



**HARERA**  
**GURUGRAM**

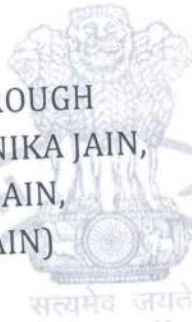
**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,  
HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM**

**Complaint no. : 4857 of 2021**  
**Date of decision : 21.03.2022**

1. MONIKA JAIN
2. SANJAY JAIN

(SINCE DECEASED THROUGH  
HIS LEGAL HEIRS: MONIKA JAIN,  
MANSHI JAIN, DANYA JAIN,  
PARTH JAIN, HARITI JAIN)

R/O : Flat No. 871,  
Veer Apartments,  
Plot No. 28, Sector-13,  
Rohini-110085



Versus

**Complainants**

1. PARSVANATH DEVELOPER LTD  
ADDRESS: Parsvnath Tower near  
Shahdara Metro Station, Shahdara  
New Delhi-110032
2. PARSVANATH, HESSA DEVELOPERS  
PVT. LTD.

ADDRESS: Parsvnath Tower near  
Shahdara Metro Station, Shahdara  
New Delhi-110032

**Respondents**

**APPEARANCE:**

For Complainants:

Mr. Sukhbir Yadav Advocate

For Respondent:

Mr. S.M. Ansari Advocate

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**ORDER**

1. This is a complaint filed by Ms. Monika Jain and Mr Sanjay Jain (since deceased, represented through legal heirs- Ms. Mansha Jain, Ms. Danya Jain, Mr. Parth Jain and Ms. Hariti Jain (also called as buyers) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act of 2016) read with rule 29 of The Haryana Real Estate (Regulation, and Development) Rules,2017 (in short, the Rules) against respondents/developers.
2. As per complainants, on 17.06.2010, M/s Strategic Overseas Pvt. Ltd. booked a flat in respondents' project **Parsvanath Exotica**, situated at sector-53/54, Gurugram. The respondents allotted a unit No. B5-1101 admeasuring 3390 sq. ft. for a basic sale consideration of Rs 2,25,43,500/-. A flat buyer's agreement (FBA) dated 30.06.2010 was executed between original allottees and respondents, in this regard. Said flat was subsequently purchased by complainants from aforesaid allottees on 05.09.2011. The transaction was endorsed in favour of complainants by respondent on 26.09.2011.
3. As per Clause 10 (a) of FBA, possession of said flat was to be delivered by the developers to the allottees within 36 months from the date of commencement of construction, of the block



in which flat is located. The respondents did not complete the construction work and consequently failed to deliver possession of unit, as per agreement.

4. As per demands raised by respondents, they (complainants) made timely payment of Rs 2,27,80,406/- i.e more than the basic sale consideration along with miscellaneous and additional charges etc, but to their utter dismay, there has been no progress at the construction site.
5. The complainants being aggrieved by delay in delivery of possession of flat, filed a complaint before The Haryana Real Estate Regulatory Authority, Gurugram (in brief the authority) being complaint No. 697 of 2018, for refund of amount paid alongwith compensation. The complainants amended said complaint and reserved the right to seek compensation before adjudicating officer. As respondents failed to hand over the possession of the flat by the due date of 17.03.2014, the Authority vide its order dated 20.11.2018 directed respondents to refund the <sup>principal</sup> ~~principle~~ sum of Rs 2,27,80,406/- to them (complainants). The respondents were further directed to give interest at rate of 10.75 % p.a. on the amount deposited by the complainants, from the date of each payment till actual date of refund of deposited amount, within 90 days.

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## HARERA GURUGRAM

6. The respondents failed to comply with aforesaid order of Authority dated 20.11.2018 and therefore, complainants filed an execution petition, which is pending before the Authority.
7. Moreover, Shri. Sanjeev Jain, Managing Director of Respondent company, represented before the Authority that the project would be completed by 31.12.2019, as per the date mentioned in the RERA registration application submitted with the registration branch of RERA Gurugram. It is pertinent to mention that the project is still incomplete.
8. The complainants had purchased the flat with the hope that the burden of rental will go off, if they will live in their own house. But despite receipt of more than basic sale consideration, the respondents failed to fulfil their commitments.
9. The respondents miserably failed to hand over possession of unit as per the terms of FBA due to which complainants are being unnecessarily harassed mentally and financially. They (complainants) are entitled to be compensated by the respondents. As per the current market trends, the rental value of 4 BHK apartment is Rs 80,000/- to Rs 88,000/- per month. The rental loss to complainants comes out to be Rs 54,40,000/- from September 2013 to November 2018. As the respondents failed to deliver the project on or before due date of possession, there is loss of rental income till the date of order of Authority and interest loss on from the date of



order of Authority till the realisation of money which comes out to be Rs 57,87,210/-

10. Contending that the respondents have breached the fundamental terms of the contract, and delayed the delivery of possession, and thereby caused huge financial loss, mental agony and harassment, the complainants have sought compensation of Rs 50,50,000 on account of rental loss from September 2013 to November 2018, Rs 57,87,210 on account of loss of interest on the accrued interest, Rs 10,00,000 for causing mental agony and Rs 5,00,000 as cost of litigation.


11. The respondents contested the complaint by filing a reply. It is contended that complainants are not entitled to get reliefs as sought in the present complaint, as the same have already been granted by the Authority. The issue raised in the present complaint is arising out of the same cause of action which has already been adjudicated by the Authority in the case bearing No. 697 of 2018 titled as **Monika Jain v Parsvanath Developers Ltd & Ors.** The complainants have already filed **Execution Petition No. E/5046/697/2018** before the Authority.

12. It is further contended that complainants have not approached this Forum with clean hands and have concealed material facts with respect to execution petition qua the order of Authority dated 20.11.2018, having been adjourned sine die.

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13. The complainants have tried to misuse the provisions of law to get unlawfully gain from respondents. The Hon'ble Authority vide its order 20.11.2018 has already awarded refund of deposited amount with cumulative compensation in the form of interest at the rate of 10.75 % p.a. The prayer as sought by complainants in the present complaint cannot be allowed as it would amount to double jeopardy.
14. Contending all this, respondents prayed for dismissal of complaint.
15. There is no denial that present complainants had filed a complaint, before the Authority, seeking 'delayed possession charges' and said complaint has already been decided by the Authority. Now, through complaint in hands, the complainants have sought compensation on account of rental loss, for loss of interest on the accrued interest, for mental agony and cost of litigation. Learned counsel representing the respondents reiterated the plea of his client well mentioned in its reply and reproduced above. According to him, when 'refund of deposited amount with interest @ 10.75% p.a.' has already been granted, no further relief as sought by the complainants can be allowed by any court including this forum. Learned counsel relied upon a case titled as **National Building Construction Company Limited vs Sri Twivedi(2021) 5SCC 273 Civil Appeal**

  
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**No.274/2020.** There was a delay in handing over possession beyond the contractual stipulated time period, under Clause 20 of Letter of Allotment. A period of 2 ½ years was stipulated, which came to an end, at the end of December, 2014. An additional period of one year was granted. After which, the due date came to an end with December 2015. The allottee filed a complaint under The Consumer Protection Act, 1986, before the National Consumer Disputes Redressal Commissioner (NCDRC). The NCDRC granted interest @10%p.a. w.e.f. July, 2015. The matter went to the Supreme Court of India, where their Lordships held that once NCDRC awarded interest for delay in handing over possession, there was no justification to award additional amount of Rs.2,00,000/- by NCDRC as compensation for loss of rent.

16. There is no dispute over the mandate given by the Apex court. Aforesaid complaint was filed under The Consumer Protection Act, 1986. The Parliament has passed Act of 2016, which is a special Act, with specific objects including to protect the interest of consumers, in real estate sector. Section 19 of said Act describes the rights and duties of allottee(s). Sub-section 4 provides that allottee shall be entitled to claim refund of amount paid alongwith interest at such rates as may be prescribed and compensation in the manner, as provided under this Act from the promoter, if the



promoter fails to complete or is unable to give possession of apartment/plot or the building, as the case may, in accordance with the terms of agreement for sale. Section 18 of this Act prescribes for return of amount and compensation by the promoter. According to it, if promoter fails to complete or is unable to give possession of an apartment/plot or the building, as the case may be:

- a) In accordance with terms of agreement for sale or as the case may be duly completed by the date specified therein or;
- b) Due to discontinuance of his business.....

In such a case, he(promoter) shall be liable, on demand to the allottee..... to return the amount received by it in respect of that apartment/plot or the building, as the case may with interest at such rates as may be prescribed in this behalf **including compensation** in the manner as provided under this Act. Both of these provisions cast obligation upon the promoter, to refund amount alongwith interest **as well as to pay compensation** in the manner, as provided under the Act.

17. The Apex court through a recent judgment given in case titled as **M/s Newtech Promoters and Developers Pvt Ltd. Vs State of UP & Ors Etc in Civil Appeal No.6745-6749 of**





2021 referred both of aforesaid provisions i.e. Section 18 and 19 of the Act and observed as follow-

*"22 If we take a conjoint reading of sub-section(1),(2) and (3) of Section 18 of the Act, the different contingencies spelt out therein.(A) the allottee can either seek refund of the amount by withdrawing from the project; (B) such refund could be made together with interest as may be prescribed;(C) in addition, can also claim compensation payable under Sections 18(2) and 18(3) of the Act: (D) the allottee has the liberty, if he does not intend to withdraw from the project, will be required to be paid interest by the promoter for every months' delay in handing over possession at such rates as may be prescribed."*

18. Their Lordships explained that section 19(4) is almost a mirror provision to Section 18(1) of the Act. Both of these provisions recognise right of an allottee two distinct remedies, viz, refund of the amount together with interest or interest for delayed handing over of possession and compensation.

19. As described above, according to Section 18 and 19 of the Act, which are relied upon by three Judges Bench of the Supreme Court of India in case referred above, it is clear that apart from refund of amount together with interest, the complainants are entitled to compensation, in the manner, as provided under this Act.



20. So far as the plea of learned counsel for respondents that if compensation as requested by the complainants is granted, the same may amount to double jeopardy for his client, as the same has already been directed to refund the deposited amount with 10.75% p.a., I am not in consonance with the learned counsel in this regard. In case, where the promoter fails to hand over possession of unit to the allottee, as per agreement entered between him/it and the allottee, the latter has both the remedies i.e. refund of deposited amount with interest, as well as compensation, under this Act.

21. As per Section 72 of Act of 2016, following factors are to be taken in account by the Adjudicating Officer while adjudging the quantum of compensation:

- a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- b) the amount of loss caused as a result of the default;
- c) the repetitive nature of the default;
- d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice

22. There is nothing on record to show if any disproportionate amount<sup>✓</sup> is gained by builders by not handing over possession of unit in question to the complainants. Similarly, there is no evidence to prove that respondents committed any such default earlier also. So far as the loss caused to the

  
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complainants in not getting possession of unit in question in time is concerned, as per counsel representing them (complainants) his clients had hoped that after getting possession of flat in question, their burden of rental would go off and they will start living in their own house. Unit in question is stated to be a dwelling house comprising four bedrooms, one drawing/dining room, one kitchen and four toilets. Total area admeasuring 3390- sq ft. It is submitted by learned counsel that rent of such accommodation in nearby localities is between Rs 80,000 - Rs 88,000/- per month. He collected this information after downloading the same from the websites i.e. Magic Bricks.com and 99 acres. Com.

23. On the other hand, as per learned counsel for respondents, when the authority has already allowed interest on deposited amount, the amount of rent cannot be granted.

24. It is a matter of common sense of which any court can take judicial notice that value of rupee is declining constantly due to inflation. Perhaps, provision to award interest is to compensate a person in equalising value of rupee. Due to this reason, award of interest cannot be termed as compensation. If respondents had handed over possession of flat in question in agreed time, the complainants were at liberty to reside therein or to rent it out. But due to failure of

  
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- respondents in handing over possession, the complainants were deprived of their right to live in said flat or to rent it out.
25. The respondents had undertaken to hand over possession by September, 2013. The complainants deprived of their right for more than eight years.
26. Latin maxim "*ubi jus ibi remedium*" postulates that where law has established a right there should be a corresponding remedy for its breach. By executing FBA as described earlier, respondent agreed to handover possession of flat in question within 36 months of FBA. It created right in favour of allottees and corresponding duty towards the respondents. True, said right was conditional to payment of sale consideration. As per complainants, they have already paid more than basic sale price. In such a circumstance, the complainants have remedy, in form of refund of amount as well as compensation, provided by Act of 2016, discussed above.
27. The complainants did not produce any reliable evidence like rent agreement of similar accommodation in or nearby localities. Rate of rent of Rs.80,000-88,000/- as claimed by complainants appears to be excessive. Quotations from websites of Magicbricks.com etc are not reliable evidence.
28. On the basis of afore-discussed facts, this forum considers that awarding of Rs 10,000 per month from the due date of possession till date of order of refund by Authority i.e.




20.11.2018 as compensation to the complainants for depriving them of their right. For more than 08 years, as appropriate. Same is thus awarded to complainants.

29. Learned counsel representing the respondents has also claimed that complainants did not produce any evidence to show that they (complainants) suffered any mental agony as claimed by them and hence nothing can be awarded in the name of mental agony.

30. To deprive a person from his right apparently causes mental agony to the sufferer. It is not necessary that such person should have suffered mental illness. A sum of Rs.1,00,000/- is awarded to the complainants for mental agony.

31. Although, the complainants have not filed any receipt of payment as litigation fee of their counsel. It is evident from the record that the same are being represented by an advocate. They (complainants) are entitled to costs of litigation.

32. The respondents are directed to pay all these amounts i.e. Rs.10,000/- per month from the due date of possession till date of order of refund by Authority i.e. 20.11.2018 , plus Rs.1,00,000/- within 90 days from today, along with interest @ 9.3 % p.a. from due date of possession till realisation of amount. Cost of litigation Rs 50,000 is also imposed upon respondents to be paid to complainants.

  
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33. A decree sheet be prepared accordingly.

File be consigned to the Registry.

21.03.2022



**(RAJENDER KUMAR)**  
**Adjudicating Officer**  
**Haryana Real Estate Regulatory Authority**  
**Gurugram**



**HARERA**  
**GURUGRAM**