



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	522 of 2022
Date of filing.:	20.04.2022
First date of hearing.:	28.06.2022
Date of decision.:	25.01.2023

Mrs. Anita Kishore Thawani
Flat no. 202, Maganlal Residence 1,
Behind Shulabh Apartment, Tithal Cross Road
Valsad-396001, Gujarat

....COMPLAINANT

VERSUS

TDI Infrastructure Limited.
9 Kasturba Gandhi Marg,
Delhi 110001

....RESPONDENT

CORAM:

Dr. Geeta Rathee Singh

Member

Nadim Akhtar

Member

Date of Hearing:

25.01.2023

Hearing:

5th

Present:

Ms. Neelam Singh, Counsel for the complainant
through VC.

Mr Shubhnit Hans, Counsel for the respondent
through VC.

Geeta Rathee

ORDER (DR. GEETA RATHEE SINGH- 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 Tuscan Floors, Kundli Sonipat
2.	Nature of the project.	Group Housing Colony
3.	DTCP License no.	177 of 2007
4.	RERA Registered/not	Unregistered

	registered	
5.	Details of unit.	Unit no. T-57, 1434 sq.ft
6.	Date of Builder buyer agreement	March 2011
7.	Due date of possession	September 2013
8.	Basic sale consideration	₹ 32,50,003.26/-
9.	Amount paid by complainant	₹ 34,36,082.52/-
10.	Offer of possession.	None

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 ₹ 32,50,003.26/- against which the complainant had paid an amount of ₹ ₹ 34,36,082..52/- . Complainant was allotted unit no. T-57, duplex measuring 1434 sq.ft. A floor buyer agreement was executed between both the parties in March 2011. As per clause 30 of the agreement, possession of the unit should have been handed over by September 2013. Complainant had opted for construction linked plan and made all the payments in time barring last instalment of remaining amount

payable at the time of 'offer of possession'. Complainant sent emails dated 04.12.2017, 20.03.2018 & 11.04.2018 asking the respondent update about the status of the allotted unit. It is submitted by the complainant that respondent has failed to offer possession of the booked unit till date. There has been inordinate delay on part of the respondent in delivery of possession and construction of the project is not in progress.

C. RELIEF SOUGHT

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

- i. That the respondent be directed to refund the sum of ₹ 34,36,082.52/- to the complainant.
- ii. Respondent be directed to pay statutory interest on delayed period
- iii. To provide compensation of ₹ 5,00,000/- for causing harassment to the complainant by the respondent due to delay in handing over possession.
- iv. To make payment of litigation expenses of ₹ 50,000/-

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 delay caused in handing over the possession is not solely attributed to the respondent as it has always been tentative and subject to force majeure conditions. Respondent has not denied the amount claimed by complainant as having been paid to respondent in lieu of booked unit. However, it has been submitted that complainant in present complaint has defaulted on several accounts with regard to timely payment of instalments despite being issued various demand/reminder letters and is thus not entitled to any relief.

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 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 has failed to develop the project and deliver possession of booked unit even after a lapse of 8 years. Even in its

written submissions respondent 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. Respondent has further failed to provide update with regard to the current status of construction work of the project and the unit booked by the complainant. In such situation, complainant is not interested 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 eight years is not interested in waiting any further. 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 Sonipat 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.

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. The fact of the matter is that as per the buyers agreement possession of the booked unit should have been delivered by the year 2013. However, respondent has not issued an offer of possession for the booked unit to the complainant till date. Respondent has failed to apprise the Authority with regard to the current status of construction of project and the unit booked by the complainant and if the respondent will issue an offer of possession for the booked unit in near future. In such situation, it raises a doubt in the mind of the complainant with regard to credibility of respondent to deliver possession of the booked unit. Further, 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. 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. Learned counsel for the respondent has not raised any further objection to the claim of the complainant.

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. In light of above mentioned submissions, Authority observes that as per the buyers agreement executed between both parties, possession of the booked unit should have been delivered by the respondent by the year 2013. However, even after a lapse of eight years respondent has failed to issue an offer of possession of the booked unit to the complainant. Even at present respondent is not in a position to deliver possession to the complainant. Complainant who has already waited for such a long period of time is not willing to wait further. Since it is the respondent who has failed to abide by his duties as mentioned under section 11 (4) of the RERA ACT, it becomes the unqualified right of the allottee to withdraw from the project on account of delayed delivery of possession. Therefore, Authority observes that complainant is entitled to receive refund of the

paid amount along with interest in terms of Rule 15 of HRERA Rules 2017.

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

16. 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.

17. Authority has got calculated the interest payable to the complainants till date of order i.e 25.01.2023 which works out to ₹ 34,23,011/-. Accordingly, total amount payable to the complainants including interest calculated at the rate 10.60% works out to ₹ 68,59,114.13/-.

18. While filing the complaint in the relief sought complainant has also prayed for compensation of ₹ 5,00,000/- for causing harassment due to delay in handing over possession and litigation expenses of ₹ 50,000/-. The Authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12,14, 18 & section 19 of the Act, the complainant may file a separate complaint before Adjudicating officer under section 31 read with section 71 of the Act and rule 29 of the HRERA rules. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

I. DIRECTIONS OF THE AUTHORITY

19. 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 ₹ 68,59,114.13/- 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.

20. 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]