



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	757 of 2022
Date of filing.:	19.04.2022
First date of hearing.:	28.06.2022
Date of decision.:	15.12.2022

Swati A Jain  
1101-E Wing Kukreja Palace, V B Lane  
Extn Garodia Nagar, Ghatkopar-E  
Mumbai

...COMPLAINANT

VERSUS

TDI Infrastructure Pvt. Limited.  
Vandana Building, Upper Ground Floor,  
11, Tolstoy Marg, Connaught Palace

....RESPONDENT

**CORAM:** Dr. Geeta Rathee Singh Member

Nadim Akhtar Member

**Date of Hearing:** 15.12.2022

**Hearing:** 3rd

**Present: -** Mr. Vikas Deep, Ld. Counsel for the complainant  
through VC.  
Mr. Shubhnit Hans, Ld. counsel for the respondent

*G. Rathee*

**ORDER (DR. GEETA RATHEE SINGH- MEMBER)**

1. Present complaint dated 19.04.2022 has been filed by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

**A. UNIT AND PROJECT RELATED DETAILS**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name of the project.	TDI City, Kundli, Sonapat
2.	Nature of the project.	Plotted colony
3.	<b>RERA Registered/not registered</b>	Unregistered



4.	<b>Details of unit.</b>	Flat No. 502, 5th floor, Tower 6, 1280 sq.ft.
5.	<b>Date of Builder buyer agreement</b>	04.06.2008
6.	<b>Due date of possession</b>	Not mentioned
7.	<b>Total sale consideration</b>	₹. 46,45,000/-
8.	<b>Amount paid by complainant</b>	₹ 46,81,250/-
9.	<b>Offer of possession.</b>	Nonr

### **B. FACTS OF THE COMPLAINT**

3. Complainant in this case had booked a residential plot in the project of the respondent namely "TDI City", Sonipat in the year 2006 for a total sale consideration of ₹ 46,45,000/-/- against which the complainant has paid an amount of ₹ 46,81,250/- till July 2009. Vide allotment letter date 08.08.2006 complainant was allotted plot no. 961, Block- H measuring 500 sq.yds. Respondent vide letter dated 04.06.2008 executed a buyers agreement with the complainant for sale of allotted plot. A copy of the agreement is annexed as Annexure C-4 of the complaint file. It is alleged by the complainant that more than 16 years have passed from the date of booking but the respondent is not in a position to deliver possession since the project is still incomplete.

**C. RELIEF SOUGHT**

4. The complainant in his complaint has sought relief of refund of the paid amount along with interest as per provisions of section 18 of the RERA Act.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

5. Respondent in its reply submitted that the complainant in present complaint is seeking refund of the paid amount since respondent is not in a position to deliver possession. However, vide letter dated 05.06.2018, the respondent company had informed the complainant that due to reasons beyond control of the respondent company and unforeseen circumstances, the complainant could not be offered possession of the original booked unit and as a goodwill gesture, respondent vide letter of even date provided the complainant with an option for taking over possession of an alternate unit ready in all respects in the same project and get done registration of sale deed. However, it is the complainant who did not come forward since 2018, to choose from the above, and has instead filed present complaint. Copy of letter dated 05.06.2018 is annexed as annexure R-2. Therefore, it is submitted that the complainant is not entitled to any relief.



**E. ARGUMENTS OF LEARNED COUNSEL FOR  
COMPLAINANT AND RESPONDENT.**

6. During course of oral hearing , learned counsel for both the parties reiterated their averments as mentioned in the complaint and reply filed therein. Learned counsel for the complainant stated that though vide letter dated 05.06.2018, respondent had given an option to the complainant for an alternative plot in the same project but in said letter respondent had failed to mention any specifications with regard to the alternative plot because of which complainant could not have trusted said offer of respondent. Now, since the respondent is not in a position to offer possession of booked plot i.e plot no. H-961 and more than 16 years have already passed since date of booking , the complainant is only interested in seeking refund of the paid amount along with interest. Therefore, learned counsel for the complainant prayed that directions be issued to the respondent to refund the amount paid by complainant along with interest.

**OBSERVATIONS OF THE AUTHORITY**

7. In view of the submissions of learned counsel for the respondent, Authority observes that complainant in this case had booked a unit in



the project of the respondent in the year 2006 for a total sale consideration of ₹ 46,45,000/- against which the complainant had paid an amount of ₹ 46,81,250/-. However, even after delay of more than 16 years respondent did not offer possession of the booked plot to the complainant. In its reply submitted, it has been admitted by the respondent that due to reasons beyond control, possession of the unit booked by the complainant could not be delivered and therefore, vide letter dated 05.06.2018 respondent had given an option to the complainant to take possession of an alternative unit in the same project which was ready for delivery. However, as per the complainant in said letter respondent had failed to mention any specifications in regard to the alternative plot in question thus raising doubts in the mind of complainant in regard to the genuineness of the offer and thus complainant chose not to respond to the same. Authority observes that in present situation, respondent has caused an extra ordinary delay in delivery of possession of the booked and further the offer dated 05.06.2018 for an alternative unit could not be considered a genuine offer since respondent failed to provide any details and further follow up with the complainant in case of delay in handing over of possession. Further, Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others" has observed that in case of delay in granting possession as per agreement



for sale, allottee has an unqualified right to seek refund of amounts paid to the promoter along with interest. Para 25 of this judgement is reproduced below:

*“25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”*

8. Therefore, Authority finds it to be fit case for allowing refund in favour of complainant. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:



**“Rule 15: Interest payable by promoter and Allottee. [Section 19] - An allottee shall be compensated by the promoter for loss or damage sustained due to incorrect or false statement in the notice, advertisement, prospectus or brochure in the terms of section 12. In case, allottee wishes to withdraw from the project due to discontinuance of promoter's business as developers on account of suspension or revocation of the registration or any other reason(s) in terms of clause (b) sub-section (I) of Section 18 or the promoter fails to give possession of the apartment/ plot in accordance with terms and conditions of agreement for sale in terms of sub-section (4) of section 19. The promoter shall return the entire amount with interest as well as the compensation payable. The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent. In case, the allottee fails to pay to the promoter as per agreed terms and conditions, then in such case, the allottee shall also be liable to pay in terms of sub-section (7) of section 19:**

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.”*

9. The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is



reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

10. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the marginal cost of lending rate (in short MCLR) as on date i.e. 20.12.2022 is 8.60%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.60%.

11. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

*(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation.-For the purpose of this clause-*

*(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*

*(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;*

Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid by him till the actual realization of the amount.



Hence, Authority directs respondent to refund to the complainant the paid amount of ₹ 46,81,250/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.60% (8.60% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the interest payable to the complainant from date of payments till date of order(i.e 15.12.2022) and same works out to ₹ 75,75,494/-.

#### **I. DIRECTIONS OF THE AUTHORITY**

12.Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to refund the entire amount of ₹ 1,22,56,744/- .to the complainant.
- (ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development)



Rules, 2017 failing which legal consequences would follow.

13. The complaint is, accordingly, **disposed of**. File be consigned to the record room and order be uploaded on the website of the Authority



**DR. GEETA RATHEE SINGH**  
[MEMBER]



**NADIM AKHTAR**  
[MEMBER]