
Office:- 6315/C-6/7 Vasant Kunj,  
New Delhi

**Complainant**

**Versus**

1. M/s Parsvnath Hessa Developers Pvt. Ltd.  
2. Parsvnath Developers Ltd.  
Through its Directors, Parsvnath Metro Tower, Near  
Shahadra Metro Station, Shahadra, Delhi-110032,  
Corporate Office: 6<sup>th</sup> Floor, Arunachal Building, 19,  
Barakhamba Road, New Delhi-110001

**Respondent no. 1**

**Respondent no. 2**

**CORAM:**

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

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

**APPEARANCE:**

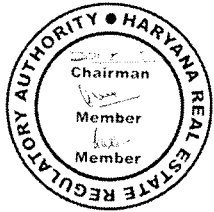
Sh. Sukhbir Yadav  
Ms. Divya Gupta

Sh. Pranay Malhotra

Sh. Sanjeev Jain

Advocate for the complainants  
Authorised Representative of  
Respondent  
Senior Manager of the  
respondent company  
Director of Parsvnath Hessa  
Developers Pvt. Ltd.

RESPONDENT NO. 2 – Ex parte proceedings has been initiated.



**ORDER**

1. A complaint dated 10.05.2018 was filed under section 31 of the Real Estate (Regulation And Development Act, 2016 read with rule 28 of The Haryana Real Estate (Regulation And Development) Rules, 2017 by the complainant Kish Export Limited, against the promoter M/s Parsvnath Hessa Developers Pvt. Ltd. and Parsvnath Developers Ltd., on account of violation of clause 10(a) of flat buyer agreement executed on 30.05.2005, for unit no B-1-1102 in the project "Parsvnath Exotica" for not giving possession on due date which is an obligation of the promoter under section 11 (4) (a) of the Act ibid.

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

1.	Name and location of the project	"Parsvnath Exotica", Sector-53/54, Gurugram
2.	Unit no.	B-1-1102
3.	Registered/ not registered	<b>Not registered</b>
4.	Date of booking	5.10.2004
5.	Date of flat buyer agreement	30.5.2005
6.	Total consideration amount as per agreement	Rs. 93,22,500/-



7.	Total amount paid by the complainants	Rs. 92,96,959/-
8.	Date of delivery of possession as per clause 10(a) 36 months plus 6 months grace period from the date of start of construction	01.05.2011 as per annexure P-5 copy of letter offer for fit outs
9.	Delay for number of months/ years upto date 13.09.2018	9 years 11 months
10.	Penalty clause as per flat buyer agreement dated 03.09.2012	Clause 10(c) of BBA i.e. Rs. 107.60 per sq meter or Rs.10/- per sq.ft. per month for the period of delay

3. The details provided above have been checked on the basis of the record available in the case file which has been provided by the complainant and the respondents. A flat buyer agreement is available on record for the aforementioned apartment i.e. unit no. B-1-1102, according to which the possession of the aforesaid unit was to be delivered on 30.11.2008 along with 6 months grace period. The respondents promoter's have failed to deliver the possession as per the terms of the builder buyer agreement Thus, as per



the builder buyer agreement, the promoter's are liable to pay a compensation @ Rs. 107.60 per sq meter or Rs.10/- per sq.ft. per month for the period of delay.

4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The respondents appeared on 01.05.2018. The case came up for hearing on 12.04.2018, 01.05.2018, 22.05.2018, 29.05.2018, 26.06.2018, 05.07.2018, 12.07.2018, 29.08.2018 and 13.09.2018.

### Facts of the complaint

5. That on date 25.03.2006, the complainant purchased a flat in the above mentioned project in resale from Mr. Rajesh Kumar Yadav, bearing no B-1-1102 (area admeasuring 3390 Sq. Ft.), in the township i.e. (Parsvnath Exotica, Sector- 53/54 Gurugram) constructed/developed by the respondent party. That the above said flat was booked by Ms. Neeta Malik on 5.10.2004 and the flat buyer agreement was executed on 30.5.2005. On 7.01.2006 Mr. Rajesh Kumar Yadav purchased the said flat from Ms. Neeta Malik and on 25.03.2006



complainant purchased the said flat from Mr. Rajesh Kumar yadav with permission of the respondent(s).

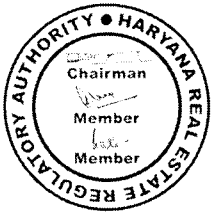
6. That thereafter the complainant continued to pay the remaining instalment as per the payment schedule of the of the builder buyer agreement and have already paid more than 95% amount i.e. Rs. 92,96,959/- till 14.07.2010 along with interest and other charges.
7. That even after repeated requests and visits from the complainant the respondents neither gave status reports on construction work, nor was any progress on the finishing and landscaping works observed. Aggrieved by the slow pace of work the complainant opted to carry out the interior and furnishing work on their own. On 28.05.2014 the respondent issued a letter to the complainant for “ offer for fit outs of the said unit” and offered a rebate of Rs. 7,50,000/- in lieu of carrying out the finishing work like A.C, A.C piping, false ceiling, wooden flooring, china ware, C.P fittings, electric wires and switches.



8. That the respondent issued a certificate of possession on 18.06.2014 and the complainant took the possession of flat for fit outs and spent an additional sum of 16 lakh rupees on interior and fit outs. As per clause 10(a) of the flat-buyer agreement, the company proposed to hand over the possession of the said unit by 13.07.2014 (from date of booking) + 6 months grace period, i.e. 13.01.2015. The clause regarding 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 or 24 months from the date of booking of the flat, whichever is later, with a grace period of 6 months, on receipt of sanction of building plans/revised building plans and approvals of all concerned authorities.....”.*

9. The main grievance of the complainant in the present complaint is that despite the full payment of the actual cost of the flat, the respondents failed to deliver absolute possession of the flat (with occupation certificate and NDC's from the concerned departments). Till date the respondents have not been able to execute a conveyance deed, which has disabled the complainant to get absolute rights on the said property



10. That as per the complaint the cause of action first arose in 2008 when the respondent failed to deliver possession of the flat within the stipulated time period as per the builder buyer agreement then again on the following dates: March 2011, June 2014, Jan 2015, June 2016 and on various other occasions.

**11. Issues raised by the complainant**

- i. Whether the developer has violated the terms and conditions of the BBA agreement?
- ii. Whether there is any reasonable justification for delay to give possession of flats?
- iii. Whether there has been deliberate or otherwise, misrepresentation on the part of the developers for delay in giving possession?
- iv. Whether the complainant is entitled to refund of all money paid to respondents?
- v. Whether the complainant is entitled for compound interest @ 24% per annum from date of booking till date?



## 12. Relief sought

- i. Direct the respondents to refund the amount Rs. 16,00,000/- spent on interior and fit out of the flat along with interest @ 24% per annum compounded from the date of booking till date of payment.
- ii. Direct the respondents to give the possession (with occupation/completion certificate) within 3 months from date of passing of order, also be directed to pay compensation for the period of delay of possession as mentioned above.
- iii. Respondents may kindly be directed to pay a sum of Rs. 10,00,000/- for deficiency in service as the complainant has suffered huge financial losses due to violation of the terms and conditions of the agreement by the respondent.
- iv. Respondents may kindly be directed to pay a sum of Rs. 10,00,000/- for negligence and unfair trade practices.
- v. Respondents may kindly be directed to pay a sum of Rs. 1,00,000/- as litigation expenses.
- vi. Respondents may be directed to complete and seek necessary governmental clearances regarding infrastructural and other necessary facilities before





handing over the possession of the flat to the complainant.

- vii. Respondents may kindly be directed to provide third party audit to ascertain areas of the flat accurately especially the super areas and built up areas.
- viii. Respondents may be directed to refrain from giving effect to unfair clauses unilaterally incorporated in the buyer's agreement.

### **Written arguments on behalf of complainant**

13. That at the onset it is pertinent to mention that Parsvnath developers limited (respondent No. 2) did not appear before hon'ble authority and not tendered any reply of complaint. Hence it is most respectfully submitted that ex-parte proceedings should be initiated against him. It is respectfully submitted that heavy cost and penalty need to impose on respondent for non-compliance to order of the authority. Respondent no. 1 and 2 have joint as well as several liabilities towards complainant.



### Respondent's reply

14. That as per the respondents, occupation certificates have been issued for 11 towers out of 18 which are developed and completed, and occupation certificates for 5 towers D4, D5, D6, B1 and C4 have been applied for and are pending before the DTCP. Also stated, is the fact, that in tower B1 in which the flat of the complainant is situated is complete in all respects and that out of 41, 28 allottees have already occupied their respective flats for carrying out the fitout work in their flats. The respondents state that all the basic amenities and facilities are duly available at the project site and that the fit out work in the flat of the complainant is complete. That work of the tower B. Is complete since 2013 and application for occupation certificate is pending since 2013.

15. Respondents submitted that they had applied for occupation certificate on 13.08.2013 which is much prior to the publication of the rules thus the project is not an ongoing project. The respondents states that the complainant is acting as an investor and not as a consumer. The respondents states that on 27.09.2007, a letter was issued to the complainant for



next payment for start of construction. The respondents brings in attention the notice with respect to non-payment of instalments 3,4,5 and 6 by the complainant. The respondents informed the complainant that they have opened the Escrow account dated 05.07.2013.

16. The respondents mentioned in their reply that the complainant was offered the unit for fit outs along with a rebate of Rs. 7,50,000/-. The respondent company vide its letter dated 28.05.2014 duly credited a sum of Rs. 9,15,300/- on account of delay compensation starting from May 2011 till July 2013 as per clause 10(c) of the builder buyer agreement. The respondents stated that due to recession period the construction work had slowed down. The respondents states that time is not the essence of this agreement, the intention is the essence of the agreement. The respondents further stated that authority does not have the jurisdiction to decide the case as the said project is not an ongoing project as per Rule 2(o) of the Haryana Real Estate (Regulation and Development) rules 2017 and the present complaint lies before the adjudicating officer.



17. The respondents states that the causes of delay whatever they were, were beyond the control of the promoter and the liability for that does not lie with the promoter.

### Determination of issues

18. In regard to the **first issue** raised by the complainant, the promoters have violated the agreement by not giving the possession on the due date as per the agreement, thus, the authority is of the view that the promoter has failed to fulfil his obligation mentioned in clause 10(a) of the buyer's agreement and also violated 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.”*

19. With respect to the **second issue** raised by the complainant, 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.
20. With respect to the **third issue** in the complaint, the complainant have not furnished anything to prove any misrepresentation on the part of the respondent company.
21. 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 respondents in delivery of possession on the committed date, the complainant will be entitled to claim refund.

22. In regard to the **fifth issue** raised by the complainant, 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 of 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.*

23. The complainant 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.”*

24. The complainant 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:



### **Powers of Authority to issue directions-**

25. 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

26. **Jurisdiction of the authority-** The preliminary objections raised by the respondents 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 complainant at a later stage.

27. The delay compensation payable by the respondent @ Rs.107.60 per sq meter or 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 respondents 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.”*

28. 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 respondents 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 respondents must be granted time to complete the project till the committed date and the complainant must wait till the date committed by the respondents. However, the respondents are bound to give interest at the prescribed rate, i.e. 10.45% on the amount deposited by the complainant 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 respondents are 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 complainant can approach this authority for redressal of their



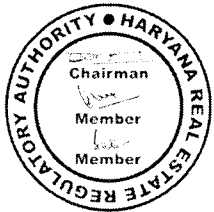
grievance. Further, the complainant must also complete the payment due on their part.

29. The complainant by an application for amendment of complaint reserve his 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**

30. 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 respondents are directed to give the physical possession of the said flat to the complainant on the date committed by the respondents for handing over the possession.
- (ii) The respondents are directed to give interest to the complainant at the prescribed rate of 10.45% on the amount deposited by the complainant for every month of delay from the due date of possession



04.05.2011 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 respondents then the complainant 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*.
- (iv) Parsvnath Developers Limited (Respondent No. 2) did not appear before hon'ble authority and not tendered any reply of complaint. Hence *ex-parte* proceedings has been initiated against him. The complaint is disposed of accordingly.



31. The order is pronounced.

32. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

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

Haryana Real Estate Regulatory Authority, Gurugram

Date: 13.09.2018





**HARERA**  
**GURUGRAM**

**HARYANA REAL ESTATE REGULATORY AUTHORITY**  
**GURUGRAM**

**हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम**

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

**PROCEEDINGS OF THE DAY**

Day and Date	Thursday and 13.09.2018
Complaint No.	244/2018 Case titled as KISH EXPORTES LIMITED V/S M/S Parsvnath Hessa Developers Pvt. Ltd & Another
Complainant	KISH EXPORTES LIMITED
Represented through	Shri Sukhbir Yadav, Advocate for the complainant.
Respondent	M/S Parsvnath Hessa Developers Pvt. Ltd & Another
Respondent Represented through	Shri Sanjeev Jain, Managing Director of the respondent company with Ms Diya Gupta, authorized representative and Pranay Malhotra Manager. Shri Krishan Soni representative of the office of Senior Town Planner, Guru gram
Last date of hearing	29.8.2018
Proceeding Recorded By	

**Proceedings**

**The project is not registered.**

Shri Krishan Soni, junior draftsman has appeared from the office of STP Gurugram and submitted the photo copies of approval of building plans of the project bearing Memo No.3180 dated 10.4.2009 and alongwith occupation certificate bearing Nos.15952 dated 31.10.2011 and 3254 dated 17.3.2011 which have been placed on record.



**HARERA**  
**GURUGRAM**

**HARYANA REAL ESTATE REGULATORY AUTHORITY**  
**GURUGRAM**

**हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम**

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

Shri Sanjeev Jain, Managing Director of respondent-company is present and apprised the authority regarding the progress of the project till date. He pointed out that there are 18 towers in this project out of which 11 towers are fully developed and occupation certificate has been obtained and possession is being offered to the flat buyers. It has further been stated that occupation certificate with regard to 5 towers has also been applied for which is still pending in the office of DTCP. Construction in respect of remaining two towers has not been completed so far which is likely to be completed by 31.12.2019 as per date mentioned in the registration application submitted with the registration branch. The counsel for the complainant has categorically pointed out that the statement given by Mr Sanjeev Jain Managing Director is far from facts because the construction in tower where the flat of the complainant is located has been pending for the last many years and no work is in progress. Therefore, they doubt about the completion of their tower by the due date as mentioned by the promoter in registration application. Therefore, they may be given refund of the deposited amount alongwith interest.

After hearing both the counsel for the parties, the authority is of the opinion that keeping in view the progress of the project and the endeavor of the authority to get stalled projects completed in order to hand over the possession to the complainant, the authority is not inclined to order refund of the amount deposited by the complainant rather he is entitled for interest of the delayed period of possession.

The agreement between the parties was executed on 30.5.2005. As per clause 10 (a) of the agreement, the respondent was to handover



**HARERA**  
**GURUGRAM**

**HARYANA REAL ESTATE REGULATORY AUTHORITY**  
**GURUGRAM**

**हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम**

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

possession within 36 months + six months as grace period i.e. 30.11.2008. The project is likely to be completed by 31.12.2019. Keeping in view that there is failure on the part of the promoter to hand over the possession by due date, accordingly in terms of Section 18 (1) of the Real Estate (Regulation & Development) Act 2016, the allottee shall be paid interest by the promoter for every month of delay at the prescribed rate i.e. 10.45% till handing over the possession (i.e. from 30.11.2008 till handing over the actual possession of the project). (Once the offer of possession is made by the builder, the allottee shall take possession within one month). In case of default in giving possession by 31.12.2019, the complainant shall be at liberty to exercise his right as per section 19 (4) of the Act ibid. The complaint is disposed of accordingly. Order is pronounced. Detailed order will follow. File be consigned to the registry.

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)

Dr. K.K. Khandelwal  
(Chairman)  
13.09.2018