



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2302 of 2022
Date of filing.:	27.08.2022
First date of hearing.:	17.01.2023
Date of decision.:	17.01.2023

Parmod Jain
S/167, Gur mandi, Sonapat

....COMPLAINANT

VERSUS

TDI Infrastructure Limited.
9 Kasturba Gandhi Marg, Connaught Place,
New Delhi 110001

....RESPONDENT

CORAM:

Dr. Geeta Rathee Singh

Member

Nadim Akhtar

Member

Hearing:

1st

Present:

Mr. Vikas Deep, Counsel for the complainant
through VC.

Mr Shubhnit Hans, Counsel for the respondent
through VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint 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 Commercial Plaza, Kundli, Sonipat
2.	Nature of the project.	Integrated Township
3.	DTCP License no.	109 of 2008 dated 27.05.2008
4.	RERA Registered/not registered	Unregistered
5.	Details of unit.	Not available

6.	Date of Builder buyer agreement	Not Mentioned
7.	Due date of possession	Not Mentioned
8.	Basic sale consideration	₹ 18,75,000/-
9.	Amount paid by complainant	₹3,25,000/-
10.	Offer of possession.	None

B. FACTS OF THE COMPLAINT

3. Complainant in this case had booked a commercial shop measuring 500 sq. ft in the project of the respondent namely 'Commercial Plaza, TDI City' situated at ^{Kundli} Sonepat by making a payment of an amount of ₹3,25,000/- as booking amount in the year 2007. The basic sale consideration of said flat was ₹ 18,75,000/-. It is submitted by the complainant that after payment of booking amount the further amount was payable in instalments which were to start after allotment of shop, as stipulated in registration form annexed as Annexure C-2 of complaint file. However, respondent failed to allot a specific unit in favour of the complainant despite payment of booking amount, hence, no further amount was payable by the complainant. Till date respondent has failed to allot the commercial shop in terms of booking

and also failed to develop the project as per schedule. It is further been submitted that complainant had previously filed complaint no. 800 of 2012 filed by the complainant before District Consumer Forum, New Delhi which was dismissed as withdrawn vide order dated 08.04.2019. Copy of order dated 08.04.2019 is annexed as Annexure C-3 in the complaint file.

C. RELIEF SOUGHT

4. That the complainant seek the following relief and directions to the respondent:-

i. That the respondent be directed to refund the amount deposited along with interest as per Rule 15 of HRERA Rules 2017.

5. Case was fixed for appearance of respondent and filing of reply. Upon notice, Mr. Shubhmit Hans, learned counsel appeared on behalf of respondent and sought time to file reply.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

6. Mr. Vikas Deep, learned counsel for the complainant submitted before the Authority that he does not wish to wait for reply and will argue the case on the basis of available facts and merits. He submitted before court that complainant in this case had booked a commercial

had

unit in the project in question in the year 2007 by paying a booking amount of ₹ 3,25,000/-. Thereafter, respondent had to allot a specific unit in favour of the complainant, upon allotment remaining payment of sale consideration became payable to the respondent. However, after taking the booking amount, respondent failed to allot a unit to the complainant and provide further schedule of payment of sale consideration. Respondent further failed to timely develop the project and deliver possession of the booked unit. Complainant had invested a huge sum of ₹ 3,25,000/- in the year 2007 itself with the respondent towards booking of unit but the same has been illegally retained by the respondent for so many years without allotting a specific unit in the project or possession of the same. Even at present the project is still under construction and respondent is not in a position to handover possession of a unit in the project in question. Complainant who has been waiting for more than twelve years is no longer interested in being a part of the project and prays for direction to respondent to refund the paid amount along with interest.

7. At this point, a specific query was raised to learned counsel for the respondent with regard to status of construction of the project. Mr. Shubhnit Hans, learned counsel for the respondent submitted that the project is still under construction.



F. JURISDICTION OF THE AUTHORITY

8. 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 Sonapat 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

9. 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

10. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes that complainant in this case had booked a unit in the project of the respondent in the year 2007 after making a payment of ₹ 3,25,000/- towards booking amount. The basic sale consideration of the unit was ₹ 18,75,000/- and remaining payment of instalment became due only



after allotment of a specific unit in favour of complainant by respondent as per clause b of the Registration form dated 16.01.2007 executed at the time of booking. Further, as per clause c of the Registration form 'in case the company is not in a position to make offer of allotment for a commercial shop/showroom within 12 months from the date of application, complainant shall have the right to withdraw the money and ask for refund along with interest.' However, despite taking payment of ₹ 3,25,000/- towards booking amount respondent failed to issue an offer of allotment for a commercial shop in favour of the complainant. Despite passing of more than 15 years respondent has failed to correspond with the complainant with regard to booking of a unit in the project in question. It is also alleged that the respondent has failed to develop the project in question and is not in a position to deliver possession since the project is still under construction.

11. Today is the first hearing in the matter and upon notice Mr. Shubhmit Hans, learned counsel appeared on behalf of respondent and sought time to file reply. However, when a specific query was put up to the learned counsel for the respondent with regard to the status of the project, he submitted before the Authority that the project is still under construction.



12. It is apparent from the statement of the learned counsel for respondent that the project in question is under construction and respondent is not in a position to deliver possession to complainant in foreseeable future. Since this is a Court of summary proceedings, Authority decides to proceed based on the available facts and not wait for the reply to be filed by respondent.
13. Now, the complainant in this case had booked a unit in the project of the respondent in the year 2007. No specific unit was allotted in the name of the complainant and no builder buyer agreement has been executed between both parties. Even at present the project is under construction and respondent is not in a position to deliver possession in foreseeable future. Complainant has already waited for so many years for delivery of possession of booked unit but respondent is unable to deliver a valid possession 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.
14. 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 agreement. 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.”

15. 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.”



16. 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.

17. 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. 17.01.2023 is 8.60%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.60%.

18. The 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.

19. Authority has got calculated the interest payable to the complainants till date of order i.e 17.01.2023 which works out to ₹ 5,52,710/- Accordingly, total amount payable to the complainants including interest calculated at the rate 10.60% works out to ₹ 8,77,710/- (₹ 3,25,000/- + ₹ 5,52,710/-).

I. DIRECTIONS OF THE AUTHORITY

20. 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 ₹ 8,77,710/- 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.



21. 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]

