



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1319 of 2022
Date of filing.:	26.05.2022
First date of hearing.:	02.08.2022
Date of decision.:	22.12.2022

1.COMPLAINT NO. 1319 OF 2022

Deepak
H.no 297, Pana Udyan Narela,
Delhi-110040

....COMPLAINANT

VERSUS

1. TDI Infracorp India Ltd.
Vandana Building, Upper Ground Floor,
11, Tolstoy Marg, Connaught Palace
2. TDI Realcon Pvt Ltd
Vandana Building, Upper Ground Floor,
11, Tolstoy Marg, Connaught Palace

....RESPONDENT

2. COMPLAINT NO. 1320 OF 2022

Meena Devi & Anr.
H.no 955, Sector 14, Sonipat,
Haryana-131001

....COMPLAINANT/S

VERSUS

1. TDI Infracorp India Ltd.
Vandana Building, Upper Ground Floor,
11, Tolstoy Marg, Connaught Palace
2. TDI Realcon Pvt Ltd
Vandana Building, Upper Ground Floor,
11, Tolstoy Marg, Connaught Palace

....RESPONDENT

S.No.	Particulars	Details
1.	Name of the project.	Waterside Floors, Kundli, Sonipat
2.	Nature of the project.	Commercial Complex
3.	DTCP License no.	158 of 2008
4.	RERA Registered/not registered	Registration vide registration no. 43 of 2017
5.	Details of unit	WF-48, Ground Floor, 1500 s.ft.
6.	Date of Agreement	Not mentioned
7.	Due date of possession	2013
8.	Total sale consideration	₹ 72,31,740/-
9.	Amount paid by	₹ 73,48,326/-
10.	Offer of possession.	None

B. FACTS OF THE COMPLAINT

4. Facts of captioned complaints are similar and they pertain to same project of the respondent. Both the captioned complaints, therefore, have been taken up together for disposal. Facts of complaint no. 1319 of 2022 titled as Deepak versus TDI Infracorp India Ltd are being taken into consideration by treating it as lead case.
5. Complainant in this case had booked two residential floors in the project of the respondent namely "Water Side Floors" situated at Lake Grove City, Kundli, Sonipat in the year 2013 for a total sale consideration of ₹ 72,31,740/- against which complainant has made a

total payment of ₹ 73,48,326/- to the respondent till date. Vide allotment letter dated 18.09.2013 complainant was allotted unit no. WF-48/GF admeasuring 1500 sq.ft. and vide allotment letter dated 15.10.2013 unit no. WF-51/GF admeasuring 1500 sq.ft. in the name of the complainant. Copies of both the letters are annexed as Annexure C-3 & C-4 in the complaint file. It is alleged by the complainant that respondent executed Floor Buyer's agreement vide which unit no. WF-48/GF was agreed to be sold in the year 2013 however, respondent did not mention any date on said agreement . A copy of agreement dated NIL is annexed as Annexure C-5 in the complaint file. As per clause 28 of the agreement respondent should have delivered possession of the booked unit within 30 months from the date of execution i.e before April 2016. Complainant suffered a huge financial crunch due to family health issues and therefore vide letter dated 12.11.2014 had requested the respondent to adjust the payment made in respect of both the units in favour of one unit. Said letter was received by the respondent, a copy of which is annexed as Annexure C-6 in complaint file.

That the complainant paid each instalment as per the demands of the respondent and has made a substantial payment of ₹ 73,48,326/- till 2019. Copy of statement of accounts dated 13.02.2019 & 22.02.2022 issued by respondent reflecting payment of said amount of ₹ 73,48,326/-

is annexed as Annexure C-7(colly) in complaint file. It is alleged by the complainant that despite receiving entire sale consideration towards booked unit respondent has failed to deliver possession of the booked unit till date. Despite repeated requests/ communications respondent has failed to respond in regard to delivery of possession of booked unit.

C. RELIEF SOUGHT

6. Feeling aggrieved complainant has filed present complaint seeking refund of the paid amount of ₹ 73,48,326/- along with interest as per the provisions of Section 18 of the RERA Act.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

7. Respondent in its reply submitted that construction and development of the project has been completed and respondent has already offered fit out possession of the unit to the complainant on 07.02.2022. However, it is the complainant who is not coming forward to accept the offer of possession and make payment of remaining amount. That the complainant has defaulted on several account in making timely payment of deposits and has thus accrued a delayed payment penalty of ₹5,12,964/- and an amount of ₹ 18,63,475/- is still outstanding against the complainant. It has been stated that the agreement was entered between both the parties on 12.12.2013 and that the total cost of the unit was ₹ 86,98,837/-. The project stands complete including



the unit booked by the complainant and complainant may take possession after payment of balance sale consideration.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT.

8. During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for complainant submitted that complainant had booked the floor in the year 2013 and as per buyers agreement possession should have been delivered by the year 2016. However, more than five years have passed but the complainant is not in a position to deliver possession of the unit. Although it has stated in the reply that the project is complete and ready for possession but the respondent has failed to mention in regard to the status of occupation certificate. Respondent has even issued an offer of possession dated 07.02.2022 for fit out works but has failed to apprise the complainant whether respondent has received occupation certificate. An offer of possession without obtaining occupation certificate cannot be called a valid offer of possession and the complainant is not willing to accept the possession without occupation certificate. Therefore, learned counsel for the complainant requested the Authority that directions be issued to respondent to refund the amount paid by complainant along with interest.



In rebuttal, learned counsel for the respondent stated that all developmental works in the project are complete and respondent has applied for occupation certificate which will be received soon. Therefore, the relief sought by the complainant may not be allowed.

F. JURISDICTION OF THE AUTHORITY

9. Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

F.1 Territorial Jurisdiction

As per notification no. 1/92/2017 ITCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be entire Haryana except Gurugram District for all purpose with offices situated in Panchkula. In the present case the project in question is situated within the planning area Rewari district. Therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

F.2 Subject Matter Jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:



Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act of 2016 quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by learned Adjudicating Officer if pursued by the complainants at a later stage.

G. ISSUES FOR ADJUDICATION

10. Whether the complainant is entitled to refund of amount deposited by him along with interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS OF THE AUTHORITY

11. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes that as per



the buyers agreement possession of the booked unit should have been delivered by the year 2016. However, till date respondent is yet to issue a valid offer of possession to the complainant, even today respondent is uncertain with regard to the grant of occupation certificate. Complainant in this case has already waited for more than five years for delivery of possession but is not willing to take possession of booked unit without occupation certificate which is uncertain in foreseeable future. In such situation, complainant does not wish to be a part of the project and is willing to withdraw on account of default in delivery of possession as per agreed terms.

12. Further, Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others" has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per agreed state. 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.”

13. The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. The complainant wishes to withdraw from the project of the respondent, 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 (1) 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.”

14. 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.
15. 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%.

16. 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.

17. Authority has got calculated the interest payable to the complainants and accordingly total amount payable to the complainants including interest calculated at the rate 10.60% is depicted in table below:

S. No	Complaint No.	Amount paid by complainant (in ₹)	Interest accrued till 15.12.2022 (in ₹)	Total Amount payable to Complainant (in ₹)
1.	1319 of 2022	---	---	---
2.	1320 of 2021	65,99,541/-	56,46,011/-	1,22,45,552/-

18. In complaint no. 1319 of 2022, complainant has claimed to have paid an amount of ₹ 73,48,326/- to the respondent in lieu of booked unit without attaching proof of entire said payments being made to the respondent. Complainant has attached a detailed ledger account at page 59 of the complaint file but the same cannot be considered for calculating refund of the paid amount for lack of proper receipts and date of payment. In the absence of receipts Authority would not be able to ascertain dates on which amounts have been paid and total amount deposited by the complainant. No proof regarding payment of amount has been annexed by the respondent in its reply. So, in order to calculate the interest on amount paid by the complainant, Authority decides to rehear the matter with a direction to the complainant(s) to place on record proof of payments(receipts) made by them to the respondents. Complainant(s) are directed to submit said proof atleast



fifteen days before next date of hearing. adjourned to 28.02.2023 for the limited purpose of verification of amounts paid by the complainant to the respondent and calculation of interest as per principles mentioned in para 8 of this order .

I. DIRECTIONS OF THE AUTHORITY

19. Hence, the Authority hereby passes this order in Complaint no. 1320 of 2022 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 1,22,45,552/- 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.



Complaint no. 1319 & 1320 of 2022

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

Geeta Rathee

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

Nadim Akhtar

.....
NADIM AKHTAR
[MEMBER]

