



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1396 of 2021
Date of filing.:	22.12.2021
First date of hearing.:	08.02.2022
Date of decision.:	31.01.2023

Nidhi Jain
H.No 34, Road No 7, East Punjabi Bagh,
Punjabi Bagh, S.O West Delhi

....COMPLAINANT

VERSUS

TDI Infrastructure Limited,
Espania Heights, NH-1, Kamaspur,
Sonapat

....RESPONDENT

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

Present: Mr. Vivek Sethi, Counsel for the complainant
 through VC.
 Mr Shubhnit Hans, Counsel for the respondent
 through VC.

Dr. 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.	Espania Heights, NH-1, Sonapat
2.	Nature of the project.	Group Housing Colony
3.	DTCP License no.	1065, 1066, 1067 & 1068 of 2006
4.	RERA Registered/not registered	Unregistered
5.	Details of unit.	EH-05/0602, 1390 sq.ft.

Dr. Geeta Rathee

6.	Date of Builder buyer agreement	26.03.2015
7.	Due date of possession	26.09.2017
8.	Total sale consideration	₹ 25,73,068/
9.	Amount paid by complainant	₹ 28,93,095/-
10.	Offer of possession.	None

B. FACTS OF THE COMPLAINT

3. Complainants in this case had booked a residential flat in the project of the respondent namely 'Espania Heights' situated at Sonapat. The total sale consideration of said flat was ₹ 25,73,068/- against which the complainants had paid an amount of ₹ 28,93,095/- . On 10.05.2012 complainant was allotted unit no. flat no. EH-05/0602 measuring 1390 sq. ft. A builder buyer agreement dated 26.03.2015 was executed between both the parties. As per clause 28 of builder buyer agreement possession of the flat should have been delivered within a period of 30 months from the date of execution of the agreement i.e by 26.09.2017. Complainant on numerous occasions approached the respondent for physical possession of the booked flat but received no response. Whereupon complainant visited the site and found that the respondent had failed to develop the project in question and that the residential flat of the complainant was far from the stage

of handover of possession. Despite taking payment more than the total sale consideration respondent has failed to develop the project and is not in a position to offer possession of the booked unit. 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 ₹ 28,93,095/ to the complainant along with interest.
- ii. To pay a sum of ₹ 10,00,000/- as damages on account of mental agony, torture and harassment.
- iii. To pay a sum of ₹ 10,00,000/- as compensation on account of deficiency in services along with interest.
- iv. To refund legal cost of ₹ 1,00,000/- incurred by the complainant.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

5. Respondent in its written submissions has submitted that present project is a group housing colony developed under licence numbers 1065, 1066, 1067 & 1068 of 2006 granted by Department of Town Country Planning Department. Project of the respondent, including

the unit of the complainant, is complete and possession had been offered to complainant vide letter dated 08.02.2018, annexed as Annexure R-4. However, complainant failed to come forward and accept possession of unit after payment of outstanding dues. Respondent company sent pre-cancellation letters dated 20.11.2019 & 29.06.2021 to complainant for clearance of pending dues and taking possession. It is stated that complainant did not come forward and respondent was constrained to issue cancellation letter dated 20.07.2021 to complainant annexed as Annexure R-7. There has been default on the part of the complainant in making payments towards the booking made in the said project and coming forward to accept possession. Therefore, complainant is not entitled to any relief.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

6. During oral arguments learned counsel for both parties reiterated their averments as were submitted in writing. No further arguments were made before the Authority.

F. JURISDICTION OF THE AUTHORITY

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


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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.

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

8. 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

9. After going through rival contention of both parties and perusing documents placed on record, the factual matrix is that complainant had booked a flat in the project of the respondent in the year 2011. Complainant was allotted flat bearing no. EH-05/0602 vide allotment letter dated 10.05.2012. Builder buyer agreement was executed between both parties on 26.03.2015 and as per clause 28 possession of the unit should have been delivered by the respondent in September 2017. It is alleged by the complainant that respondent has failed to construct the project and the unit booked by the complainant is not in a habitable condition. Therefore, complainant has prayed for seeking direction to respondent to refund the paid amount along with interest. On other hand, respondent in its written submission has submitted that

project in question including the unit of the complainant is complete and ready for possession. Possession for fit out works has already been offered to complainant on 08.02.2018 however, it is the complainant who has failed to make payment of outstanding dues and accept possession. On account of non payment of dues and failure to accept possession, the allotment in favour of the complainant was cancelled vide letter dated 20.07.2021.

10. Pursuing the written submissions filed by respondent it is observed that respondent has failed to provide information with regard to current status of the project and the flat of complainant. Mere written submission of respondent does not tantamount to proof that the project is complete. Respondent should have attached latest photographs of the site to substantiate its claim. Further, respondent has failed to submit any proof of grant of occupation certificate. Though an offer of possession was made to the complainant on 08.02.2018 but it cannot be said to be a valid offer since the project is yet to obtain occupation certificate. Henceforth, till date respondent has failed to issue a valid offer of possession to complainant despite taking payment of entire sale consideration. Since the project has not yet obtained occupation certificate and respondent is unable to ascertain grant of same in foreseeable future, in such a situation, it raises a doubt in the mind of the complainant with regard to

credibility of respondent to deliver possession of the booked unit. Complainant does not wish to be a part of the project any further 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 Hon'ble 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 non delivery of possession as per the agreement for sale. 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. Considering all the facts and submissions, Authority observes that it is the respondent who is at fault here for failing to timely deliver possession of the booked unit, consequently as per action 18 of the RERA Act, 2016 complainant is entitled to receive refund of the paid amount along with interest on account of default on the part of respondent as per the terms of agreement. Since it is the respondent who has failed to discharge his obligations as mentioned under section 11 (4) of the RERA ACT of 2016, the allottees have unqualified right to withdraw from the project on account of delay in delivery of possession as per agreement for sale. 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. 31.01.2023 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(z) 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;

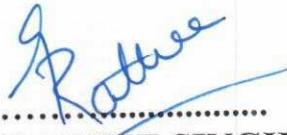
I. DIRECTIONS OF THE AUTHORITY

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 ₹58,05,128/- (calculated till date of order i.e 31.01.2023) 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


.....
NADIM AKHTAR
[MEMBER]


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