



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1369 of 2022
Date of filing.:	01.06.2022
First date of hearing.:	02.08.2022
Date of decision.:	13.04.2023

1. Seema

R/o 43, Site III-Pocket-6,
DDA Flats Nasir Pur,
Delhi

2. Harpreet Kaur

R/o RZ-142, gali No-1, Durga Park,
South West Delhi
Delhi- 110045

....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:

5th

Present:

Mr. Atul Kumar Singh, Counsel for complainants
through VC.

Mr Shubhnit Hans, Counsel for respondent
through VC.

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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.	Espania Royale Heights- (KRH) Kamaspur, NH-1, Sonipat
2.	Nature of the project.	Integrated Township
3.	DTCP License no.	70/2012



4.	Details of unit.	Unit no.B-1/I204, 99.87 sq.ft(1075 sq.ft)
5.	Date of Builder buyer agreement	15.03.2013
6.	Due date of possession	15.09.2015
7.	Possession clause	“However, if the possession of the Apartment is delayed beyond a period of 30 months from the date of execution hereof and the reasons of delay are solely attributable to the wilful neglect or default of the Company then for every month of delay, the Purchaser shall be entitled to a fixed monthly compensation damages/penalty quantified @ Rs.5 per square foot of the total super area of the Apartment. The Purchaser agrees that he shall neither claim nor be entitled for any further sums on account of such delay in handing over the possession of the Apartment.”
8.	Basic sale consideration	₹ 22,30,840/-
9.	Amount paid by complainant	₹ 26,60,011/-
10.	Offer of possession.	23.07.2020

Hand

B. FACTS OF THE COMPLAINT

3. Complainants in this case had booked a residential apartment in the project of the respondent namely 'Espania Royale Heights' situated at Kamaspur in Kundli, Sonapat. The basic sale consideration of said apartment was ₹ 22,30,840/- against which the complainant had paid an amount of ₹26,60,011/-. Vide allotment letter dated 05.01.2013, complainants were allotted apartment no. B-1/1204 measuring 99.87sq.ft (1075 sq ft). An apartment buyer agreement was executed between both the parties on 15.03.2013. As per clause 28 of the agreement, possession of the unit should have been handed within a period of 30 months from date of execution of agreement i.e by 15.09.2015. It is alleged by the complainant that respondent failed to deliver possession of booked apartment within stipulated time as per agreement. Rather, vide letter dated 20.08.2020, respondent raised a demand of ₹ 7,11,518 on pretext of augmentation of area of unit without providing any justification or details of said increase in area. Complainants were further informed that in case they fail to fulfil the demand raise by the respondent, the allotment of the complainants will be cancelled. Complainants approached financial institutions to avail loan facility to make payment but were informed that loan will only be disbursed if the project has received occupation



certificate. Complainant requested the respondent to furnish details of occupation certificate but received no response. Respondent cancelled the allotment of complainants vide cancellation letter dated. 08.02.2022 and 22.03.2022 on account of non payment of dues despite having made the entire payment towards booked apartment.

C. RELIEF SOUGHT

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

That respondent be directed to refund the total amount paid to the respondent along with delay interest at the rate of MCLR+2%.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

5. Respondent in its written submissions has submitted that the project in question already stands completed and the respondent has applied for grant of occupation certificate on 31.03.2017 but the same has not been granted to them by the Department of Town & Country Planning till date. That the respondent had issued an offer of possession for fit out works on 23.07.2020. However the complainants failed to come forward to take possession of apartment



after clearing pending dues. Respondent has denied that the complainant approached the respondent to enquire with regard to occupation certificate to avail loan. 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 in the complaint file and reply. Learned counsel for the complainants submitted that possession of the unit was supposed to be delivered by the year 2015. An offer of possession was made to the complainants in July 2020 after a gap of more than five years without obtaining occupation certificate. Further, respondent had unilaterally increased the area of the apartment from 1075 sq. ft to 1279.250 sq. ft without providing any justification, which raised an additional financial burden of ₹ 7,11,518/- on the complainants despite having paid more than the basic sale consideration. Possession of the apartment has been delayed for an inordinate amount of time. Even at present the promoter has not received occupation certificate and respondent has failed to provide a definite period by which he will receive



occupation certificate. Respondent is not in position to issue a valid offer of possession in respect of the booked apartment. Therefore learned counsel for the complainant prayed the Authority that complainant may be granted relief of refund of paid amount along with interest.

7. Learned counsel for the respondent raised no further objection to the arguments put forth by learned counsel for the complainant.

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 as per the buyers agreement possession of the booked unit should have been delivered by the year 2015. By the year 2018, complainants had made a total payment of ₹ 26,60,011/- to the respondent towards booked apartment. Grouse of the complainants is that respondent had issued an offer of possession for fit out works on 23.07.2020 after a delay of more than 5 years from deemed date



of possession, but said offer of possession was issued without obtaining occupation certificate. Further respondent had unilaterally increased the area of the unit from 1075 sq. ft to 1279.25 sq ft. without providing any justification for the same. Respondent in its written submission has submitted that project in question is complete and respondent has applied for grant of occupation certificate on 31.03.2017 but the same has not been granted to them by the Department of Town & Country Planning till date.

10. Complainants have paid a total amount of ₹ 26,60,011/- against basic sale consideration of ₹ 22 Lakh towards booked apartment. Possession of the apartment has been extraordinarily delayed by the respondent. Further, respondent had unjustifiably raised a demand of ₹ 7,11,518/- from the complainant on account of increased area without providing component wise details of alleged increased area. Such a huge demand apparently caused additional financial burden on the complainants. Offer of possession dated 23.07.2020 cannot be called a valid offer of possession since respondent is yet to receive occupation certificate. Respondent had applied for occupation certificate on 31.03.2017 but the same is yet to be granted. Further respondent cannot clearly ascertain as to when occupation certificate will be received. Therefore, it is evident that respondent is not in a position to issue a valid offer of possession to complainants in the



foreseeable future. Respondent has failed to fulfil its obligation with regard to delivery of possession within stipulated time as per agreed terms of builder buyer agreement. Complainants who have already waited for so many years are not willing to wait for an indefinite amount of time for delivery of possession. In such cases where the respondent has defaulted on account of timely delivery of possession of allotted unit, complainants become entitled to choose either to stay with the project or seek refund of paid amount. Complainants in this case have 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 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 delay in delivery of possession of booked unit. Since, the complainants wish to withdraw from the project of the respondent, therefore, Authority finds it to be fit case for allowing refund in favour of complainants. 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 (1) 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 highest marginal cost of lending rate (in short MCLR) as on date i.e. 13.04.2023 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 complainants interest from the date amounts were paid by them till the actual realization of the amount.

17. Authority has got calculated the interest payable to the complainants till date of order i.e 13.04.2023 which works out to ₹ 23,07,706/- Accordingly, total amount payable to the complainants including interest calculated at the rate 10.70% works out to ₹ 49,67,717/-.



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 ₹ 49,67,717/- (till date of order i.e 13.04.2023) 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 after uploading the order on the website of the Authority


.....
DR. GEETA KATHEE SINGH
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]