

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

**Complaint No.** : 697 of 2018  
**Date of First**  
**Hearing** : 09.10.2018  
**Date of Decision** : 20.11.2018

1. Ms. Monika Jain (w/o late Mr. Sanjay Jain)
  2. Mr. Sanjay Jain (since deceased, represented through legal heirs)
  3. Ms. Mansha Jain (daughter)
  4. Ms. Danya Jain (daughter)
  5. Mr. Parth Jain (son)
  6. Ms. Hariti Jain (daughter)
- R/o Flat no. 871, Veer Apartments, Plot no. 28, Sector-13, Rohini, North West Delhi-110085

**...Complainants**

Versus

1. M/s Parsvnath Developers Ltd.
2. M/s Parsvnath Hessa Developers Pvt. Ltd.

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

**...Respondents**



**CORAM:**

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

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

**APPEARANCE:**

Shri Sukhbir Yadav  
Shri Yash Verma

Advocate for the complainants  
Advocate for the respondents

**ORDER**

1. A complaint dated 09.08.2018 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 complainants Ms. Monika Jain, Mr. Sanjay Jain (since deceased, represented through legal heirs- Ms. Mansha Jain, Ms. Danya Jain, Mr. Parth Jain and Ms. Hariti Jain), against the promoter M/s Parsvnath Hessa Developers Pvt. Ltd. and M/s Parsvnath Developers Ltd., on account of violation of clause 10(a) of the flat buyer agreement executed on 30.06.2010 for unit no. B5-1101 measuring 3390 sq. ft. in the project "Parsvnath Exotica" for not giving possession on the 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.	B5-1101
3.	Project area	26.905 acres
4.	DTCP license	69 to 74 of 1996, 52 to 57 of 1997, 1079 of 2006, 1080 of 2006
5.	Nature of real estate project	Residential (Group housing)





6.	Registered/ not registered	<b>Not registered</b>
7.	Date of booking	17.06.2010
8.	Date of flat buyer agreement	30.06.2010
9.	Total consideration	BSP- Rs.2,25,43,500/- (as per agreement)
10.	Total amount paid by the complainants	Rs. 2,27,80,406/-
11.	Payment plan	Construction linked plan
12.	Date of delivery of possession from the date of execution of flat buyer agreement	Clause 10(a)- 36 months from the commencement of construction of the block in which flat is located, i.e. 17.09.2010 (on start of ground floor roof, instalment no.3-annexure P-4) + 6 months grace period, i.e. 17.03.2014
13.	Delay for number of months/ years upto date 20.11.2018	4 years 7 months
14.	Penalty clause as per flat buyer agreement dated 30.06.2010	Clause 10(c) of flat buyer agreement i.e. Rs. 107.60 per sq meter or Rs.10/- per sq.ft. of the super area 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 have been provided

by the complainants and the respondents. A flat buyer agreement dated 30.06.2010 is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be delivered on 17.03.2014. The promoters have not fulfilled their committed liability by neither giving possession as per the terms of the flat buyer agreement nor paying any compensation i.e. @ Rs. 107.60 per sq. meter or Rs.10/- per sq. ft. per month for the period of delay as per flat buyer agreement dated 30.06.2010.

4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The case came up for hearing on 09.10.2018 and 20.11.2018. The respondents filed its reply on 27.09.2018 and appeared on 20.11.2018.

#### Facts of the complaint

5. The complainants submitted that the above said flat was booked by M/s Strategic Overseas Pvt. Ltd. (first buyer) on 17.06.2010 and a flat buyer agreement was executed on 30.06.2010. On 05.09.2011, the complainants purchased the said flat in resale from M/s Strategic Overseas Pvt. Ltd.



6. The complainants submitted that on 17.06.2010, M/s Strategic Overseas Pvt. Ltd. (first buyer) booked a unit in the project named "Parsvnath Exotica", Sector-53/54, Gurugram by paying an advance amount of Rs.22,54,350/- to the respondents. Pursuant to aforesaid booking by the first buyer, the said first buyer was allotted a unit bearing B5-1101 on 11<sup>th</sup> floor admeasuring 3390 sq. ft.
7. On 30.06.2010, a flat buyer agreement was entered between the parties, i.e. first buyer and the respondents wherein as per clause 10(a), the construction should have been completed within a period of 36 months from the commencement of construction of the block in which flat is located with additional 6 months grace period, i.e. by 17.03.2014. However, till date the possession of the said unit has not been handed over to the complainants despite making all requisite payments as per the demands raised by the respondents. On 05.09.2011, the complainants purchased the said flat on resale basis.
8. The complainants submitted that they have taken loan from Standard Chartered Bank. The respondents issued permission to mortgage in favour of Standard Chartered Bank on date 02.02.2012 and also executed tripartite agreement.





9. The complainants submitted that thereafter they continued to pay the remaining instalment as per the payment schedule of the agreement and have already paid more than 95% of the consideration amount i.e. Rs.2,27,80,406/- till 09.01.2014 along with interest and other charges, but when complainants observed that there is no progress in construction of subject flat for a long time, they raised their grievance to respondents. Though complainants were always ready and willing to pay the remaining instalments provided there is progress in the construction of flat.
10. It is submitted that though towers seem to be built up but no progress is observed on finishing and landscaping work.
11. The complainants submitted that despite repeated calls, meetings and emails sent to the respondents, no definite commitment was shown to timely completion of the project and no appropriate action was taken to address the concerns and grievances of the complainants. Complainants further submitted that given the inconsistent and lack of commitment to complete the project on time, deficiency in services and unfair and restrictive trade practices, the complainants decided to file the present complaint.





12. The complainants submitted that on 16.09.2014, Standard Chartered Bank asked for possession certificate/letter of conveyance deed of the flat in question. The respondents were communicated about the same and were asked for possession of flat and also execution of conveyance deed. However, the respondents did not comply with the request of the complainants.
13. It is further submitted that the work on other amenities like external, internal MEP services has not yet started. It has been more than 8 years from the date of booking and even the construction of the towers is not completed, clearly showing the negligence, unfair trade practice and deficiency in services on part of the builder.
14. **Issues raised by the complainants**
- I. Whether the developer has violated the terms and conditions of the flat buyer 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 complainants are entitled for refund along with compound interest @ 24% per annum from date of booking till date?
- V. Whether the complainants are entitled to compensation for mental agony and as penalty for delayed possession?

**15. Relief sought**

- I. Direct the respondents to refund the principal amount paid by them of Rs.2,27,80,406/- along with interest @ 24% per annum compounded from date of booking till the date of refund.

**Respondent's reply**

16. The respondents submitted that the respondent no.1/Parsvnath Developers Ltd. is not a necessary party in the present complaint and hence the complaint is bad for misjoinder of parties. Respondent no.1 has brought in foreign direct investment in the project in question so as to ensure fast completion and delivery of the project. As such an agreement has been executed between the respondent no.1 and respondent no.2, a joint venture company of respondent no.1. Under the terms of the said agreement, development, construction and marketing of built up areas in towers B1,







B2, B3, B5, B6 and C4 have been transferred to respondent no.2 company. In this regard an intimation letter was sent to all the allottees of the project by the respondent no.1 and in the said letter it was specifically stated that the respondent no.1 shall be remained only as a confirming party and all other responsibilities were already transferred to respondent no.2. In view of the above reasons, respondent no.1 company is not a necessary party in the present case and hence the name of the respondent no.1 is liable to be deleted from the party array.

17. The respondents submitted that the project construction is already completed. It is submitted that the respondent companies under various collaboration agreements/ development agreements had planned to develop the project land and in pursuance to the same, 18 towers were planned to be developed. Out of the said 18 towers, 11 towers were duly developed and completed and the occupancy certificate has been received with respect to these 11 towers on 21.04.2010, 13.03.2011 and 31.10.2011 respectively. It is further stated that respondent no.1/ Parsvnath Developers Ltd. has already applied for the occupancy certificate with respect to remaining 5 towers i.e. D4, D5, D6 on 01.11.2011 and with respect to towers No. B1, and C4 on 13.08.2013 for





which review were also filed by the respondent no.1 on 24.11.2017 before DTCP.

18. It is further submitted that the occupancy certificate (OC) is not being granted by DTCP for want of beneficiary interest/right in favour of the developer under the policy dated 18<sup>th</sup> February, 2015. It is pertinent to state that in principal DTCP has accorded his approval on the transfer of the beneficiary interest in favour of the developer. However, the formal approval is in process.
19. The respondents submitted that the respondent company has applied for registration of the part of the said project with respect to tower no. B5, B6 and EWS with HARERA wherein the revised declaration date of handing over the possession of the project is stipulated as 31<sup>st</sup> December 2019.
20. The respondents submitted that the tower no. B5, in which the flat of the complainants is located, has been completed. The respondents have duly completed all the construction work/development work in the part of the project and tower B5 and are under the process of applying for the occupancy certificate with respect to the said tower.





21. It is submitted by the respondents that due to pendency of the beneficiary interest in favour of the respondents, the delay is being caused in handing over the possession of the flat. It is submitted that the respondents have been pursuing the authority with all its possible efforts to get the formal approval. However, the same is still pending with the concerned authority. It is submitted that the respondent company shall immediately handover the possession of the flat upon receipt of the occupancy certificate from the authority. Moreover, the respondents have duly complied with all the norms and bye-laws required for obtaining the occupancy certificate with the authority and have developed the project in complete adherence of the building bye laws prevailing in Haryana.
22. The respondents submitted that the complainants are only subsequent purchasers. They have purchased the allotment from the original allottee M/s Strategic Overseas Pvt Ltd. in the year 2011 and the complainants were well aware about the status of the construction at the time of purchasing the said flat from the open market.
23. The respondents submitted that refund at this advanced stage of project is not in the interest of the other allottees at





large as the same will hamper the completion of the project. Further, the interest of complainants is duly protected in terms of clause no. 10(c) of the flat buyer agreement for the delay in delivering the possession of the flat.

24. The respondents submitted that the respondent company has invested a huge amount on the construction and development of the said project and in case the refund is allowed to the complainants, it would cause financial loss to the project as well as loss to the genuine customers in the said project. Further, the purpose of implementation of RERA would be defeated as RERA has been enacted in order to ensure smooth functioning of the real estate sector and to regulate the same for its better functioning.
25. The respondents submitted that under clause 10(c) of the flat buyer agreement, the delay compensation has been specifically mentioned and agreed by the complainants and hence contending the date of offering the possession as the contention for refund and payment of interest and compensation is incorrect wherein "time is the essence of the contract" stands contravened and hence proviso of section 18 is not applicable in the captioned matter as the respondents have agreed to abide by the obligations made under the flat





buyer agreement duly executed between the complainants and the respondents.

26. The respondents submitted that allowing refund to one individual would further jeopardize the project as a whole and simultaneously adversely affect the interest of other allottees as well. It is further pertinent to mention here that collected fund from the buyers has been invested into the purchase of the land, construction material, construction of the towers, getting approvals/sanction etc. from the competent authority.
27. The respondents submitted that the delay in handing over the possession on due date was because of reasons beyond their control, namely: -
- (i) The construction of the project is dependent on money being received from the bookings made and subsequent instalments. However, as a prolonged effect of global recession, number of bookings made by prospective purchasers reduced drastically.
  - (ii) Lack of adequate sources of finance.
  - (iii) Rising manpower and material costs.
  - (iv) Approvals and procedural difficulties.





- (v) Extreme shortage of water in the region which affected the construction work.
- (vi) Shortage of bricks due to restrictions imposed by Ministry of environment and forest on bricks kiln.
- (vii) Unexpected sudden declaration of demonetization policy by the central government. Non-availability of cash-in-hand affected the availability of labours.
- (viii) Recession in economy also resulted in availability of labour and raw-materials becoming scarce.
- (ix) There was shortage of labour due to implementation of social schemes like National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban Renewal Mission (JNNURM).

It may be noted that the respondents had at many occasions orally communicated to the complainants that the construction activity at the subject project had to be halted for some time due to certain unforeseen circumstances which were completely beyond the control of the respondent.

28. It is further submitted that the complainants as well as the original allottee of the flat in question are chronic defaulters in making payment on time contrary to the agreed terms.





### Determination of issues

29. Regarding the **first issue** raised by the complainants, the developers have violated the agreement by not giving the possession on the due date as per the agreement, i.e. by 17.03.2014, 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.
30. Regarding the **second issue** raised by the complainants, it has been submitted by the respondent company 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. Hence, this issue is answered in affirmative.
31. Regarding the **third issue** in the complaint, the complainants have not furnished any concrete document to prove the alleged misrepresentation on the part of the respondent company. Hence, this issue is answered in negative.





32. Regarding the **fourth 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 complainants interest, at the prescribed rate of 10.45%, for every month of delay till the handing over of possession. The detailed directions in this regard has been elaborated in subsequent paras.
33. Regarding **fifth issue** in the complaint, the complainants initially sought compensation for mental agony. But during the pendency of complaint, the complainants have filed an application for amendment of complaint with the permission to reserve their rights to seek compensation by filing separate application to the adjudicating officer. Hence, this issue became infructuous.
34. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.



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.



### Findings of the authority

35. **Jurisdiction of the authority-** The project 'Parsvnath Exotica' is situated in Sector-53, Gurugram. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

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 complainants at a later stage.

36. The delay compensation payable by the respondents @ 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."*

37. The complainants reserve their right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.
38. In the proceedings dated 20.11.2018, the counsel for the complainants produced an endorsement on a letter dated 12.10.2018 vide which the DTCP has rejected the request of the respondents for grant of occupation certificate on following grounds: -
- (i) NOC from fire safety point of view.
  - (ii) Copy of environment clearance.





The complainants have already made a payment of Rs.2,27,80,406/- out of total sale consideration of Rs.2,25,43,500/. Thus, as such there is little hope for the complainants to get a possession of the flat. Keeping in view the dismal state of affairs on the part of the respondents to complete the project, the authority is left with no option but to direct the respondents to refund the amount paid by the complainants with prescribed rate of interest @ 10.75% from the date of receipt of payments from the complainants. Payment of the said amount along with interest will be made to the complainants within a period of 90 days from the date of issuance of this order.

**Decision and directions of the authority**

39. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondents:

- (i) The respondents are directed to refund to the complainants the principal sum of Rs.2,27,80,406/- paid by them on account of the failure of the respondents in handing over the possession by the due date of 17.03.2014.
- (ii) The respondents are directed to give interest to the complainants at the prescribed rate of 10.75% on the



amount deposited by the complainants, ~~for every month of~~ <sup>Deleted vide order dated 16/01/2019</sup>  
~~delay in handing over the possession.~~ The interest will be  
given from date of receipt of payments till actual date of  
refund of the deposited amount within 90 days from the  
date of this order.

40. The complaint is disposed of accordingly.
41. The order is pronounced.
42. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

**(Subhash Chander Kush)**

Member

Dated: 20.11.2018

**Corrected Judgement uploaded on 18.01.2019**



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AUTHORITY, GURUGRAM**

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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.	B5-1101
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13.	Delay for number of months/ years upto date 20.11.2018	4 years 7 months
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3. The details provided above have been checked on the basis of the record available in the case file which have been provided

by the complainants and the respondents. A flat buyer agreement dated 30.06.2010 is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be delivered on 17.03.2014. The promoters have not fulfilled their committed liability by neither giving possession as per the terms of the flat buyer agreement nor paying any compensation i.e. @ Rs. 107.60 per sq. meter or Rs.10/- per sq. ft. per month for the period of delay as per flat buyer agreement dated 30.06.2010.

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#### Facts of the complaint

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14. **Issues raised by the complainants**

- I. Whether the developer has violated the terms and conditions of the flat buyer 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 complainants are entitled for refund along with compound interest @ 24% per annum from date of booking till date?
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**15. Relief sought**

- I. Direct the respondents to refund the principal amount paid by them of Rs.2,27,80,406/- along with interest @ 24% per annum compounded from date of booking till the date of refund.

**Respondent's reply**

16. The respondents submitted that the respondent no.1/Parsvnath Developers Ltd. is not a necessary party in the present complaint and hence the complaint is bad for misjoinder of parties. Respondent no.1 has brought in foreign direct investment in the project in question so as to ensure fast completion and delivery of the project. As such an agreement has been executed between the respondent no.1 and respondent no.2, a joint venture company of respondent no.1. Under the terms of the said agreement, development, construction and marketing of built up areas in towers B1,



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19. The respondents submitted that the respondent company has applied for registration of the part of the said project with respect to tower no. B5, B6 and EWS with HARERA wherein the revised declaration date of handing over the possession of the project is stipulated as 31<sup>st</sup> December 2019.
20. The respondents submitted that the tower no. B5, in which the flat of the complainants is located, has been completed. The respondents have duly completed all the construction work/development work in the part of the project and tower B5 and are under the process of applying for the occupancy certificate with respect to the said tower.



21. It is submitted by the respondents that due to pendency of the beneficiary interest in favour of the respondents, the delay is being caused in handing over the possession of the flat. It is submitted that the respondents have been pursuing the authority with all its possible efforts to get the formal approval. However, the same is still pending with the concerned authority. It is submitted that the respondent company shall immediately handover the possession of the flat upon receipt of the occupancy certificate from the authority. Moreover, the respondents have duly complied with all the norms and bye-laws required for obtaining the occupancy certificate with the authority and have developed the project in complete adherence of the building bye laws prevailing in Haryana.
22. The respondents submitted that the complainants are only subsequent purchasers. They have purchased the allotment from the original allottee M/s Strategic Overseas Pvt Ltd. in the year 2011 and the complainants were well aware about the status of the construction at the time of purchasing the said flat from the open market.
23. The respondents submitted that refund at this advanced stage of project is not in the interest of the other allottees at



large as the same will hamper the completion of the project. Further, the interest of complainants is duly protected in terms of clause no. 10(c) of the flat buyer agreement for the delay in delivering the possession of the flat.

24. The respondents submitted that the respondent company has invested a huge amount on the construction and development of the said project and in case the refund is allowed to the complainants, it would cause financial loss to the project as well as loss to the genuine customers in the said project. Further, the purpose of implementation of RERA would be defeated as RERA has been enacted in order to ensure smooth functioning of the real estate sector and to regulate the same for its better functioning.

25. The respondents submitted that under clause 10(c) of the flat buyer agreement, the delay compensation has been specifically mentioned and agreed by the complainants and hence contending the date of offering the possession as the contention for refund and payment of interest and compensation is incorrect wherein “time is the essence of the contract” stands contravened and hence proviso of section 18 is not applicable in the captioned matter as the respondents have agreed to abide by the obligations made under the flat





buyer agreement duly executed between the complainants and the respondents.

26. The respondents submitted that allowing refund to one individual would further jeopardize the project as a whole and simultaneously adversely affect the interest of other allottees as well. It is further pertinent to mention here that collected fund from the buyers has been invested into the purchase of the land, construction material, construction of the towers, getting approvals/sanction etc. from the competent authority.

27. The respondents submitted that the delay in handing over the possession on due date was because of reasons beyond their control, namely: -

(i) The construction of the project is dependent on money being received from the bookings made and subsequent instalments. However, as a prolonged effect of global recession, number of bookings made by prospective purchasers reduced drastically.

(ii) Lack of adequate sources of finance.

(iii) Rising manpower and material costs.

(iv) Approvals and procedural difficulties.



- (v) Extreme shortage of water in the region which affected the construction work.
- (vi) Shortage of bricks due to restrictions imposed by Ministry of environment and forest on bricks kiln.
- (vii) Unexpected sudden declaration of demonetization policy by the central government. Non-availability of cash-in-hand affected the availability of labours.
- (viii) Recession in economy also resulted in availability of labour and raw-materials becoming scarce.
- (ix) There was shortage of labour due to implementation of social schemes like National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban Renewal Mission (JNNURM).

It may be noted that the respondents had at many occasions orally communicated to the complainants that the construction activity at the subject project had to be halted for some time due to certain unforeseen circumstances which were completely beyond the control of the respondent.

28. It is further submitted that the complainants as well as the original allottee of the flat in question are chronic defaulters in making payment on time contrary to the agreed terms.



### Determination of issues

29. Regarding the **first issue** raised by the complainants, the developers have violated the agreement by not giving the possession on the due date as per the agreement, i.e. by 17.03.2014, 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.
30. Regarding the **second issue** raised by the complainants, it has been submitted by the respondent company 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. Hence, this issue is answered in affirmative.
31. Regarding the **third issue** in the complaint, the complainants have not furnished any concrete document to prove the alleged misrepresentation on the part of the respondent company. Hence, this issue is answered in negative.



32. Regarding the **fourth 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 complainants interest, at the prescribed rate of 10.45%, for every month of delay till the handing over of possession. The detailed directions in this regard has been elaborated in subsequent paras.

33. Regarding **fifth issue** in the complaint, the complainants initially sought compensation for mental agony. But during the pendency of complaint, the complainants have filed an application for amendment of complaint with the permission to reserve their rights to seek compensation by filing separate application to the adjudicating officer. Hence, this issue became infructuous.

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

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.



### Findings of the authority

35. **Jurisdiction of the authority-** The project 'Parsvnath Exotica' is situated in Sector-53, Gurugram. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

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 complainants at a later stage.



36. The delay compensation payable by the respondents @ 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.”*

37. The complainants reserve their right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

38. In the proceedings dated 20.11.2018, the counsel for the complainants produced an endorsement on a letter dated 12.10.2018 vide which the DTCP has rejected the request of the respondents for grant of occupation certificate on following grounds: -

- (i) NOC from fire safety point of view.
- (ii) Copy of environment clearance.



The complainants have already made a payment of Rs.2,27,80,406/- out of total sale consideration of Rs.2,25,43,500/-. Thus, as such there is little hope for the complainants to get a possession of the flat. Keeping in view the dismal state of affairs on the part of the respondents to complete the project, the authority is left with no option but to direct the respondents to refund the amount paid by the complainants with prescribed rate of interest @10.75% from the date of receipt of payments from the complainants. Payment of the said amount along with interest will be made to the complainants within a period of 90 days from the date of issuance of this order.

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

39. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondents:

- (i) The respondents are directed to refund to the complainants the principal sum of Rs.2,27,80,406/- paid by them on account of the failure of the respondents in handing over the possession by the due date of 17.03.2014.
- (ii) The respondents are directed to give interest to the complainants at the prescribed rate of 10.75% on the



amount deposited by the complainants for every month of delay in handing over the possession. The interest will be given from date of receipt of payments till actual date of refund of the deposited amount within 90 days from the date of this order.

40. The complaint is disposed of accordingly.
41. The order is pronounced.
42. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

**(Subhash Chander Kush)**

Member

Dated: 20.11.2018





**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 20.11.2018
Complaint No.	697/2018 case titled as Mr. Monika Jain & ors Vs. M/s Parsvnath Hessa Developers Pvt. Ltd. and anr.
Complainant	Mr. Monika Jain & ors
Represented through	Shri Sukhbir Yadav, Advocate for the complainant
Respondent	M/s Parsvnath Hessa Developers Pvt. Ltd. and anr.
Respondent Represented through	Shri Yash Varma Advocate for the respondent.
Last date of hearing	13.11.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

Arguments heard.

Complainant booked a flat No.B-5/1101 with the respondent/promoter and the possession of the flat was to be handed over to the complainant within a period of 36 months plus 6 months grace period or from the date of start of construction i.e. 17.9.2010 which comes out to be 17.3.2014. However, the project could not be completed, as a result of which it stands delayed for a period of 4 years and 7 months. Counsel for the complainant has produced an endorsement on letter dated 12.10.2018 vide

which the DTCP has rejected the request of the respondent for grant of occupation certificate on following grounds:-

- (i) NOC from fire safety point of view.
- (ii) Copy of Environment Clearance.

Complainant has already made a payment of Rs.2,27,80,406/- out of total sale consideration of Rs.2,25,43,500/. As such there is little hope for the complainant to get a possession of the flat. Keeping in view the dismal state of affairs on the part of the respondent to complete the project, the authority is left with no option but to direct the respondent to refund the amount paid by the complainant with prescribed rate of interest @10.75% from the date of receipt of payments from the complainant. Payment of the said amount alongwith interest will be made to the complainant within a period of 90 days from the date of issuance of this order.

Complaint stands disposed of. Detailed order follows. File be consigned to the registry.

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)