



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1864 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.	TDI City, Kundli Sonapat
2.	Nature of the project.	Commercial
4.	Details of unit.	HC-4/4
5.	Date of Builder buyer agreement	None

6.	Due date of possession	None
7.	Basic sale consideration	₹ 60,18,000/-
8.	Amount paid by complainant	₹ 12,00,000/-
9.	Offer of possession.	08.09.2017

B. FACTS OF THE COMPLAINT

3. Complainant in this case had booked a commercial plot in the future township project of the respondent namely 'TDI City' which was to come up at Kundli, Sonapat through advance registration form, Annexure C-2, dated 01.02.2006. The basic sale consideration of said plot was ₹ 60,18,000/- against which the complainant had paid an amount of ₹ 12,00,000/- as booking amount at the time of registration of the plot. As per clause (a) of the registration form respondent had to issue an offer of allotment for the plot within 6 months from date of registration application i.e by 01.07.2006 and possession was to be given within a period of 12 months from date of application i.e by 01.01.2007. Further, complainant had opted for option II as payment plan, according to which the remaining balance sale consideration became payable after allotment of a commercial plot to the complainant. It is alleged by the complainant that respondent did not offer the 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 instalments. Complainant made numerous visits to the office of the respondent to enquire about the plot but was told that plans are not yet approved by the concerned Department and the project will be launched soon. On 13.01.2012, complainant received a letter from the respondent, stating, that the booking has been cancelled on account of non-payment of instalments and amount deposited stands forfeited with the respondent. On account of deficiency in services complainant had previously filed Complaint no. 1181 dated 19.10.2012 before District Consumer Commission, North West Delhi which was dismissed vide order dated 28.02.2022 for want of pecuniary jurisdiction. Complainant had also filed complaint no. 666 of 2020 before this Authority which was withdrawn on 18.05.2022 with liberty, to file a fresh complaint in case complaint filed before District Consumer Dispute Redressal Forum, New Delhi is withdraw. However, later it is brought to the notice of the Authority, Id. Counsel for the complainant had made that the consumer complaint is pending.



C. RELIEF SOUGHT

4. That the complainant seeks 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 statement has submitted that the project in question already stands completed and the respondent has also received part completion certificates dated 23.10.2008, 18.11.2013 & 22.9.2017 with respect to the township. Complainant had booked a commercial plot in the project on 01.01.2006. Complainant was allotted commercial plot no. 4, Block HC-4 vide allotment letter dated 10.01.2007. Respondent has denied that the possession of the plot was to be delivered by the year 2007 rather handing over possession of said plot was tentative. That respondent has already issued an offer of possession to the complainant on 08.09.2017. However, the complainant failed to come forward to take possession of plot after clearing pending dues. 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

had

account of non payment of dues and as per agreed terms agreed 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 form 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. Learned counsel for the complainant denied that a letter of allotment dated 10.01.2007 in respect of commercial plot was issued to the complainant. He further submitted that 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. There is a huge deficiency on the part of respondent and thus complainant is entitled to seek refund of the paid amount along with interest.
7. Learned counsel for the respondent submitted that complainant in this case had deposited an amount of ₹ 12.00 Lakh as advance booking amount at the time of booking against basic sale

consideration of ₹ 60,18,000/- in the year 2006. Complainant was allotted a plot in the project vide allotment letter dated 10.01.2007. 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. However, in the year 2017, as a goodwill gesture respondent issued an offer of possession dated on 08.09.2017 to the complainant to clear all outstanding dues within 30 days and accept possession. However, the complainant still did not respond to the letter. Complainant himself is at fault here and thus is not entitled to any relief.

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 plot in the project of the respondent on 01.01.2006 by paying a booking amount of



₹ 12,00,000/- against basic sale consideration of ₹ 60,18,000/- . As per terms of registration, respondent had to allot a plot to the complainant within six months of registration and possession was to be offered within a period of 12 months. Grouse of the complainant is that respondent failed to allot a specific plot to the complainant and since no allotment was made further payments were not payable by the complainant. On the other hand, respondent submitted that an allotment was made to the complainant on 10.01.2007 and several reminder letters were sent for payment of due amount 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 only attached a copy of letter of allotment dated 10.01.2007 but no postal receipt has been attached with it. Since there is no postal receipt it cannot be accurately ascertained that in fact the letter of allotment was sent by the respondent to the complainant and the complainant had received the same. Respondent has claimed that several reminder letters were issued to the complainant but no copy has been placed on record. 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 huge amount of ₹ 12,00,000/- paid by the respondent 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. As such cancellation made by the respondent is not valid particularly when thereafter it is alleged that on 08.09.2017 offer of possession was given to the complainant.

11. Even the alleged offer of possession dated 08.09.2017 cannot be called a valid offer of possession as it was issued without occupation certificate and along with a huge demand of ₹ 1,48,43,134/- out of which ₹ 78,35,558/- was charged as interest on account of delayed payment. Complainant could not have accepted such an offer of possession. The amount of ₹ 78,35,558/-, charged as interest on account of delayed payment was itself illegal since remaining payment of instalments was due only after allotment which was never done in this case. Complainant could not have accepted such an invalid offer of possession. There has been severe deficiency in services on part of 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 ₹ 21,91,595/-. Accordingly, total amount payable to the complainants including interest calculated at the rate 10.70% works out to ₹ 33,91,595/-.

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 ₹ 33,91,595/- (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 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]