



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1057 of 2022
Date of filing.:	06.06.2022
First date of hearing.:	02.08.2022
Date of decision.:	07.02.2023

Jitendra Kumar Sharma  
60FF, My Floor-2 TDI City,  
Sonipat, 131030

....COMPLAINANT

VERSUS

TDI INFRACORP (INDIA) LTD.  
Upper Ground Floor, 11, Tolstoy Marg,  
Connaught Place, New Delhi -110001

..... RESPONDENT NO. 1

TDI Infrastructure Limited.  
2, First Floor, Rodeo Drive Mall,  
TDI City, Kundli Sonipat, Haryana,  
131028

...RESPONDENT NO. 2

**CORAM:** Dr. Geeta Rathee Singh

Member

Nadim Akhtar

Member

**Hearing:** 6th

**Present:**

Mr. Jitendra Kumar Sharma Counsel for the  
Complainant

Mr. Karan Inder Singh, Counsel on behalf of respondent  
No. 1

Mr Shubhnit Hans, Counsel for the respondent no. 2  
Through VC.

**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.	Lake Grove, Kundli, Sonipat
2.	Nature of the project.	Residential
4.	RERA Registered/not registered	Unregistered

5.	<b>Details of unit.</b>	Customer Id- KLDS
6.	<b>Date of Builder buyer agreement</b>	None
7.	<b>Due date of possession</b>	None
8.	<b>Total sale consideration</b>	₹ 60,69,014/-
9.	<b>Amount paid by complainant</b>	₹ 5,50,000/-
10.	<b>Offer of possession.</b>	None

### B. FACTS OF THE COMPLAINT

3. Complainant in this case had booked a flat in the project of the respondent namely 'Lake Grove' situated at Sonepat by paying a booking amount of ₹5,50,000/- on 07.04.2016. At the time of booking, complainant was assured by the representatives of the respondent that the entire project would be completed within one year and that the possession of the flat would be delivered by April 2017 and in case of failure to do so, promoter would return the full amount paid to them with 12% interest. On 17.08.2016, complainant received a letter from the respondent submitting that complainant had to deposit an amount of ₹ 2,57,083.08/- to confirm his allotment. After receiving this letter, complainant approached the office of the

*S. Rathee*

respondent company at site seeking clarification in respect of allotment but received no response. Further, possession of the booked unit was promised to be delivered by April 2017, however, even by end of 2016, the project in which the complainant had booked his flat was not fully developed. Complainant, being senior citizen was in immediate need of buying a residential flat and had therefore, opted to purchase an already developed flat from the respondent no. 2 i.e TDI Infrastructure Ltd. On 25.12.2016 complainant purchased a flat bearing no. 60FF, My Floor 2, M2, in a different project of the respondent no. 2 company, namely 'TDI City', which is the current residential address of the complainant. Complainant requested the representative of the respondent company to adjust the amount of ₹ 5,50,000/- paid towards booking in project - 'Lake Grove', since it was no longer needed. However, the representative told him that the project "Lake Grove" is being developed by TDI Infracorp(India) Ltd. and "TDI city" being developed by TDI Infrastructure Ltd and since both are separate companies with separate accounts/adjustments the amount of ₹ 5,50,000/- cannot be done. However, the representative assured the complainant that the amount will be returned to him. Complainant visited the site several times but received no response from the respondent company regarding refund of the paid amount. The representatives of the respondent company time and again gave

false assurances to the complainant but the amount of ₹ 5,50,000/- has not been received back till date.

**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 ₹ 5,50,000/- to the complainant along with interest.
- ii. Compensation for torture and harassment caused to senior citizens.

**D. REPLY SUBMITTED ON BEHALF OF TDI INFRASTRUCTURE LTD**

5. TDI Infrastructure Ltd. in its written submission stated that the project in question is not being developed by it, i.e, respondent no. 2 and therefore, the complainant has wrongly arrayed 'TDI Infrastructure Ltd.' as a respondent. As per Annexure -1 in the complaint file , the project 'Lake Grove' is being developed by TDI Infracorp(India) Ltd, however, the complainant has wrongly impleaded TDI Infrastructure Ltd. as party. TDI Infrastructure Ltd. has no role to play in the present complaint and thus the captioned complaint is not maintainable against respondent no. 2.

**E. ARGUMENTS OF LEARNED COUNSEL FOR TDI INFRASTRUCTURE LTD.**

6. During the course of hearing dated 02.08.2022, Mr. Shubhnit Hans, learned counsel for TDI Infrastructure Ltd. submitted that the project "Lake Grove" in which the complainant had initially booked the unit and had made a payment of ₹ 5,50,000/- was being developed by TDI Infracorp(India) Ltd.. TDI Infrastructure Ltd. has been wrongly impleaded as respondent and therefore, he prayed for deleting name of TDI Infrastructure Ltd. from array of parties as being misjoinder. Relevant part of order dated 02.08.2022 is reproduced below-

"3. After hearing both parties and perusal of records of the case, Authority observes that as per Annexure-1 name of project in which the complainant booked his unit on 05.05.2016 is 'Lake Drive Apartment' Lake Grove, Kundli Sonapat. Said project is being developed by TDI INFRACORP (INDIA) LIMITED and this project is registered with Authority vide RERA No. 43 OF 2017 dated 11.08.2017. In view of these facts, Authority on the basis of statement of complainant and exercising its powers under section 35 (1) of the RERA Act, 2016 impleads the promoter TDI INFRACORP (INDIA) LIMITED as respondent no.1. and directs him to file reply before next date of hearing with an advance copy given to complainant.

Office is directed to send fresh notice along with copy of complaint at the registered address of promoter TDI INFRACORP (INDIA) LIMITED. Decision regarding deleting the name

*G. Patil*

*of respondent M/s TDI Infrastructure will be taken after hearing all parties. Till that time M/s TDI Infrastructure will also remain party to complaint as respondent no.2. Meanwhile, M/s TDI Infrastructure will also make its submissions in writing with advance copy given to the complainant before next date of hearing.”*

7. Accordingly, notice dated 16.08.2022 was issued to TDI Infracorp(India) Ltd., impleading it as a party in present complaint and for appearance before the Authority and filing of reply.

#### **F. REJOINDER FILED BY COMPLAINANT**

8. In response to the reply submitted by respondent no. 2, complainant filed a rejoinder dated 03.10.2022 submitting that the receipt of ₹ 5,50,000/- was issued by TDI Group on 07.06.2016 and TDI Infracorp (India) Ltd. had not even come into existence at that time. The project registration certificate was granted in favour of TDI Infracorp(India) Ltd. on 11.08.2017 whereas the complainant had booked the unit with TDI Infrastructure Ltd. in the year 2016. It was further submitted that TDI InfraCorp(India) Ltd. did not operate the project account of “Lake Grove” in June 2016 when the complainant made payment towards the booking of the flat in project “Lake Grove”. Therefore, TDI Infrastructure Ltd. is a party to present complaint.

7 7/10/22

**G. REPLY SUBMITTED ON BEHALF OF RESPONDENT No. 1 i.e  
TDI INFRACORP(INDIA) LTD.**

9. Today, i.e 07.02.2023, Mr. Karan Inder Singh, learned counsel appeared on behalf of respondent no. 1 i.e TDI Infracorp (India ) Ltd. and filed reply during hearing proceedings. Respondent no. 1 in its written submission has submitted that the project in question namely 'Lake Grove' is being developed by respondent no.1 i.e TDI Infracorp (India) Ltd.. Respondent no. 1 admitted to having received payment of ₹ 5,50,000/- from the complainant towards booking of a flat in the project. It is further mentioned that despite availing several opportunities the complainant did not come forward for allotment of a flat upon further payment of remaining sale consideration. Since it is the complainant who is at fault here, therefore, the amount paid by the complainant is liable to be forfeited. However, if the complainant is interested in continuing with the booking , he may do so by making payments towards remaining sale consideration. The flat is ready and project is complete, so the complainant can take possession by making the balance payment.

**H. ARGUMENTS OF COMPLAINANT**

10. During oral arguments, Mr. Jitender Kumar Sharma, complainant submitted that he had deposited an amount of ₹ 5,50,000/- towards booking of a unit in the project namely "Lake Grove" in the year



2016. That, at the time of booking he was assured that possession of the unit will be delivered within one year. However, even by the end of the year 2016, the project namely "Lake Grove" was not developed by the respondent no. 1 and possession of the booked flat was uncertain in foreseeable future. Complainant and his wife, being senior citizens, were in immediate need of a residential flat and the representative of the respondent company from whom the complainant had booked the initial unit in project Lake Grove suggested the complainant to purchase a flat in a different project of the respondent namely, 'TDI City'. On 25.12.2016 complainant under the impression that both the projects belong to the same promoter, purchased flat bearing no. 60FF, My Floor 2, M2, in the project namely "TDI City", where he is now currently residing. Thereafter, complainant requested the representative of the respondent company to adjust the amount of ₹ 5,50,000/- paid towards booking in project - "Lake Grove". However, complainant was informed that the money cannot be adjusted since both the projects technically pertain to different companies. Complainant further submitted that he has paid an amount of ₹ 5,50,000/- to respondent no.1 in the year 2016 which has been illegally retained by the respondent no. 1. Complainant submitted that he is a senior citizen who has been running from pillar to post for recovery of an amount of ₹ 5,50,000/- since 2017. He

prayed that directions be issued to the respondent company to refund the amount along with interest.

## **I. ARGUMENTS OF LEARNED COUNSEL FOR RESPONDENT**

### **NO. 1 i.e TDI INFRACORP(INDIA) LTD**

11. Mr. Karan Inder Singh, learned counsel for respondent no. 1 i.e TDI Infracorp(India) Ltd., reiterated his averments as filed in written submission.

## **J. JURISDICTION OF THE AUTHORITY**

12. 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 Sonipat 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.

## **K. ISSUES FOR ADJUDICATION**

13. Whether the complainant is entitled to refund of amount deposited by him along with interest in terms of Section 18 of Act of 2016?

**L. OBSERVATIONS OF THE AUTHORITY**

14. In its written submission, respondent no. 1 i.e TDI Infracorp(India) Ltd. has admitted to have received the payment of ₹ 5,50,000/- from the complainant towards booking of a flat in the project "Lake Grove". Respondent no. 1 has further submitted that if the complainant is interested in continuing with the booking, he may do so by making payments towards remaining sale consideration. The unit is ready and the project is complete, so the complainant can take possession by making the balance payment. However, respondent no.1 has failed to place on record any document in respect of completion of unit of complainant and grant of occupation certificate, therefore it cannot be ascertained whether the project "Lake Grove" is complete or not. Also, even if it is presumed that the project is complete, then also the complainant/allottee has conveyed his intention to withdraw from the project as the same was not delivered within the time promised by the representative of the respondent promoter. He requested for adjustment of amount towards other unit booked by him being developed by sister concern of the respondent no.1. Builder cannot be allowed to enrich itself at cost of an old person who is made to run from pillar to post to get his hard earned money refund from errant promoters.

15. Considering all material record and arguments of the parties, it is observed that at the time of booking the flat in year 2016 complainant was assured that possession of the flat would be delivered within one year i.e in the year 2017. Complainant being a senior citizen was in immediate need of a residential flat and had specifically booked the flat upon assurance that possession of the same would be delivered within one year. However, respondent no. 1 failed to deliver possession within the stipulated period of time. Uncertain about delivery of possession in foreseeable future, complainant was forced to look for other options and finally booked flat no. 60FF, My Floor 2, M2 in the project namely "TDI City" being developed by 'TDI Infrastructure Ltd.'. At the time of shifting his flat from 'Lake Grove' to "TDI City", complainant was under the impression that both the projects are being developed by same company because of similar names and the amount initially paid towards booking of unit in 'Lake Grove' would be adjusted towards fresh booking in "TDI City". However, when the complainant came to know that the two projects belong to different companies, he requested the representative for refund of the paid amount. Till date, complainant has not received the money back. It is apparently clear that complainant chose to withdraw from the project since respondent no. 1 failed to deliver possession within stipulated period of time and conveyed his intention to

withdraw from the project. Considering the delicate situation of complainant and his age, timely delivery of possession was of utmost importance. After purchasing a different flat, complainant had categorically conveyed to the representative of the respondent no. 1 company of his intention to withdraw from the project since the promoter failed to deliver upon its promise. Respondent no. 1 company should have returned the amount paid by complainant at that time but has rather retained the amount for more than seven years. There has been no specific allotment made in the name of the complainant in the project 'Lake Grove' for which the booking amount might have been utilised and no particular flat earmarked in favour of the complainant for the purpose of allotment. No document has been put forth by the respondent no. 1 stating otherwise. Complainant at this critical age had to gravely suffer on account of default on the part of respondent no. 1 company. Respondent no. 1 is at fault on account of failure to perform its obligations. The respondent builder cannot be allowed to enrich himself at the cost of an old person whose money (₹ 5,50,000/-) has been lying with the builder since 2016. The paid amount has been admitted by respondent no.1. Therefore, Authority deems it appropriate to direct the respondent no.1 to refund the amount of ₹ 5,50,000/- paid by

complainant along with interest in terms of Rule 15 of HRERA Rules 2017.

16. 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.
17. 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%.
18. 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.

19. Complainant in this case has wrongly impleaded TDI Infrastructure Ltd as a respondent party whereas the amount of the complainant had been deposited with TDI InfraCorp(India) Ltd. Authority vide notice dated 16.08.2022 impleaded TDI InfraCorp(India) Ltd. as a necessary party . Upon notice, Mr. Karan Inder Singh appeared on behalf of TDI InfraCorp(India) Ltd. and filed reply. It is further admitted that the amount of ₹ 5,50,000/- has been deposited by the complainant with TDI InfraCorp(India) Ltd. In view of this submission, impleadment of TDI Infrastructure Ltd becomes infructuous and hence its name is hereby deleted as a necessary party.

20. Authority has calculated the interest payable to the complainants till date of order i.e 07.02.2023 which works out to ₹3,97,239/-. Accordingly, the total amount payable to the complainants including interest calculated at the rate 10.60% works out to ₹ 9,47,239/-.

21. While filing the complaint in the relief sought, complainant has also prayed for compensation for torture and harassment caused to senior



citizens. The Authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12,14, 18 & section 19 of the Act, the complainant may file a separate complaint before Adjudicating officer under section 31 read with section 71 of the Act and rule 29 of the HRERA rules. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

#### **M. DIRECTIONS OF THE AUTHORITY**

22.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 ₹ 9,47,239/- (till the date of this order i.e 07.02.2023) 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.

23. The complaint is, accordingly, **disposed of**. File be consigned to the record room and order be uploaded on the website of the Authority

*Nadim*

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

*Dr. Geeta*

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