



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1388 of 2021
Date of filing.:	14.12.2021
First date of hearing.:	15.02.2022
Date of decision.:	17.01.2023

Atul Hari Bhatnagar
AD 19, 2nd Floor, Tagore Garden

....COMPLAINANT

VERSUS

TDI Infrastructure Limited.
10 Shaheed Bhagat Singh Marg,
New Delhi

....RESPONDENT

CORAM: Dr. Geeta Rathee Singh Member

Nadim Akhtar Member

Date of Hearing: 17.01.2023

Hearing: 6th

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, 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.	Unit no. T-91, 1434 sq.ft



6.	Date of Builder buyer agreement	04.04.2011
7.	Due date of possession	03.10.2013
8.	Basic sale consideration	₹ 32,50,000/-
9.	Amount paid by complainant	₹ 47,69,756.32/-
10.	Offer of possession.	12.11.2014

B. FACTS OF THE COMPLAINT

3. Complainant in this case had booked a residential floor in the project of the respondent namely 'Tuscan Floors, TDI City' situated at Sonapat. The basic sale consideration of said flat was ₹ 32,50,000/- against which the complainant had paid an amount of ₹ 47,69,756.32/-. Vide allotment letter dated 04.12.2010 complainant was allotted unit no. T-91, duplex measuring 1434 sq.ft. A floor buyer agreement was executed between both the parties on 04.04.2011. As per clause 30 of the agreement, possession of the unit should have been handed over by 03.10.2013. An offer of possession for fit out works was issued to the complainant on 12.11.2014 along with a illegal demand of ₹ 15,81,350/-. Vide said offer respondent apprised the complainant that the area of the unit had been increased from 1434



sq. ft to 1797 sq. ft without providing any justification for the same. Further, respondent failed to give status of occupation certificate/ completion certificate prior to offer of possession. The demanded amount was deposited by the complainant under protest and thereafter a no objection certificate was issued in favour of complainant. However, it is alleged by the complainant that despite having made the entire payment respondent has failed to offer a legal and valid possession of the booked unit till date.

C. RELIEF SOUGHT

4. That the complainant seek the following relief and directions to the respondent:-
 - i. That the respondent be directed to handover the actual physical possession and to get the conveyance deed registered in respect of the unit in question.
 - ii. Respondent be directed to pay statutory interest on delayed period
 - iii. Respondent be directed to refund the amount, charged on account of alleged increase in area.
 - iv. In alternate, the respondent be directed to refund the amount with statutory interest.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

5. Respondent in its written submissions has submitted that the project in question already stands complete and the respondent has applied for grant of occupation certificate on 09.05.2014 but the same has not been granted to them by the Department of Town & Country Planning till date. The complainant has already taken over the physical possession of the unit on 27.12.2014 after signing no objection certificate for handover of possession, therefore no cause of action has occurred in favour of the complainant to file captioned complaint. Respondent has admitted the amounts received from the complainant and has filed statement of accounts dated 06.04.2022 as proof of receipt. That the respondent had issued an offer of possession for fit out works on 12.11.2014 after completion of developmental works and after applying for grant of occupation certificate on 09.05.2014. The no objection certificate was assigned by the complainant of his own will and duly after inspecting the site. Complainant did not raise any objection pertaining to possession at the time of taking over physical possession. It is again reiterated that the complainant has already taken over physical possession and therefore, deserves no relief from the Authority.



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

6. During oral arguments both parties reiterated their averments as were submitted in writing. Learned counsel for the complainant submitted that in the relief sought complainant had prayed for seeking directions to respondent for either physical handover of possession of booked unit along with delay interest on account of delay in delivery of possession or in alternate refund of paid amount along with interest in case respondent is not in a position to handover possession. Complainant had booked the present unit in the year 2010 and possession of the unit was supposed to be delivered by the year 2013, however, respondent issued an offer for fit out possession in the year 2014 that too without obtaining occupation certificate. Respondent in its written submission has submitted that respondent company has applied for occupation certificate on 09.05.2014 but has not received the same till date from the concerned Authority. Complainant is not interest in taking possession without occupation certificate and since it is difficult to presume that the occupation certificate will be granted to respondent in foreseeable future, complainant who has already waited for more than seven years is not interested in waiting any further. Therefore, on healing dated 12.10.2022 learned counsel for the complainant had submitted that his client is interest in seeking refund



of the paid amount along with interest since respondent is not in a position to deliver physical possession of the booked unit. Thereafter, respondent had sought time to settle the matter out of court and was granted an opportunity for the same. However, settlement proceedings could not take place between both parties. Learned counsel for the complainant prayed the Authority that directions be issued to respondent to refund the paid amount along with interest.

7. Learned counsel for the respondent raised no objection to the arguments put forth by learned counsel for the complainant.

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 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

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. The Authority has gone through the rival contentions of both parties.

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 2013. Respondent had issued an offer of possession for fit out works 12.11.2014 along with a demand of ₹ 15,81,350/- but said offer of possession was issued without obtaining occupation certificate. Complainant has filed present complaint seeking physical possession of booked unit after obtaining occupation certificate or in alternate refund of paid amount along with interest in case respondent is not in a position to deliver possession as per the terms of buyers agreement. Respondent in its written submission has submitted that respondent has applied for grant of occupation certificate on 09.05.2014 but the same has not been granted to them by the Department of Town & Country Planning till date. Since respondent is yet to issue a valid offer of possession to the complainant and even at present is uncertain with regard to the grant



of occupation certificate, complainant on hearing dated 12.10.2022 had opted for relief of refund of paid amount along with interest on account of inability of respondent to deliver a valid possession. Respondent had sought an opportunity to amicable settle the matter but settlement proceedings could not take place between both parties. Now, the complainant in this case has already waited for more than nine years for delivery of possession of booked unit after obtaining occupation certificate 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.

11. 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.”

12. 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 (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."

13. 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.



14. 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%.

15. 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.



16. Authority has got calculated the interest payable to the complainants till date of order i.e 17.01.2023 which works out to ₹ 52,54,373/- Accordingly, total amount payable to the complainants including interest calculated at the rate 10.60% works out to ₹ 1,00,23,595.21/- (₹ 47,69,222.21 + ₹ 52,54,373/-)

17. Complainant has claimed to have paid an amount of ₹ 47,69,756.32/- however, as per the receipts annexed at page 15 and the statement of account annexed at page 28 of the reply, the paid amount works out to ₹ 47,69,222.21. Therefore the interest payable to complainant has been calculated on an amount of ₹ 47,69,222.21 only.

I. DIRECTIONS OF THE AUTHORITY

18. 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 ₹ 1,00,23,595.21/- 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.

19. 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]