



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE ADJUDICATING OFFICER

COMPLAINT NO. 2417 OF 2019

Savita Kathuria w/o Sh. Vijay Kathuria, r/o J-3/8, 3<sup>rd</sup> floor, DLF Phase-2,  
Gurugram, (Haryana), 122008

....COMPLAINANT

VERSUS

M/S Parsvnath Developers Ltd., near Shahdara Metro Station, Shahdara,  
Delhi – 110032

....RESPONDENT

**Date of Decision:** 03.11.2020

**Hearing:** 7<sup>th</sup>

**Present: -** Mr. Hoshiar Chand, counsel for the complainant through  
video conference

Ms. Apurva Singh, proxy counsel for the respondent  
through video conference

## ORDER

1. The brief facts of the case of complainant are that she had purchased booking rights of plot measuring 300 sq. yards in resale from

Savita Kathuria

original applicant on 13.06.2008 in the future project being developed by the respondent under the name 'Parsvnath City' situated at Sonipat. The booking was transferred in her favour by the respondent on 09.07.2008. The complainant and her predecessors in interest had paid a sum of ₹5,77,500/- to the respondent. The respondent has failed to allot any plot to the complainant till date even after receiving substantial payment from her. The complainant had filed complaint no. 321 of 2018 titled as Savita Kathuria versus Parsvnath Developers Ltd. before Hon'ble Haryana Real Estate Regulatory Authority, Panchkula. Vide order dated 16.01.2019 passed by Hon'ble Haryana Real Estate Regulatory Authority, Panchkula refund of the amount deposited by her was allowed along with interest. The respondent was also directed to pay the complainant penal interest at the rate of 4% over and above the interest calculated under Rule 15 of the HRERA Rules from the date on which amount was received till the date of its actual refund to the complainant. The complainant was also given liberty to claim compensation from Adjudicating Officer to seek additional compensation. Complainant had filed Appeal no. 193 of 2019 titled Savita Kathuria versus M/s Parsvnath Developers Ltd. before Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh. Vide order dated 05.07.2019 Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh upheld the order dated 16.01.2019 passed by Hon'ble Haryana Real Estate Regulatory Authority, Panchkula and the appeal was dismissed. After that the complainant had filed present complaint seeking compensation

of ₹10,00,000/- as per provisions of section 72 of RERA Act, 2016 on the ground that the complainant has lost faith in the respondent as the respondent by its act and conduct has misrepresented about the approvals received by it. The respondent had been misrepresenting the complainant with respect to allotment of the plot since the year 2004 till date. Requisite information has not been provided to the complainant and the information provided by the respondent was not correct. The documents which were sought by Hon'ble Haryana Real Estate Regulatory Authority, Panchkula were not provided.

2. Upon notice respondent appeared through counsel and filed reply taking preliminary objections with regard to maintainability of the complaint, no ground for compensation is made out, complainant has already been compensated in the form of delayed possession interest vide order dated 16.01.2019 passed by Hon'ble Haryana Real Estate Regulatory Authority, Panchkula, the complainant has paid only ₹5,77,500/- towards advance booking and he has already received ₹4,13,096/- till date for inability of respondent to develop the project, refund of deposited amount along with interest and additional interest @4% per annum has already been refunded to the complainant which is in the form of compensation, no ground for granting compensation has been pleaded/proved by the complainant and the present complaint is an abuse and misuse of process of law and is liable to be dismissed.

3. On merits, it has been pleaded that the complainant was well aware about the status of project, as she had purchased registration for a new project of respondent company from open/secondary market on 13.06.2008. Registration was transferred in the name of complainant on 09.07.2008 by paying administrative charges of ₹37,500/-. Complainant had also filed appeal no. 193 of 2019 before Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh praying for allotment of plot which was rejected out rightly by Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh vide order dated 05.07.2019. It is denied that the respondent has received substantial amount from the complainant and failed to make allotment even after lapse of fifteen year. The documents warranting terms and conditions have been executed and signed by complainant with free will and consent. In case of non-allotment of plot, the complainant is entitled to accept the deposited amount along with simple interest @9% per annum from the date of acceptance of nomination of registration. Complying with the order dated 16.01.2019 passed by Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh, the respondent has handed over post-dated cheques to the complainant. The complainant has purchased registration for the purpose of investment rather for living purpose. The respondent has prayed for dismissal of the complaint.

4. Rejoinder to the written statement was filed by the complainant controverting the allegations of the respondent and reiterating the stand taken by her in the complaint. It has been stated that despite order dated 16.01.2019

for refund passed by Hon'ble Haryana Real Estate Regulatory Authority, Panchkula, the amount was not paid by respondent and the respondent kept on utilizing the amount of the complainant since then. The complainant had to file execution bearing no. 2402 of 2019 in which the respondent had handed over four post-dated cheques in discharge of his liability but all those post-dated cheques were dishonoured. Later on payment of one cheque was made through RTGS. It has been further stated that the prices of the plot have escalated considerably thereby making it difficult for the complainant to purchase it from open market. The respondent had allotted plots to other buyers on premium ignoring the rightful claim of the complainant.

5. Arguments advanced by both learned counsel for the parties have been carefully heard along with meticulous examination of record of the case.
6. To begin with, it has been argued by learned counsel for the complainant that despite booking of plot in 2008, neither any plot was ever allotted to the complainant and nor any offer was made to her. This led the complainant to file complaint before Hon'ble Haryana Real Estate Regulatory Authority, Panchkula whereby refund was allowed in her favour. Despite a refund order being passed in complainant's favour, she had to file appeal before Hon'ble Real Estate Appellate Tribunal, Chandigarh; execution before Hon'ble Real Estate Regulatory Authority, Panchkula and present complaint for compensation. It has been further argued that respondent had misrepresented about the approvals and had not provided requisite

information and documents sought by Hon'ble Real Estate Regulatory Authority, Panchkula. Due to the conduct of the respondent, complainant had to indulge in multiple litigations and had incurred huge expenses, which has caused harassment and mental agony to the complainant for which she shall be compensated.

7. To rebut the arguments of learned counsel for the complainant, it has been argued by learned counsel for the respondent that the complainant has filed an execution before the Hon'ble Authority, Panchkula where the respondent has paid a sum of ₹10,32,740/- till date. The award of additional 4% interest passed by Hon'ble Authority is in form of compensation only, therefore, there is no justification for grant of further compensation. She has further argued that there is no clause or ground for compensation or loss in the complainant filed by the complainant. She has prayed for dismissal of complaint.

8. Perusal of file shows that the complainant had filed complaint no. 321 of 2018 titled as Savita Kathuria versus Parsvnath Developers Ltd. before Hon'ble Haryana Real Estate Regulatory Authority, Panchkula seeking possession of plot measuring 300 sq. yards in the project namely 'Parsvnath City' situated at Sonipat being developed by the respondent which the complainant had taken in resale from the original applicant on 13.06.2008. Vide order dated 16.01.2019 the complainant was allowed refund of ₹5,77,500/- which the complainant had deposited with the respondent, along

with interest at the rate stipulated in Rule 15 of HRERA Rules, 2017. The respondent was further directed to pay penal interest at the rate of 4% over and above the interest calculated as per Rule 15 of HRERA Rules, 2017 from the date on which it had received the amount till the date of its actual refund to the complainant. The complainant herself had filed an appeal before Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh challenging the order dated 16.01.2019 passed by Hon'ble Haryana Real Estate Regulatory Authority, Panchkula. Before Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh also the complainant had been insisting for possession of the plot. Order dated 16.01.2019 passed by Hon'ble Haryana Real Estate Regulatory Authority, Panchkula shows that offer for alternate plots were made to the complainant which were not acceptable to her. Husband of the complainant had sated before Hon'ble Haryana Real Estate Regulatory Authority, Panchkula that offer for alternative plots made to him were much inferior in terms of location and market potential. It was in these circumstances that refund of entire amount of ₹5,77,500/- was allowed in favour of the complainant along with interest as per Rule 15 of HRERA Rules, 2017. It is also apparent that taking into consideration that the plot was booked in the year 2004 and even after realising that possession of the plot would not be possible, amount was not refunded, penal interest at the rate 4% over and above the interest as per Rule 15 was allowed. In para 11 of order dated 05.07.2019 passed by Hon'ble Haryana Real Estate Appellate Tribunal,

Chandigarh, it is apparent that during the proceedings before Hon'ble Tribunal efforts were made for allotment of plot to the complainant at suitable place. Mr. Pranay Malhotra, Manager of respondent company had informed the Hon'ble Tribunal that no plot was available in Block A and Block B of Parsvnath City, Sonipat and the respondent company was unable to allot any alternative plot to the appellant in the said project. In these circumstances, appeal filed by the complainant was dismissed. During the course of arguments, it has been pointed out by counsel for the respondent that out of the total amount to be refunded, a sum of ₹10,32,740/- has already been paid to the complainant.

9. If the complainant has already been allowed refund along with interest at the rate prescribed in Rule 15 of HRERA Rules, 2017 and over and above the said interest, penal interest at the rate 4% p.a. has already been allowed, there seems no justification to allow any amount as compensation under the provisions of section 72 of RERA Act, 2016 as the complainant has lost faith in the respondent, the respondent went on misrepresenting the complainant about the approvals and allotment of the plot and also failed to provide requisite information and documents to the Court. Hence, the relief of the complainant for compensation of ₹10 lacs is hereby turned down.

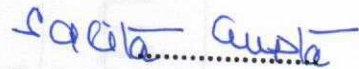
10. Another relief sought by the complainant is ₹50,000/- towards cost of litigation as he had filed complaint no. 321 of 2018, after that filed Appeal no. 193 of 2019 before Hon'ble Tribunal and Execution Petition



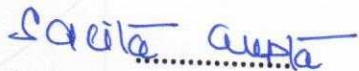
bearing no. 2402 of 2019. He has also spent money in filing the present complaint seeking compensation. It is true that complainant has spent money in filing complaint before Hon'ble Haryana Real Estate Regulatory Authority, Panchkula, Appeal before Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh, execution and also the present complaint. Hence, a sum of ₹25,000/- is allowed as cost of litigation. Respondent is directed to pay the complainant a sum of ₹25,000/- as cost of litigation within thirty days of uploading of the order.

11. In these terms, the present complaint is **disposed of**. File be consigned to record room and order be uploaded on the website of the Authority.

03.11.2020

  
DR. SARITA GUPTA  
(Adjudicating Officer)

Note: This order contains nine (9) pages and all the pages have been checked and signed by me.

  
DR. SARITA GUPTA  
(Adjudicating Officer)