



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	152 of 2022
Date of filing.:	15.02.2022
First date of hearing.:	19.05.2022
Date of decision.:	31.01.2023

Naresh Kumar and Inder Kumar
E-4/128, Sector 7, Rohini, Delhi 110085

....COMPLAINANTS

VERSUS

TDI Infrastructure Limited.
10 Shahed Bhagat Singh Marg, Sector-3,
Diz Area, New Delhi

....RESPONDENT

CORAM: Dr. Geeta Rathee Singh Member

Nadim Akhtar Member

Date of Hearing: 31.01.2023

Hearing: 6th

Present: Mr. Karan Dang, 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 City, Kundli, District Sonipat
2.	Nature of the project.	Integrated Township
3.	RERA Registered/not registered	Unregistered
4.	Details of unit.	Plot no. J-218-B was initially allotted to the complainant on

		16.03.2006. Changed to Plot no J 559 vide letter dated 01.08.2014
5.	Date of Builder buyer agreement	None
6.	Due date of possession	None
7.	Basic sale consideration	₹ 22,75,000/-
8.	Amount paid by complainant	₹ 23,03,875/-
9.	Offer of possession.	None

B. FACTS OF THE COMPLAINT

3. Complainants in this case had booked a residential plot in the project of the respondent namely 'TDI City' situated at Sonapat. The basic sale consideration of said plot was ₹ 22,75,000/- against which the complainants had paid an amount of ₹ 23,03,875/- by the year 2007. On 16.03.2006 complainants were allotted plot no. J-218 B measuring 350 sq. yds by authorised representative of the company. However, no formal letter of allotment in regard to plot 218 B was issued in favour of the complainants. No builder buyer agreement has been executed between both the parties. By the year 2007, complainants had made payment of nearly 90 % of the cost of the unit and remaining 10% payment was to be made at the time of 'offer of possession'.

Complainants thereafter visited the site and found that there was no development in construction work. Respondent did not provide status of delivery of possession of the booked plot to the complainants. Complainants sent a legal notice dated 14.02.2008 for delivery of possession. However, they did not receive any reply from the respondent. It is stated in the complaint that the respondent is not in a position to deliver possession of the booked unit because it does not have the ownership of the piece of land on which the plot of the complainants is situated. Vide letter dated 01.08.2014 respondent unilaterally offered an alternative plot bearing no. J-559 to the complainants and issued a final statement of accounts in respect to said plot with an arbitrary demand of ₹ 11,14,959/-. Complainants have monitored the site of the project for the past five years and stated that even at present, farming is going on at site. Complainants have submitted that respondent has failed in his obligation to develop the project within stipulated time and is not in a position to offer possession of the booked plot i.e 218 B and evenmore the alternative plot bearing no. J-559 is not acceptable to the complainants. There has been inordinate delay on part of the respondent in handing over the possession of the originally booked plot.

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 ₹ 33,79,309/- to the complainant along with interest.
- ii. To appoint an independent commissioner to look into facts and the ground reality of the project.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

5. Respondent in its written submissions has submitted that the plot of the complainants is ready and the project has already received part completion certificate dated 23.01.2008, 18.11.2013 & 22.09.2017. It is denied that the respondent does not have the ownership of the land of the project. The project of the respondent is ready in all respects with all facilities as promised. Possession of plots in the project in question has been offered to various allottees and the same is being utilised by them. Respondent has not denied the amount claimed by complainant as having been paid to respondent in lieu of booked unit.

**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 complainants submitted that complainants had booked a plot in the project of the respondent in the year 2006. Complainants were initially allotted plot no. 218-B on 16.03.2006. However, respondent was unable to develop the project and deliver possession of the booked plot as it did not have the ownership of the land in question. Thereafter, respondent allotted a alternative plot bearing no. J-559 in the project vide letter dated 01.08.2014 but the same was not acceptable to the complainants since that plot had also not been developed by the respondent as per terms. He further averred that in its written submission, respondent has submitted that project is developed and ready but respondent has not attached any proof with regard to the status of the project. Mere verbal submission of the respondent that the project is completed does not substantiate its claim that the plot in question is ready for possession. Respondent has unilaterally changed the allotment of complainant from booked plot J-218 B to J 559. Complainants are not interested in taking possession of the plot no. J-559. Since the originally booked plot i.e plot no. 218 B is not being developed by the respondents and there is no scope of development of said project,

complainants are seeking refund of the paid amount along with interest. Learned counsel for the complainant prayed to the Authority that directions be issued to respondent to refund the paid amount along with interest. Learned counsel for the complainant submitted that Authority vide order dated 10.08.2022 had imposed a cost of ₹ 5,000/- payable to the Authority and ₹ 2,000/- payable to the complainant on respondent which has not been paid till date. Respondent be directed to pay the cost.

7. Learned counsel for the respondent submitted that the complainant was initially allotted plot no. J-218 B in the year 2006 which was later on changed to J-559 with the permission of the complainants in the year 2014. He further stated that at that time complainants did not raise any objection to the change in allotment of plot. Now the plot bearing no. J 559 is allotted in the name of complainants. It is developed and ready for hand over of possession. Complainants may make payment of outstanding amount and take possession of said plot.

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.

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.

Complainants are aggrieved of the fact that originally allotted plot bearing no. 218 B was unilaterally changed by respondent to plot no J- 559 in 2014. Possession of either plot was never offered to them by respondent. There is no development in the project at site. Due to which no credit can be relied upon by them towards the respondent and they are pressing upon relief of refund of paid amount. Respondent in his rebuttal has stated that plot was changed with the permission of complainants and project in which the alternative plot i.e plot no. J 559 is located, has been fully developed and possession of said plot can be handed over to the complainants. However, respondent in support of his submissions has not placed on record any

documentary evidence in regard to completion or offer of possession qua plot no. J-559. In light of aforementioned submissions, Authority observes that in present complaint, complainants had been allotted plot bearing no. 218- B on 16.03.2006. In the absence of builder buyer agreement, it cannot be rightly ascertained as to when the possession of said plot was due to be given to the complainants. In Appeal no 273 of 2019 titled as TDI Infrastructure Ltd Vs Manju Arya, Hon'ble Tribunal has referred to observation of Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr. in which it has been observed that period of 3 years is reasonable time. Therefore, taking a period of three year from 16.03.2006, respondent should have delivered possession of the plot by March of 2009. However, respondent instead of handing over possession of the booked plot changed the booking of the complainants to a different plot bearing no. J 559 and raised a further demand of ₹ 11,14,959/- vide letter dated 01.08.2014. It is stated by the respondent that the booking of the complainants was shifted from plot 218-B to plot J-559 with the permission of the complainants whereas the complainants have refuted this claim. In its written submission respondent has not provided any documentary proof substantiating its claim that the plot was shifted with the consent of the complainants, hence it cannot be accepted as true statement.

11. Respondent has further stated that the project including the alternative plot J 559 has been completed and is ready for handing over of possession. However, respondent has not filed any information with regard to the current status of the project or latest photographs of the site. Further respondent has not filed any documentary proof with respect to completion or offer of possession for alternative plot bearing no. J 559. Mere written/oral submission of respondent does not tantamount to a proof that the project is complete. Complainants had made a total payment of ₹ 23,03,875/- to the respondent by the year 2007 towards booked plot bearing no. 218 B, possession of which should have been handed over by the year 2009. However, respondent is not in a position to develop said project in the foreseeable future. Further, learned counsel for the complainants has submitted before Court that the complainants are not interested in seeking possession of the alternative plot bearing no. J 559. In such a situation, complainants do not wish to remain a part of the project any further and are 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 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.”

13. 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 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.”

14. Considering all the facts and submissions , it is the respondent who is at fault here for failing to timely deliver possession of the booked plot bearing no. 218 B . Complainants are entitled to receive refund of the paid amount along with interest on account of default on the part of respondent in performing his obligation towards the allottees. Since it is the respondent who has failed to abide by his duties as mentioned under section 11 (4) of the RERA ACT, allottees have an unqualified right to withdraw from the project on account of delayed delivery of possession. Therefore, Authority observes that complainants are entitled to receive refund of the paid amount along with interest in terms of Rule 15 of HRERA Rules 2017.
15. 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.
16. 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%.

17. 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 complainants interest from the date amounts were paid by him till the actual realization of the amount.

18. Authority has got calculated the interest payable to the complainants till date of order i.e 31.01.2023 which works out to ₹ 41,04,764/-. Accordingly, total amount payable to the complainants including interest calculated at the rate 10.60% works out to ₹ 64,08,639/-.

19. While filing the complaint in the relief sought, complainant has also prayed to appoint an independent commissioner to look into facts and the ground reality of the project. Complainants in this case do not wish to remain a part of the project and have been granted relief of refund of the paid amount along with interest on account of default on the part of respondent to timely deliver possession. In view of the fact, prayer for appointment of independent commissioner to look into facts and the ground reality of the project becomes redundant.

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 ₹ 64,08,639/- (calculated till date of order i.e 31.01.2023) to the complainants.
- (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.

(iii) Respondent is directed to pay the cost of ₹ 5,000/- payable to the Authority and ₹ 2,000/- payable to the complainant imposed vide order dated 10.08.2022 on account of delay in filing reply.

21. 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]