



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

### COMPLAINT NO. 97 OF 2021

Manjari

....COMPLAINANT

VERSUS

TDI Infracorp (India) Ltd.

....RESPONDENT

**CORAM:**

**Dr. Geeta Rathee Singh**

**Member**

**Nadim Akhtar**

**Member**

**Date of Hearing:** 20.12.2022

**Hearing:** 16<sup>th</sup>

**Present: -**

Mr. Anuruddha Singh, Counsel for complainant through VC.

Mr. Ajay Ghanghas Ld. Counsel for respondent through VC.

### **ORDER (DR. GEETA RATHEE SINGH- MEMBER)**

1. Present complaints have been filed by complainants in Form CRA 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

*Dr. Rathee*

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.

2. Authority on hearing dated 04.08.2022 had passed a detailed order wherein arguments advanced by both parties were recorded. Order dated 04.08.2022 is reproduced below for reference:-

“1 While perusing case file, it is observed that on last date of hearing i.e. 01.06.2022, a detailed order was passed by the Authority. Facts of the case apart from arguments advanced by both parties were recorded therein. Authority vide order dated 01.06.2022, had also observed that it is essential to understand the nature of relief claimed by parties and award passed by the Arbitrator in order to determine the issue of maintainability of the complaint. Therefore, Authority had directed both parties to file copy of entire record pertaining to case filed before Sole Arbitrator and award passed by him vide orders dated 22.01.2022. Complainant was also directed to address arguments on maintainability of the complaint. Relevant part of aforementioned order dated 01.06.2022 is reproduced below:

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"1. Case of the complainant is that she booked an apartment bearing no. T 17/0203 having area of 1375 sq. fts. in the project of respondent namely "Waterside Floors" in TDI Lake Grove City, Kundli, Sonapat in April, 2015. Apartment Buyer Agreement was executed between parties on 14.02.2017. As per agreement, possession of booked apartment was to be handed over within 42 months from the date of agreement, thus deemed date of delivery comes to 14.08.2020. Complainant has paid Rs. 42,37,401/- till date against basic sale consideration of Rs. 50,92,500/-. Out of total amount paid by complainant, she has raised Rs. 31,32,005/- by way of loan from bank. An amount of Rs. 31,32,005/- was raised by complainant from Dewan Housing Finance Corporation Limited ( DHFCL). A tripartite agreement was executed between complainant, respondent and DHFCL on 19.03.2017. Clause L of said tripartite agreement stipulated that builder has undertaken to pay Pre-EMI interest on loan amount for a fixed period of 22 months. Thus, out of total payment of Rs. 42,37,401/- paid to respondent, complainant has paid Rs. 11,05,396/- out of her own pocket plus Rs. 31,32,005/- by way of loan raised from Dewan Housing Finance Corporation Limited.

*Grouse of the complainant is that despite lapse of about two years from deemed date of delivery, respondent has failed to deliver her possession of the apartment, therefore, she is seeking refund of Rs. 11,05,396/- along with interest as per Rule 15 of the HRERA, Rules 2017. Complainant is also praying for direction to respondent to make payment of Pre-EMI interest and settle loan account with Dewan Housing Finance Corporation Limited.*

2. *Learned counsel for respondent argued that present complaint is not maintainable because a similar matter between complainant, respondent and DHFCL was pending for adjudication before Sole Arbitrator Sh. Rajendra B. Agrawal at Mumbai and the same has been decided by Sole Arbitrator on 22.01.2021. Since issues raised by complainant already stand adjudicated and decided by Sole Arbitrator vide its final order dated 22.01.2021, therefore, present case is now not maintainable before Authority. He further apprised the Court that apartment is complete and respondent likely to offer the same soon.*

3. *After hearing arguments of both the parties and perusal of record, Authority observes that since arbitral award by arbitrator is conclusive and binding and is enforceable as*



*a decree of the court in accordance with the provisions of the Code of Civil Procedure, 1908, therefore, Authority cannot interfere or pass any contradictory/ conflicting order with the award passed by Sole Arbitrator on 22.01.2021. Therefore, in order to determine whether present complaint is maintainable before Authority, it is essential to determine the nature of relief claimed by parties as well as award passed by Arbitrator. Therefore, both parties are directed to file copy of entire record pertaining to case filed before Sole Arbitrator and award passed by him on 22.01.2022. Complainant is also directed to address arguments on maintainability of the present complaint on the next date of hearing."*

2. *Neither party has filed certified copies of record of Arbitrator in compliance of orders dated 01.06.2022.*

3. *Learned counsel for the respondent stated that respondent has not received copy of award passed by Arbitrator on 22.01.2022 till date.*

3. *In such scenario, last opportunity is granted to the respondent to file aforesaid record in compliance of order dated 01.06.2022. Complainant has prayed for direction to the respondent to make payment of*

*Pre-EMI interest. At present without commenting much on the merits of the case, respondent is directed submit details of Pre-EMI interest paid by him to the bank till date and make payment of Pre-EMI interest till date and file proof thereof with an advance copy to the complainant at least fifteen days before next date of hearing. Respondent shall also file status of completion of unit as well as project and Occupation Certificate with an advance copy to the complainant at least fifteen days before next date of hearing. In case, respondent fails to file record of proceedings in arbitration case then adverse inference will be taken against respondent and case will be heard and disposed of on merits on next date of hearing.*

4. *Case s adjourned to 19.10.2022."*

3. Fact of the matter is that respondent had submitted before Court that present complaint is not maintainable before the Authority because a similar matter between complainant, respondent and DHFL was pending in Arbitration and was decided by sole arbitrator on 22.01.2021. Since the issues raised by complainant stood adjudicated and decided, present case was not maintainable before the Authority. As far as status of construction of the unit was concerned, it was



submitted by respondent that the unit stood complete and respondent shall offer possession soon.

4. Vide order dated 04.08.2022 last opportunity was granted to respondent to file a copy of order dated 22.10.2021 to ascertain the fact that the matter has been decided failing which the case will heard and decided on merits. Respondent was also directed to file status of completion of unit as well as project and occupation certificate.
5. Today, Mr. Ajay Ghanghas, learned counsel for the respondent stated that he has not received a copy of the arbitration award and that the award was passed ex-parte in the absence of the complainant. Further with regard to the project he submitted that the project is yet to completed and occupation certificate has not been received till date.
6. Despite availing several opportunities, respondent has failed to substantiate his claim that the matter under adjudication has already been decided by a sole arbitrator and that the issues raised by complainant have already been adjudicated upon. Vide order dated 04.08.2022 respondent was granted last opportunity to prove his claim by placing on record a copy of order dated 22.01.2021 passed by the sole arbitrator, however, respondent has failed to file the same. Therefore, Authority deems it fit to hear and decide the case on the basis of merits.

7. Ms Anuradha Singh, learned counsel for the complainant reiterated her averments as recorded earlier and prayed the Authority that since even now the project is till not completed and is yet to receive occupation certificate, complainant is not interest in taking possession of the booked unit and is only interested in seeking refund of the paid amount along with interest.
8. In view of the observations and submissions recorded in paragraphs above, Authority observes that complainant in present complaint had booked an apartment in the project of the respondent in the year 2015. As per buyers agreement possession of which should have been delivered by the year 2020. Despite lapse of two years from deemed date of delivery of possession, respondent has failed to deliver her possession of the booked unit. On account of delay in delivery of possession, complainant is seeking refund of the paid amount along with interest. Since it has been admitted by the respondent that the project is yet to be completed and receive occupation certificate, complainant who has already waited for more than two years for delivery of possession could not be asked to wait any further. Further, the Hon'ble Supreme Court in "Newtech Vs The State of Uttar Pradesh" has observed that the right to seek refund where possession is not handed over to allottee as per agreement for sale. Relevant part 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*”

9. In view of aforementioned observations, Authority observes that complainant is entitled to receive refund of the paid amount along with interest. However, complainant had also prayed for direction to respondent to make payment of Pre-EMI interest and settle loan

account with Dewan Housing Finance Corporation Limited. However, in order to determine the total amount payable to complainants as well as amount of outstanding loan against them, complainants are directed to place on record the proof of outstanding loan amount against them by submitting statement of concerned bank in this regard and submit calculations of Pre-EMI which respondent is liable to pay to them with advance copy supplied to respondent. Respondent is also directed to submit details of Pre-EMI interest paid to the bank till date and the remaining amount with proof.

10. Case is adjourned to **28.02.2023**.

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

  
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**NADIM AKHTAR**  
**[MEMBER]**