



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 2597 OF 2019

Pooja Sharma Singh & Maninder Singh

...COMPLAINANT/S

VERSUS

M/S TDI Infrastructure Ltd.

....RESPONDENT

2. COMPLAINT NO. 519 OF 2020

Rajeev batish and Meenakshi Batish

...COMPLAINANTS

VERSUS

M/S TDI Infrastructure Ltd.

....RESPONDENT

3. COMPLAINT NO. 1249 OF 2021

Asha Vashisth

....COMPLAINANT/S

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 29.07.2022

Hearing: 4th (in Complaint No. 2597-2019 & 519-2020)

7th (in Complaint No. 1249-2021)

Present: - Mr. Akshat Mittal, Ld. Counsel for the complainant through VC.
(in Complaint No. 519-2020)

Ms. Pooja Sharma, Complainant through VC.
(in Complaint No. 2597-2019)

Mr. Amit Kumar, for complainant in person.

Mr. Anil K. Garg & J. K. Jaiswal, Ld. Counsel for the
complainant through VC.

Mr. Shubhnit Hans, Ld. Counsel for the respondent.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. All the complaints are being disposed of through this common order on the ground that core issue involved in all cases are identical. Moreover, all these cases pertain to the same project of the respondent i.e. “Tuscan Heights’ at Sonapat. These cases are disposed of in view of the facts of lead **Complaint case no. 2597 of 2019 Pooja Sharma & Maninder Singh vs TDI Infrastructure Pvt. Ltd.** Written submissions of both parties as well as arguments advanced by them were recorded in order dated 08.03.2022. Relevant part of order dated 08.03.2022 is reproduced as below:

“4. Case of the complainants is that they had booked their unit in the project named “Tuscan Heights-Phase-III” of the respondent situated at Sonapat on 12.04.2011. Flat No. 0404 in Tower T-17, measuring 1080 sq. fts. was allotted to them on

03.01.2012. Floor Buyer Agreement (hereinafter referred to as FBA) was executed between parties on 16.01.2012. As per FBA, delivery of the flat was to be made within 30 months from the date of agreement, thus deemed date of delivery was on 16.07.2014. Complainant has paid Rs. 10,31,994/- till 09.06.2012 against total sale consideration of Rs. 24,42,420/-. Complainant, Ms. Pooja Sharma has apprised the Court that their unit is a part of Phase-III of Tuscan City. She stated that the tower T in which their unit is located was never commenced.

Grouse of the complainants is that construction of their unit has not even started till date. Thus, respondent has failed to perform his contractual obligation to deliver her possession of the unit. They cannot wait for indefinite time to get possession of their allotted unit. Therefore, they are seeking refund of Rs. 10,31,994/- along with interest as per Rule 15 of the HRERA, Rules 2017.

5. Respondent has admitted in his reply that construction was completed only till Tower 13 and it stopped thereafter. Admittedly, construction of Tower-17 did not even commence. Learned counsel for the respondent stated that as per his instructions from the respondent company, they are willing to allot an alternate unit to the complainants. Complainants may visit respondent's office to choose alternate unit of their choice.

6. After hearing arguments of both the parties and perusal of record, Authority observes that admittedly respondent is unable to deliver possession of originally allotted

unit to the complainants since till date respondent has failed to even start the construction of Tower T and same appears to have been abandoned by the respondent. Therefore, prima facie the present case qualifies for refund of amount paid by the complainants along with interest as per Rule 15 of the HRERA, Rules 2017.

Learned counsel for the respondent has requested for an adjournment on the ground that the respondent company wants to settle the matter by offering an alternate unit to complainants.

In such circumstances, complainants can either opt to take possession of another similarly situated alternate unit of their choice or withdraw from the project by taking refund of the amount paid by them along with interest.

Authority on request of learned counsel for the respondent is affording a last opportunity to the respondent to settle the matter amicably by way of allotment of an alternate unit of complainants' choice to them before the next date of hearing. In case, no settlement is arrived at between the parties, the Authority will grant refund of the amount paid to the complainants along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017 on the next date of hearing.

7. In view of above, respondent is directed to invite the complainants to visit their office to choose an alternate unit. Respondent is also directed to place before the complainant the layout plan of the whole project demonstrating similarly situated alternate units available for allotment in the same

project. Complainants shall have the option to choose any suitable unit out of the available units and take possession of the same. Parties shall inform about the outcome of aforesaid visit to the Authority on the next date of hearing. In case complainants choose an alternate unit, they shall take possession of the same. Respondent shall deliver possession of opted alternate unit to the complainants and file documents regarding the same before the Authority two week before the next date of hearing.”

2. Today, complainants have stated that they do not want to relocate to alternate flat and only want refund of the amount paid by them along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017.
3. After hearing arguments of both the parties and perusal of record, Authority observes that admittedly respondent is unable to deliver originally allotted flat to the complainants as admitted by in reply. In alternative, respondent wanted to offer alternate flat to complainants. In such circumstances, complainants could either opt to take possession of another similarly situated alternate flat of their choice or withdraw from the project by taking refund of the amount paid by them along with interest. Relief of possession of particular allotted flat in present case cannot be granted to complainants as respondent is not in a position to deliver originally allotted flat to the complainants.



4. Complainants have stated that do not want to relocate to alternate plot. Alternate flat can be offered only with express consent of the allottee. Authority cannot force an allottee to accept alternate flat when originally booked flat cannot be delivered. In such circumstances, if allottees seek refund, the same must be granted.

In these circumstances, when respondent is not able to deliver originally allotted flat to the complainants and he has been using the amount deposited by complainants for the last ten years approximately without any reasonable justification, Authority finds it to be a fit case for allowing refund of the amount paid by the complainants and directs the respondent to refund Rs. 10,31,994/- paid by the complainants along with interest at the rate stipulated under Rule 15 of the IIRERA Rules, 2017 from the date of making payments up to the date of passing of this order.

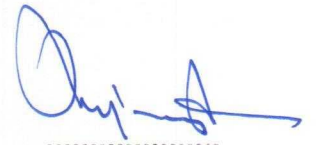
5. In Complaint No. 2597-2019, as per calculations made by Accounts Branch, amount payable by the respondent to the complainant along with interest has been worked out to Rs. 21,39,130/- (Rs. 10,31,994/- + Rs. 11,07,136/-). Therefore, Authority directs the respondent to refund Rs. 21,39,130/-.

6. In Complaint No. 519-2020, as per calculations made by Accounts Branch, amount payable by the respondent to the complainant along with interest has been worked out to Rs. 21,39,250/- (Rs. 10,38,201/- + Rs.

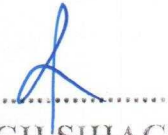
11,01,049/-). Therefore, Authority directs the respondent to refund Rs. 21,39,250/-.

7. In Complaint No. 1249-2021, as per calculations made by Accounts Branch, amount payable by the respondent to the complainant along with interest has been worked out to Rs. 19,63,810/- (Rs. 9,69,334/- + Rs. 9,94,476/-). Therefore, Authority directs the respondent to refund Rs. 19,63,810/-.

8. Respondent shall pay entire amount to the complainants within 90 days of uploading this order on the web portal of the Authority. Respondent has already incurred cost of Rs. 10,000/- in Complaint No. 2597-2019, on account of delay in filing reply. He shall also deposit aforesaid cost. Disposed of in these terms. Files be consigned to the record room and the orders be uploaded on the website of the Authority.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]