



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1744 of 2022
Date of filing.:	22.08.2022
First date of hearing.:	18.10.2022
Date of decision.:	01.06.2023

1. COMPLAINT NO. 1744 OF 2022

Manish Garg s/o Anil Kumar Garg
R/o B-14,CC Colony
Delhi -110007

...COMPLAINANT

VERSUS

TDI Infrastructure Limited.
10 Shaheed Bhagat Singh Marg,
Gole Market
New Delhi- 110001

....RESPONDENT

2. COMPLAINT NO. 2822 OF 2022

1. Gulshan Kumar Nagpal
2. Ashish Nagpal
Both R/o Flat no. 2, Sweet Home apartments,
Sector-14, Rohini, Delhi

....COMPLAINANT

VERSUS

TDI Infrastructure Limited.
10 Shaheed Bhagat Singh Marg,
Gole Market
New Delhi- 110001

....RESPONDENT

CORAM: Dr. Geeta Rathee Singh Member

Nadim Akhtar Member

Date of Hearing: 01.06.2023

Hearing: 4th

Present: - Mr. Mihir Garg, Counsel for the complainant
through VC (in complaint no. 1744 of 2022).
Mr. Neeraj Sansiniwal, Counsel for the complainant
through VC (in complaint no. 2822 of 2022)
Mr. Shubhnit Hans, Counsel for the respondent
through VC

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaints have been filed by complainants 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.
2. Captioned complaints have been taken up together as bunch matter for disposal. Taking complaint no. 1744 of 2022 titled "Manish Garg vs TDI Infrastructure Ltd" as lead case.

A. UNIT AND PROJECT RELATED DETAILS

3. 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.	Rodeo Drive Mall, TDI City, Kundli, Sonapat
2.	Nature of the project.	Commercial Plaza
3.	Details of unit.	Shop No. FF-116, measuring 500 sq. ft.
4.	Date of Builder buyer agreement	Not mentioned
5.	Due date of possession	July 2019 (assured by the respondent)
6.	Total sale consideration	₹ 22,50,000/-
7.	Amount paid by complainant	₹ 15,00,000/-
8.	Offer of possession.	14.03.2019

B. FACTS OF THE COMPLAINT

4. Case of the complainant is that he had purchased unit bearing no. FF-116 measuring 500 sq. ft in the project of the respondent namely 'Rodeo Drive Mall' situated at TDI City, Kundli, Sonapat in the year 2007(

Lead

purchased in re-sale from original allottee Ms. Sunita Aggarwal).
Complainant has paid full amount of ₹22,50,000/- against total sale consideration to the respondent by November 2007 itself. A builder buyer agreement was executed between the parties. It is pertinent to mention that that builder buyer agreement is undated but as per the complainant, the agreement was executed in 2007. As per article 4 clause 1, the possession of the unit was to be delivered within a period of 30 months including a six months grace period, from date of sanctioning of the building plans. Date of sanctioning of building plans is not available with the complainant. However, at the time of booking, respondent had verbally assured that possession of the unit would be delivered by July 2009. A copy of builder buyer agreement is annexed as Annexure-3.

5. That after a lapse of more than 9 years, the complainant received a letter dated 27.04.2018 titled as 'Fit out possession' from the respondent, stating, that respondent had applied for getting OC/CC in relation to project and approval of the same is pending before competent Authority. Thereafter, complainant received a final offer of possession letter dated 14.03.2019 wherein it was mentioned that the area of unit booked by the complainant has been reduced from 500 sq. ft to 380 sq. ft i.e. a reduction of almost 25% area in the unit. That said change in area



was unilateral, unjustified and wholly arbitrary on the part of respondent. Complainant requested the respondent to provide possession of the unit admeasuring 500 sq. ft only or else in case of failure to do so, refund the entire amount paid by the complainant towards booking. However, respondent failed to refund the paid amount despite multiple requests from the complainant.

6. Complainant received a letter dated 10.01.2020 from 'Capital India Finance Limited' stating that the respondent without due intimation/consent of the complainant had unilaterally created a charge on the entire project namely "Rodeo Drive Mall" in favour of "Capital India Finance Limited" vide loan sanction letter 25.10.2018, annexed as Annexure-6. Respondent has failed to issue a valid offer of possession to the complainant despite a lapse of more than eleven years from deemed date of delivery of possession.

C. RELIEF SOUGHT

7. The complainant in present complaint seeks following relief:

(i) to direct the respondent to refund the entire amount of

₹ 22,50,000/- paid by the complainant along

with interest.



(ii) to direct the respondent not to harass the Complainant by virtue of sham and fictitious maintenance demands.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

8. Respondent in its written submissions has submitted that the complainant had voluntarily invested in the project of the respondent namely 'Rodeo Drive' situated at 'TDI City', Sonapat. Respondent has already received part completion certificate dated 23.01.2008, 18.11.2013 and 22.09.2017. Respondent company has also received occupation certificate in respect of said commercial site vide letter dated 12.06.2019. 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 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. Further, the complainant has already been offered possession of the booked unit in the year 2018 vide letter dated 27.04.2018 and thereafter on 14.03.2019. However, the complainant failed to come forward and accept possession upon payment of balance amount. Therefore, complainant is not entitled to any relief.



**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT
AND RESPONDENT.**

9. During course of oral hearing , learned counsel for the complainant reiterated the submissions as mentioned in the complaint file. He further submitted that complainant had made a booking for a unit admeasuring 500 sq. ft against which he has already paid entire sale consideration to the respondent by the year 2007 itself. Possession was assured to be delivered by the year 2009. However, respondent has failed to deliver possession of the booked unit. After a delay of more than 9 years, respondent issued an offer of possession dated 14.03.2019 for a unit admeasuring 380.13 sq. ft in contrast to the original booking of a unit of 500 sq. ft. Respondent did not intimate or receive consent of the complainant and unilaterally changed the area of the unit. There has been a significant reduction to the tune of more than 25 % in the area of the unit. Taking possession of a unit with such reduced area will totally defeat the purpose of the complainant. Also the said offer of possession has been issued without obtaining occupation certificate. Therefore, it cannot be called a valid offer of possession. Complainant was further apprised that the respondent has created a charge on the entire project in favour of "Capital India Finance Limited" vide loan sanction letter 25.10.2018 without taking prior consent of complainant/other allottees.



Complainant is under grave apprehension that the respondent will not be able to deliver a legally valid possession of the booked unit in near future. Complainant who has already waited for more than 15 years is not willing to wait any further. Therefore, he requested that direction be issued to respondent to refund the paid amount along with interest on account of default in delivery of possession.

10. On the other hand, Mr. Shubhnit Hans, learned counsel for the respondent submitted that the project in question already stands completed. Part completion certificate has already been received on 23.01.2008, 18.11.2013 and 22.09.2017. Respondent company has also received occupation certificate in respect of said commercial site vide letter dated 12.06.2019. The area of the unit has been changed as per sanction plan and before issuing offer of possession. Respondent has already issued an offer of possession dated 14.03.2019. In said offer of possession the charges on account of reduced area have already been refunded to the complainant. However, the complainant failed to come forward and accept the possession. Possession was offered in the year 2019 and for the past five years complainant has never approached the respondent barring present complaint. Thus, complainant is not entitled to any relief.



F. OBSERVATIONS OF THE AUTHORITY

11. In view of the submissions of both parties, Authority observes that complainant in this case had purchased the booking rights qua the unit in question in the project of the respondent in the year 2007 and paid a total amount of ₹ 22,50,000/-. Said amount has been retained by the respondent since 2007. Grouse of the complainant is that even after a lapse of more than 15 years from purchase, respondent did not issue a valid offer of possession qua the booked unit after obtaining occupation certificate. Complainant is further aggrieved by the fact that the area of the booked unit has been unilaterally reduced from 500 sq. ft to 380.13 sq. ft. without obtaining the consent of the complainant or providing any intimation of the same.
12. On the other hand, respondent has submitted that the respondent company has already received occupation certificate in respect of the commercial site on 12.06.2019. Further the area of the unit has been reduced prior to issuing offer of possession and the respondent has already adjusted the amount on account of reduced area vide statement of account dated 14.03.2019.
13. Upon perusal of the complaint file it is observed that as per the buyers agreement the possession of the unit was to be delivered within a period of 30 months including a six months grace period, from date of



sanctioning of the building plans. Date of sanctioning of building plans is not available with the complainant. However, upon perusing statement of account dated 07.05.2018, annexed at page 56 of the complaint, it is observed that respondent had raised a demand under " At the time of excavation" from the complainant on 10.11.2006 meaning thereby that at the time of excavation, the builder/respondent had got approved the building plans qua the project. Thus, it can be ascertained that possession of the unit should have been delivered within a period of 30 months from the time respondent had begun excavation i.e by 10.05.2009. However, respondent issued an offer of possession to the complainant in the year 2019 after a delay of nearly 10 years. Further at the time of offer of possession, complainant came to know that the area of the booked unit has been decreased from 500 sq.ft to 380.13 sq ft i.e more than 25 % of the area of the unit . Such a reduction amounts to material change in the booked unit which frustrates the purpose of booking. As per standard market practice, a change in the area of the unit to the tune of 10 % is acceptable and reasonable in development of real estate projects . However, a reduction in the area of more than 25 % of the original area is a huge material change which is unconscionable and unreasonable on the part of the respondent. Complainant had booked the unit in the year 2007 and the respondent had begun construction in the year 2006. Thus



respondent had an estimate with regard to the area of the unit but chose not to inform the complainant till the time of offer of possession. Complainant cannot be forced to accept such a flawed and arbitrary offer of possession.

14. It is argued by the respondent that possession was issued to the complainant on 14.03.2019 and occupation certificate was received within three months i.e by 12.06.2019. It is the complainant who failed to come forward to accept possession. Fact of the matter is that the offer of possession was issued after a significant delay of more than 10 years and further there was a huge deficiency in the booked unit with regard to the reduction in the area of the unit from 500 sq. ft to 380.13 sq.ft. Development of real estate projects gets delayed sometimes due to reasons beyond the control of the builder but a delay of nearly 10 years is huge time which takes a toll on the allottees who have invested their hard earned money in the project and are then stuck without the money or possession in hand. Complainant in this case had paid the entire sale consideration to the tune of ₹ 22,50,000/- by the year 2007 itself in hopes of receiving a unit. However, the complainant was not only bereft of his hard earned money but was also not able to enjoy possession since the delivery of possession had been extraordinarily delayed by the respondent. Complainant has clearly submitted that he will not be able to



utilise the unit with reduced area. Now after more than 10 years complainant is devoid of his hard earned money and left with a unit which is of no use. It is observed that the respondent has severely defaulted in delivering possession as per the agreed terms and conditions. It is to mention here the judgement dated 02.04.2019 passed by Hon'ble Supreme Court in Civil Appel no. 12238 of 2018 titled as Pioneer Urban Land & Infrastructure Ltd vs Govindan Raghavan whereby it is held that the flat purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the agreement expired. Relevant part of said judgement is reproduced below for reference:-

"9. We see no illegality in the Impugned Order dated 23.10.2018 passed by the National Commission. The Appellant – Builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the Respondent – Purchaser within the time stipulated in the Agreement, or within a reasonable time thereafter. The Respondent – Flat Purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the Agreement expired. During this period, the Respondent – Flat Purchaser had to service a loan that he had obtained for purchasing the flat, by paying Interest @10% to the Bank. In the meanwhile, the Respondent – Flat Purchaser also located an alternate property in Gurugram. In these circumstances, the Respondent – Flat

Purchaser was entitled to be granted the relief prayed for i.e. refund of the entire amount deposited by him with Interest."

15. Possession in this case has been delayed beyond a reasonable period of time. Respondent builder has failed to fulfil its contractual obligation of obtaining occupation certificate and offering possession of the booked unit within stipulated time as per the builder buyer agreement.

16. Further, Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others" in CIVIL APPEAL NO(S). 6745 6749 OF 2021 has observed that in case of delay in granting possession as per agreement for sale, allottee has an unqualified right to seek refund of amounts paid to the promoter along with interest. 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."

17. In view of the observations made above, Authority observes that on account of failure on part of respondent in delivery of possession of booked unit within stipulated period and further deficiency in the area of the unit, complainant has acquired an unqualified right to seek refund of the paid amount along with interest. 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 of the respondent. 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;*

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”.”



18. 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. 01.06.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.70%. Accordingly, respondent will be liable to pay the complainant interest from the date the amounts were paid by him till the actual realization of the amount.
19. Hence, Authority directs respondent to refund to the complainant the paid amount along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.70% (8.70% + 2.00%) from the date amounts were paid till the actual realization of the amount.
20. Authority has got calculated the interest payable to the complainant from date of payments till date of order(i.e 01.06.2023) and same is depicted in the table below:

S.no	Complaint No.	Paid amount (in ₹)	Interest accrued till 01.06.2023 (in ₹)	Total amount to be refunded by the respondent (in ₹)
1.	1744-2022	15,00,000/-	26,18,481/-	41,18,481/-
2.	2822-2022	23,25,953/-	31,97,379/-	55,23,332/-



21. In complaint no. 1744 of 2022, complainant has claimed to have paid an amount of ₹ 22,50,000/- . It is pertinent to mention that complainant has attached receipts only for an amount of ₹ 15,00,000/- paid to the respondent till 11.09.2007. Complainant has claimed to have paid an amount of ₹ 7,50,000/- to the respondent by way of cash deposit on 30.11.2007. However, no receipt for deposit of ₹ 7,50,000/- has been attached with the file. Further as per the statement of accounts dated 14.03.2019 and 29.03.2023 issued by the respondent, annexed at page 49 & 51 respectively, the respondent has admitted to having received a payment of ₹ 15,00,000/- only. Complainant is unable to provide any receipts to substantiate the claim of having paid a total amount of ₹ 22,50,000/- . Therefore, Authority is unable to accept the submission of the complainant of having paid a total amount of ₹ 22,50,000/- to the respondent and thus will only allow relief to the extent of a total amount of ₹ 15,00,000/-.

G. 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 as reflected in para 20 of this order (till date of order i.e 01.06.2023) to the complainants in respective complaints.
- (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. Complaints are, accordingly, **disposed of**. File be consigned to the record room after uploading the order on the website of the Authority



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



.....
NADIM AKHTAR
[MEMBER]