



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1863 of 2022
Date of filing.:	29.07.2022
First date of hearing.:	28.09.2022
Date of decision.:	18.04.2023

Amrit Lal Jain
R/o 1076/23, Gur-Mandi
Sonapat, Haryana-131001

....COMPLAINANT

VERSUS

TDI Infrastructure Limited.
UG Floor, Vandana Building,
11 Tolstoy Marg, Connaught Place,
New Delhi-110001

....RESPONDENT

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

Nadim Akhtar **Member**

Hearing:

4th

Present:

Mr. Vikas Deep, Counsel for complainant
through VC.

Mr Shubhnit Hans, Counsel for respondent

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.	Park Street Mall, Kamaspur, Sonapat
2.	Nature of the project.	Commercial Plaza
4.	Details of unit.	Shop No. GF-55

Nadim Akhtar

5.	Date of Builder buyer agreement	None
6.	Due date of possession	None
7.	Basic sale consideration	₹ 22,50,000/-
8.	Amount paid by complainant	₹ 4,50,000/-
9.	Offer of possession.	None

B. FACTS OF THE COMPLAINT

3. Complainant in this case had booked a commercial shop in the project of the respondent namely 'Park street mall' situated at Kamaspur, Sonapat through advance registration form dated 04.02.2007. The basic sale consideration of said plot was ₹ 22,50,000/- against which the complainant had paid an amount of ₹ 4,50,000/- as booking amount at the time of registration of the plot. It is submitted by complainant that further instalments were payable after allotment of shop in the project, was issued to the complainant. It is alleged by the complainant that respondent did not offer allotment within the stipulated time as mentioned in the registration form. Respondent did not allot any specific commercial plot to the complainant in terms of booking and also failed to develop the project. Since the allotment was never done, therefore, respondent could not demand any instalment. Complainant made a number of



visits to the office of the respondent to enquire about the status of allotment of shop but was told that plans are not yet approved by concerned department and the project will be launched soon. Respondent failed to provide any information with regard to development of the project. However, on 08.09.2017, complainant received a letter from the respondent demanding an amount of ₹ 22,68,140/-. It is submitted that even in said letter, there were no particulars of shop number, which evidences that there was no allotment.

C. RELIEF SOUGHT

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

That respondent be directed to refund the amount deposited with statutory interest as per Rule 15.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

5. Respondent in its written submissions has submitted that the project in question already stands completed. Complainant had booked a commercial plot in the project on 04.02.2007 upon payment of ₹ 4,50,000/- as booking amount. Thereafter the complainant stopped making further payments despite allotment of booked unit was issued. The allotment of the complainant was cancelled on

13.01.2012 on account of non payment of dues. It is submitted that complainant was allotted Shop no. GF-55 in the project. It is submitted that despite various reminder letters the complainant did not pay any instalment, therefore the allotment of the complainant has been cancelled on account of non payment of dues and as per agreed terms between both parties.

**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 further submitted that as per the terms of the registration respondent had to allot a specific property to the complainant in the project within six months where upon the remaining payment of instalment were scheduled to start. However, the respondent failed to allot a specific property in the project. Respondent did not send any communication to the complainant for further deposit of instalments or intimate about status of allotment or development of the project.
7. Learned counsel for the respondent submitted that complainant in this case had deposited an amount of ₹ 4.50 Lakh as advance booking amount at the time of booking against basic sale consideration of ₹ 22,50,000/- in the year 2007. Complainant was

allotted Shop No. Gf-55 in the project. However, complainant did not make any further payments to the respondent despite repeated reminder letters. Therefore, respondent was constrained to cancel the allotment of the complainant on 13.01.2012 on account of non payment of dues.

F. 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?

G. OBSERVATIONS OF THE AUTHORITY

9. 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 complainant had booked a commercial shop in the project of the respondent on 04.02.2007 by paying a booking amount of ₹ 4,50,000/- against basic sale consideration of ₹ 22,50,000/- . As per terms of registration, respondent had to allot a shop to the complainant after which the payment of remaining instalments became due. Grouse of the complainant is that respondent failed to allot a specific shop to the complainant and since no allotment was made, further payments were not payable by the complainant. On the other hand respondent submitted that allotment of shop no. GF 55

was made to the complainant and several reminder letters were sent for payment however, the complainant did not come forward.

10. Learned counsel for the complainant has denied receiving any

allotment letter or reminder letters from the respondent. In its reply, respondent has stated that complainant was allotted Shop No. GF-55. However, the respondent has not attached letter of allotment or any correspondence of intimation vide which the complainant has been informed that Shop no. GF-55 has been specifically allotted to the complainant. Even in cancellation letter dated 13.01.2012, respondent has failed to mention any specific property in lieu of which booking has been made. The cancellation letter has only been issued against Customer Registration no. KMC-10573. Upon perusal of reminder letters annexed as Annexure R-3 (colly), it is observed that reminder letters dated 08.09.2014, 09.10.2014, 12.01.2015, 27.02.2015, 03.07.2015, 05.08.2015, 06.11.2017 & 08.09.2017 have been issued against temporary id- KMC-10573 whereas in reminder letters dated 04.09.2010, 02.12.2010 & 06.02.2014, respondent has mentioned Shop no. GF-55. However along with these reminder letters no postal receipts have been annexed. In the absence of any documentary evidence, Authority cannot accept the contention of the respondent that the allotment letter or reminder letters were in the knowledge of the complainant. Further the respondent had issued a

letter for cancellation of allotment of complainant dated 13.01.2012 on account of non payment of dues. In case, complainant had defaulted in making payments, respondent should have promptly forfeited the earnest money and returned the remaining amount to the complainant after cancellation. However, respondent retained the amount paid by the complainant and has been illegally utilising the same till now for its own benefit which is a wrongful act on the part of respondent and wrongful loss to the complainant. Since the cancellation of the shop allegedly allotted to the complainant has not been acted upon and it was one sided action on part of the respondent, the cancellation is not valid in the eyes of the law.

11. Even after a lapse of more than 14 years from date of booking respondent has failed to issue an offer of possession to the complainant. Even at present respondent has failed to mention the status of occupation certificate or stage of development of project. Complainant who has already waited for so many years is not willing to wait any further for delivery of possession for further indefinite period. There has been severe deficiency in services on part of the respondent. Complainant in this case has clearly prayed for refund of paid amount along with interest on account of inordinate delay caused in delivery of possession.



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 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. Since, 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."

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. 18.04.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.70%.

16. 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.

17. Authority has got calculated the interest payable to the complainants till date of order i.e 18.04.2023 which works out to ₹ 7,80,690/-. Accordingly, total amount payable to the complainants including interest calculated at the rate 10.70% works out to ₹ 12,30,690/-.

H. 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 ₹ 12,30,690/- (till date of order i.e. 18.04.2023) to the complainant.
- (ii) A period of 90 days is given to the respondent to comply with the directions given in this order as



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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]