



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	590 of 2022
Date of filing.:	06.05.2022
First date of hearing.:	07.07.2023
Date of decision.:	20.04.2023

R K Khurana
5/3, Ramesh Nagar, New Delhi
110015

....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:
Present:**

4th

**Mr. Anurudhha Singh, 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 Park Street, Park Street, Sector 19, Sonapat
2.	Nature of the project.	Commercial Plaza



4.	Details of unit.	Shop No. GF-204, measuring 594.21 sq. ft.
5.	Date of Builder buyer agreement	30.08.2011
6.	Due date of possession	28.02.2014
7.	Total sale consideration	₹ 28,22,497/-
8.	Amount paid by complainant	₹ 22,96,790.89/-
9.	Offer of possession.	None

B. FACTS OF THE COMPLAINT

3. Complainant had booked a commercial unit, a shop bearing no. GF-204 in the project of the respondent namely "TDI Park Street" situated at Sonipat on 23.05.2006. Total sale consideration of said unit is ₹ 28,22,497/- against which the complainant had paid an amount of ₹ 22,96,790.89/-. A buyers agreement was executed between both parties on 30.08.2011. As per Article 4 clause 01 of the agreement, possession of the unit should have been delivered by 28.02.2014. However, more than seven years have passed but the respondent is not able to deliver possession of the booked unit till date. Complainant sent various emails dated 06.09.2019, 19.09.2019 & 28.09.2019 to get updates on construction work and exact date of possession but received no response.

Handwritten signature

C. RELIEF SOUGHT

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

(i) That respondent be directed to deliver possession of the booked unit along with delay interest till the date of physical possession with occupation certificate.

(ii) That respondent be directed not to issue any demand to the complainant till the date of final offer of possession after ensuring proper occupation certificate.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

5. Respondent in its written submissions has submitted that the complainant had voluntarily invested in the project of the respondent namely 'TDI Park Street'. The delay caused in handing over of possession is not solely attributed to respondent company. There has been default on the part of the complainant in making payments towards the booking made in the said project of the company. Various reminder letters had been sent to the complainant to pay the outstanding dues to the respondent company. However, despite various reminders the complainant failed to come forward and perform its part of the obligations. Copy of reminder letters are annexed as Annexure R-3.



**E. OBSERVATIONS MADE BY AUTHORITY VIDE ORDER
DATED 25.01.2023 ARE AS UNDER.**

6. During the course of hearing dated 25.01.2023, learned counsel for the respondent submitted that the project in question namely "Park Street" is not being constructed at present and has been at a stand still for some time. Respondent is unable to give a specific timeline with regards to construction of said project. Delivery of possession of the unit booked by the complainant is uncertain in foreseeable future. He further submitted that respondent is ready to either refund the amount paid by complainant or offer an alternate unit for possession as per the choice of complainant. Complainant may approach the respondent for either of the options. In view of the submissions of learned counsel for the respondent, learned counsel for the complainant sought time to seek instructions from his client with regard to the offer of the respondent. Since, complainant had filed present complaint seeking possession of booked unit along with delay interest for delay caused in offering possession, complainant was directed to may make his choice and file an amendment of the relief sought from the Authority.



7. Relevant part of order dated 25.01.2023 is reproduced below for reference:

“2. Mr. Shubhnit Hans, learned counsel for the respondent submitted that the project in question namely “Park Street” is not being constructed at present and has been at a stand still for some time. Respondent is unable to give a specific timeline with regards to construction of said project. Delivery of possession of the unit booked by the complainant is uncertain in foreseeable future. He further submitted that respondent is ready to either refund the amount paid by complainant or offer an alternate unit for possession as per the choice of complainant. Complainant may approach the respondent for either of the options.

3. Mr. Anuruddhha Singh, learned counsel for the complainant sought time to seek instructions from his client with regard to the offer of the respondent .”

8. Pursuant to the same, complainant filed an application dated 28.02.2023 for amendment of relief from “Possession with delay payment” to “Refund of entire amount with applicable rate of Interest.”



9. In view of the directions of the Authority vide order dated 25.01.2023, the relief clause of the complainant has been amended to as following

- (i) to direct the respondent to refund the entire amount paid by complainant along with applicable interest.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

10. During oral arguments both parties reiterated their averments as were submitted in writing. Learned counsel for the complainant submitted that complainant had filed present complaint seeking possession of the booked unit. However, in view of the statement of learned counsel for respondent during the course of hearing dated 25.01.2023, complainant is now interest in seeking relief of refund of the paid amount along with interest since respondent is not in a position to deliver possession of the booked unit. Accordingly, complainant has filed an application for amendment of relief sought from the Authority. Learned counsel for complainant prayed that directions be issued to respondent to refund the paid amount along with delay interest.

11. Learned counsel for the respondent raised no further argument.



G. ISSUES FOR ADJUDICATION

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

H. OBSERVATIONS OF THE AUTHORITY

13. In light of the background of the matter as captured in this order and also the submissions of both parties, Authority observes that complainant had booked a commercial shop in the project of the respondent in the year 2006. Complainant has paid a total amount of ₹ 22,96,790.89/- against total sale consideration of ₹ 28,22,497/-. As per buyers agreement possession of the booked unit was to be delivered by 28.02.2014. However, respondent failed to issue an offer of possession in respect of the booked unit to the complainant till date. Hence, complainant file present complaint seeking relief of possession of booked unit along with interest.
14. Admittedly, as per the statement of learned counsel for the respondent the project in which the unit of the complainant is situated is not being constructed and that the respondent cannot ascertain any specific date for delivery of possession. In such circumstances, learned counsel for the respondent had further submitted that the respondent is ready to either refund the amount paid by complainant or offer an alternate unit for possession as per

the choice of complainant. In view of the statement of learned counsel for respondent, complainant made a choice to seek refund of the paid amount due to failure in delivery of possession of booked unit and accordingly filed an application for amendment of the relief sought from the Authority and the same is allowed.

15. Since, the complainant wishes to withdraw from the project of the respondent on account of failure in delivery of possession, therefore, Authority finds it to be a fit case for allowing refund in favour of complainants along with interest on paid amount as per Rule 15 of HRERA Rules 2017 on account of failure on part. The definition of term 'interest' is defined under Section 2(z) 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;

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: *“Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19](1) For the purpose of proviso to section 12; section 18, and sub.sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of india highest marginal cost*

of lending rate +2%: Provided that in case the State Bank of India marginal cost of lending rate (NCLR) 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”.”

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.

16. 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. 20.04.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.70%.



17. Authority has got calculated the interest payable to the complainants till date of order i.e 20.04.2023 which works out to ₹ 30,54,498/-. Accordingly, total amount payable to the complainants including interest calculated at the rate 10.70% works out to ₹ 53,51,288.89/-.

I. 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 ₹ 53,51,288.89/- (till date of order i.e. 20.04.2023) 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.



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

Geeta

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

Nadim

.....
NADIM AKHTAR
[MEMBER]

