



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

### BEFORE THE ADJUDICATING OFFICER

Complaint No. - 224 of 2021

Date of Institution: - 18.02.2021

Date of Decision: - 28.10.2022

Jitendra Arora s/o Sh. Jagdish Chander Arora r/o H.No 163, Nimri Colony, Phase-IV, Ashok Vihar, New Delhi-110052

....COMPLAINANT

VERSUS

1. M/s TDI Infrastructure Ltd., 10, Shaheed Bhagat Singh Marg, New Delhi-110001
2. Sh. Devki Nandan, Director, TDI Infrastructure Ltd., 7, South Patel Nagar, New Delhi-110008.

....RESPONDENTS

**Hearing:-** 30<sup>th</sup>

**Present:-** Mr. Prabhu Nath Chaudhary Advocate, Counsel for the complainant through video conferencing  
Mr. Shubhnit Hans Advocate, Counsel for the respondent no.1  
None for the respondent no.2

*Sarita Gupta*

The brief facts of the complaint are:-

1. The complainant had filed Complaint no.1044 of 2018 against the respondent-promoter before Hon'ble Haryana Real Estate Regulatory Authority, Panchkula. Hon'ble Authority had passed order directing the respondent either to handover possession of the allotted unit to the complainant upto July, 2019 with completion/occupancy certificate issued by the Competent Authority, failing which to refund the whole of the amount alongwith prescribed rate of interest paid by the allottee to the respondent-promoter. The respondent has miserably failed to handover the possession of the unit to the complainant within stipulated time as fixed by Hon'ble Authority as unit was not complete and the local Authority had not provided completion/occupancy certificate to the respondent-promoter. The respondent did not get registered the said project in gross contravention of Section 3 of RERA Act. The respondent had assured the false commitment on the basis of false information given in some brochures, prospectus and advertisements for sale and booking of the units of the project in total violation to provisions of Section 12 of the Act. As per provisions of Section 13(1) of the Act, a promoter shall not accept a sum more than 10% of the cost of the apartment, plot or building as advance payment or application fees from a person without first entering into written agreement for sale and registering the said agreement for sale but the respondent had executed the sale agreement receiving 55% of the value of the unit after 12 months of booking of the unit. In violation to provisions of Section 17(1)



of the Act, the respondent had not handed over the possession of the unit to the complainant. On 11.09.2018, the complainant had served a notice to the respondent to cancel the allotment of said unit and refund the whole amount paid by him with due interest and compensation. Despite that the respondent has neither replied to the notice nor made refund of his money. The complainant has filed this complaint before HRERA, Panchkula praying for passing an order for refund of money with due interest accrued thereon and compensation for damages and harassment. The respondent has not adhered to provisions of Sections 18(1) and 19 of the Act. By way of the present complaint, the complainant has sought compensation for physical and mental harassment and huge monetary loss to the complainant. The respondent has not paid the amount to the complainant till date despite order dated 20.02.2019 and execution order dated 23.04.2019 causing huge pecuniary loss and unbearable harassment to the complainant. The complainant has been paying ₹25,000/- per month as rent of his rented house due to failure of delivery of possession of the allotted unit by the respondent to the complainant upto January, 2016. The respondent has compelled the complainant to file complaint which has caused monetary loss and physical and mental harassment to him. The complainant has sought ₹15,00,000/- as compensation for physical and mental harassment, ₹15,00,000/- as damages for rent paid for rented accommodation w.e.f. January, 2016 till date i.e. for 60 months @ ₹25,000/- per month, ₹2,00,000/- as legal fees

and penalty be imposed upon the respondent for violation of order and directions of HRERA Panchkula.

2. Notice was successfully served upon both the respondents, despite that none had appeared on behalf of respondent no.2. Respondent no.1 appeared through counsel and filed reply to the complaint stating therein that the present complaint is not maintainable and is liable to be dismissed in limine. The complainant has sought compensation under various heads without mentioning any reason or justification as to why the compensation be granted. No documentary evidence has been annexed by the complainant along with complaint to support his averments. Merely by writing that harassment has been caused, the complainant does not become entitled for the same. The onus to prove the same is on the complainant through documents, evidence, witnesses etc., however, the complainant has failed to prove the same, rather he has tempered the evidence produced in the Court which clearly indicates the malafide intention of the complainant. Agreement to sell was executed on 23.07.2013 which is much prior to the date when RERA Act came into existence. Accordingly the agreement executed between the parties is binding on the complainant/allottee. RERA Act and RERA Rules do not have the force to supplant already agreed upon terms and conditions of the agreement executed between the respondent company and the complainant. The complainant is an educated person and has signed on each and



every page of the agreement. Delay, if any, cannot solely be attributed to the respondent as the complainant himself is a defaulter in making the payments which directly hits construction of the project. Various reminders were sent to the complainant to clear the dues but the complainant failed to make the payments on time and neglected his obligation to pay the outstanding amount. On the other hand, it is the respondent company to whom the compensation must be paid due to delay in making payments by the complainant. The complainant has not approached the Court with clean hands. Possession has already been offered to the complainant vide letter dated 03.04.2019 and 07.09.2019 but the complainant did not come forward to accept the same. While producing the additional evidence, the complainant tempered the evidence inside and outside the Court room, wherein corrections were made using a black pen, which is apparent in order dated 22.07.2021 passed by this Court. The present complaint is time barred and also hit by principle of delay and laches and is not maintainable. Adjudicating Officer does not have jurisdiction to adjudicate the issue. Complaint bearing no.1044 of 2018 filed by the complainant has been decided vide order dated 22.02.2019 passed by Hon'ble Authority. The order passed by Hon'ble Authority has not attained the finality. The respondent company has already preferred an appeal before Hon'ble Tribunal against order passed by Hon'ble Authority. It is denied that as per provisions contained in Section 17(1) of the RERA Act, the promoter has to

execute the registered conveyance deed in favour of complainant being the allottee and handover physical possession of the said unit and other title documents upto January, 2016 but the promoter respondent has not handed over the possession of the said unit. In fact possession has always been tentative and subject to force majeure conditions. The project of respondent company is complete and ready for possession for fit outs, which has already been offered to the complainant. The occupation certificate has been applied and same is awaited. Provisions of RERA Act are not denied however its applicability to the facts and circumstances of the present case are denied. It is also denied that the complainant was entitled to obtain information relating to sanctioned plan etc. approved by Competent Authority and such other information as provided in the Act/Rules/Regulations or agreement for sale signed with the promoter. It is also denied that the complainant was entitled to know stage wise time schedule of completion of the project. The complainant was not entitled to claim the refund along with interest and compensation. As per provisions of Rule 29 of RERA Rules, compensation must be granted after establishment of violation by Hon'ble Authority. The complainant has sought compensation but has failed to aver any such contention pertinent to compensation. No documentary evidence has been led by the complainant to prove his case. Mere words cannot be lead to grant of compensation to the complainant. No pecuniary loss has been caused to the complainant. It is denied that complainant is paying



₹25,000/- per month as rent for his rented house due to failure of delivery of possession of the allotted unit by the respondent to the complainant within stipulated period i.e. January 2016. The complainant is making false and frivolous story just to gain undue monetary advantage from the respondent company. The complainant has himself admitted that the house in which he is living, belongs to his mother, therefore such contention cannot be accepted being absurd and frivolous. Vide order dated 20.02.2019 passed by Hon'ble Authority, the complainant was advised to file complaint before Adjudicating Officer to claim compensation as per provisions of the Act. The respondent has prayed for dismissal of complaint.

3. The facts of the case are not disputed. The complainant Jitendra Arora had booked an apartment measuring 1224 sq. ft. (super area) on payment of earnest money in sum of ₹5,00,000/- in the Espania Royale Floor, project of respondent at Sonapat. Builder buyer agreement was executed between the parties on 23.07.2013. As per the said agreement, possession was to be handed over by the respondent company to the complainant till 23.01.2016. Till that time i.e. 23.01.2016, the complainant had paid a sum of ₹36,98,619/- with the respondent company. This amount is not disputed by the respondent. The copy of statement of account in the account of respondent company has been placed on record by learned counsel for the complainant at page no.27, 28 and 29 of the complaint. Till

the date the possession was to be handed over to the complainant, a sum of ₹36,98,619/- has been paid by the complainant and admitted by the respondent. Since the possession of apartment was not handed over to the complainant, on 09.03.2018 the complainant had filed Complaint no. 1044 of 2018 before Hon'ble Authority seeking refund of the paid amount. Vide order dated 20.02.2019 passed by Hon'ble Authority, the respondent company was directed to handover possession of apartment to the complainant till July 2019, failing which he shall be entitled to refund of amount deposited by him alongwith interest. Copy of order dated 20.02.2019 passed by Hon'ble Authority has been placed on the record. It is the averment of the complainant that despite order dated 20.02.2019 passed by Hon'ble Authority, possession was not handed over to the complainant till July 2019. Neither possession was handed over to the complainant nor amount paid by the complainant was refunded to him. He was compelled to file execution complaint before Hon'ble Authority on 22.04.2019. Even in execution, amount was not refunded to the complainant. On 01.08.2019, the respondent company had filed appeal before -Hon'ble Tribunal. Vide order dated 22.10.2019 passed by Hon'ble Tribunal, appeal filed by respondent was dismissed as the respondent had failed to make pre-deposit as per requirement under Section 43(5) RERA Act. It is the argument of learned counsel for the complainant that appeal was filed before Hon'ble High Court alongwith other bunch matters. Vide judgment dated



16.10.2020 passed by Hon'ble High Court, bunch appeals titled as Experion Developers Pvt. Ltd. v/s State of Haryana and others were ordered to be dismissed. Special leave petitions were filed before Hon'ble Supreme Court. Vide judgment dated 12.05.2022 in Newtech Promoters v/s Union of India and others, Hon'ble Supreme Court had dismissed the petitions. It has been argued by learned counsel for complainant that the execution filed by the complainant is still pending before Hon'ble Authority and is fixed for payment by the respondent company.

4. By way of the present complaint, the complainant has sought compensation to the tune of ₹15,00,000/- on the ground of mental harassment and agony, since the possession of apartment was not handed over to the complainant by the respondent, he had no option but to stay in rented house, he has sought ₹15,00,000/- as damages for rent, ₹2,00,000/- as legal fees and he has also requested penalty to be imposed upon the respondent for violation of order and directions of RERA, Panchkula. सत्यमेव जयते

5. The heads, under which the compensation has been sought by the complainant be dealt with separately.

6. First of all taking the compensation of ₹15,00,000/- as damages for rent paid. It has been argued by learned counsel for the complainant that the complainant is residing in rented house bearing no163, situated at Nimri Colony,

Phase-IV, Ashok Vihar, New Delhi-110052 and paying rent to Smt. Loveleen Arora @ ₹25,000/- per month. Learned counsel for the complainant has placed on record the original of rent agreement/renewal deed dated 06.08.2019 w.e.f. 01.08.2019 till 31.07.2026 for a period of 84 months. Learned counsel for complainant has also placed on record copies of bank statements of HDFC of Jitendra Arora, complainant and his wife Kamini Arora showing that payment of rent was being made to Smt. Loveleen Arora landlady of the house. Learned counsel for the complainant has also placed on record affidavit of Smt. Loveleen Arora landlady in which she has stated that she had rented out house no. 163, Nimri Colony, Phase-IV, Ashok Vihar, New Delhi-110052 to Jitendra Arora at a monthly rent of ₹25,000/- for 7 years i.e. 01.08.2019 to 31.07.2026. The said tenancy was renewed from the earlier tenancy w.e.f. 01.04.2016 to 31.07.2019 which was also rented out for a sum of ₹25,000/- per month. The tenant was making the payment of rent from his own account as well as from the bank account of his wife and sometimes in cash. The execution of rent deed dated 06.08.2019 in the name of complainant has been strongly objected to by learned counsel for the respondent on the ground that Smt. Loveleen, the alleged landlady is mother of the complainant and the complainant has been residing in house of his mother. It has also been argued that the said rent deed is a fabricated document only to claim amount of rent @ ₹25,000/- per month from the respondent. It has also been



argued that the rent deed is never made for 84 months. Rather it is made only for 11 months. The payment of amount of rent by the complainant to his own mother has also been disputed by learned counsel for respondent saying that it does not stand proved from the documents placed on record.

7. The complainant has shown himself as tenant of his own mother Smt. Loveleen Arora. Rather this fact has been concealed from the Court that Smt. Loveleen Arora, landlady is mother of the complainant. On 02.08.2021 during the pendency of the present case, an affidavit has been filed by Smt. Loveleen Arora with regard to execution of rent agreement w.e.f. 01.08.2019 to 31.07.2026. Though it has also written that the present tenancy is the renewal of earlier tenancy with Jitendra Arora which was previously w.e.f. 01.04.2016 to 31.07.2019 of the same house for the amount of rent i.e. ₹25,000/- per month, at this stage it is pertinent to mention here that previous alleged tenancy w.e.f. 01.04.2016 to 31.07.2019 is not on the record. Had the said tenancy been executed, the complainant could provide copy of the same. It is for the first time that complaint for refund amount was filed by the complainant on 09.03.2018. It was decided vide order dated 20.02.2019. Execution complaint was filed on 22.04.2019. Appeal before Hon'ble Tribunal was filed by respondent company on 01.08.2019. It was only after that i.e. on 06.08.2019, the stamp paper were purchased for execution of rent agreement and it was executed w.e.f. 01.08.2019. It appears that no rent deed

was ever executed w.e.f. 01.04.2016 to 31.07.2019. Learned counsel for the complainant has placed on record copy of rent receipt as Annexure C-2 signed by Smt. Loveleen Arora. It is relevant to mention here that this is undated. The landlady Smt. Loveleen Arora has stated that the said house was rented out to Jitendra Arora since 2012 but it has not been mentioned what amount of rent was being taken by her in the year 2012 when it was rented out. The rate of rent has also not been mentioned w.e.f. 2012 to 31.03.2016. The period of tendency has been mentioned as 01.04.2016 to 31.07.2019 @ ₹25,000/- per month and the total rent for that period has been shown as ₹10,00,000/- and further from 01.08.2019 to 30.03.2021 @ ₹25,000/- and total rent for this period has been shown as ₹5,00,000/-. The total amount of rent w.e.f. 01.04.2016 to 30.03.2021 has been shown as ₹15,00,000/-. Learned counsel for the complainant has placed on record the copy of bank statement of complainant Jitendra Arora as well as his wife Smt. Kamini Arora but the bank statement does not show uniform withdrawal of ₹25,000/- per month or it was ever deposited in the account of Smt. Loveleen Arora landlady who is also mother of Jitendra Arora. On 26.10.2016, one cheque in the sum of ₹51,000/- has been paid in the account of Smt. Loveleen Arora and on 08.05.2017, one cheque has been paid in the account of Smt. Loveleen Arora to the tune of ₹31,000/-, on 07.10.2017 a cheque was paid in the sum of ₹39,000/-, 12.12.2017 a cheque of ₹24,000/- was deposited in the account of Smt. Loveleen



Arora. By no stretch of imagination it can be said that a sum of ₹25,000/- was being paid by the complainant Jitendra Arora regularly to his landlady Smt. Loveleen Arora. Except the cheques deposited in her account, there are withdrawals by the complainant himself. It cannot be said that these withdrawals would amount to payment of monthly rent to Smt. Loveleen Arora either by the complainant or his wife Smt. Kamini Arora. Though in her affidavit Smt. Loveleen Arora has stated that the rent was being paid either by her son Jitendra Arora or his wife Smt. Kamini Arora or sometimes cash was being paid. It does not amount the payment of rent in pursuance of execution of rent deed dated 06.08.2019. Had there been rent deed either from the year 2012 when Loveleen Arora has alleged that the house was rented out to Jitendra Arora or from the year 2016 when possession was to be handed over to the complainant by the respondent company, the matter would had been entirely different. The question of payment of rent to the tune of ₹25,000/- per month and execution of rent deed have crept into the mind of complainant only after filing of complaint before Hon'ble Authority, passing of order by Hon'ble Authority in which directions were given to the respondent company to handover the possession of the apartment till 31.07.2019. Benefit of transactions of the bank has been tried to be taken showing that as there were regular withdrawals or regular deposit of rent in the name of Smt. Loveleen Arora. This is futile attempt on the part of complainant. It all appears to be

afterthought and the complainant has failed to prove that he was compelled to live in rented house and pay ₹25,000/- per month as the possession of the apartment was not handed over by the respondent to the complainant. Hence no amount of compensation is being paid on account of rent allegedly paid by the complainant to his landlady, who is his mother.

8. The complainant has sought compensation of ₹15,00,000/- on account of mental harassment and agony. It is matter of record that in total a sum of ₹36,98,619/- has been paid by the complainant to the respondent. A sum of ₹5,00,000/- was paid at the time of booking of apartment. Builder buyer agreement was executed between the parties on 23.07.2013. As per the said agreement, possession of the apartment was to be handed over to the complainant by the respondent company till 23.01.2016. Copy of statement of account has been placed on record by learned counsel for complainant on page no.28 of paper book of complaint, which shows that a sum of ₹33,14,202/- was <sup>paid 29</sup> on 23.01.2016, ₹3,62,688/- on 17.05.2016 and ₹2,540/- on 25.07.2016 and ₹19,189/- on 21.04.2017. The possession of the apartment was to be handed over till 23.01.2016. In Complaint no.1044 of 2018, which was decided on 20.02.2019 by Hon'ble Authority, the respondent company was directed to handover the possession of the apartment till 31.07.2019. It is pertinent to mention here that despite that neither possession has been handed over nor refund has been made. It shows that the amount deposited by



the complainant was being used by the respondent company from the date of deposit till the date of order. It amounts to wrongful gain to the respondent and wrongful loss to the complainant. The amount of compensation is quantifiable. As per observations of Hon'ble Apex Court in Civil Appeal No.6239 of 2019 titled as Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. v/s DLF Southern Homes Pvt. Ltd (now known as BEGUM OMR Homes Pvt. Ltd.) and Ors. it has been observed that compensation @ 6% p.a. is to be paid to the allottee/home buyer.

9. The calculation of compensation is tabulated below:

**Compensation Calculation**

Amount Paid (in ₹)	Time period	Rate	Compensation Amount (in ₹)
₹33,14,202/-	23.01.2016 to 03.04.2019	6 %	₹6,35,782/-
₹3,62,688/-	17.05.2016 to 03.04.2019	6 %	₹62,720/-
₹2,540/-	25.07.2016 to 03.04.2019	6 %	₹410/-
₹19,189/-	21.04.2017 to 03.04.2019	6 %	₹2,249/-
Total ₹36,98,619/-			₹7,01,161/-

10. The complainant has sought a sum of ₹2,00,000/- as legal expenses. Learned counsel for complainant has placed on record copies of receipt of fees charged by him from the complainant viz receipt dated 20.11.2018 in the sum of

₹25,000/-, 20.02.2019 in the sum of ₹25,000/-, receipt dated 20.04.2019 in the sum of ₹25,000/-, receipt dated 30.08.2019 in the sum of ₹50,000/-, receipt dated 02.09.2020 in the sum of ₹50,000/- and receipt dated 05.04.2021 in the sum of ₹25,000/-. All these receipts bear initials of some munshi, whose name is not written. Firstly signatures of counsel are not there, secondly name of munshi who had received the payment has not been mentioned. Complaint no.1044 of 2018 was filed on 09.03.2018 but the fees has been shown to be allegedly taken on 20.11.2018 and after that on 20.09.2019, in the same complaint ₹25,000/- more were received, for filing of present complaint a sum of ₹25,000/- has been taken on 05.04.2021, whereas the complaint has been filed on 18.02.2021. For filing of execution Complaint no.1025 of 2019 a sum of ₹25,000/- was charged on 20.04.2019. On 30.08.2019 and 02.09.2020 a sum of ₹50,000/- each has been charged for appeal before Hon'ble Appellate Tribunal. When appeal was not entertained and it was dismissed for want of pre-deposit, there was no question of issuing notice to the opposite party. Since all these copies of receipts do not bear signatures of learned counsel for the complainant and name of munshi has neither being mentioned nor he has appeared before Court to depose that these are his signatures and on behalf of advocate he had received these amounts as fees. Hence these copies of receipts are not being taken as having been proved. However a sum of ₹25,000/- in lump sum is being granted as cost of litigation.




11. The total compensation comes to ₹7,26,161/- [₹7,01,161/- (mental harassment and agony) + ₹25,000/- (litigation cost)].

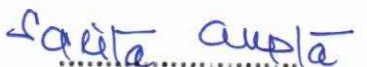
In these terms, the present complaint is partly allowed. The respondent is directed to pay amount of ₹7,26,161/- (Rupees Seven Lakh Twenty Six Thousand One Hundred and Sixty One only) within 90 days to the complainant. First instalment is to be paid within 45 days from the date of uploading of this order and remaining amount within next 45 days.

11. The present complaint stands disposed of. File be consigned to record room after uploading of this order on the website of the Authority.

28.10.2022

  
(DR. SARITA GUPTA)  
ADJUDICATING OFFICER

**Note:** This judgement contains 17 pages and all the pages have been checked and signed by me.

  
(DR. SARITA GUPTA)  
ADJUDICATING OFFICER