



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	252 of 2021
Date of filing.:	24.03.2021
First date of hearing.:	27.04.2021
Date of decision.:	18.05.2023

1. Harjit Kaur w/o S. Tahilinder Singh
H.no 291, Police Line, Sanyo Cottage,
Amritsar, Punjab
2. Gurdeep Kaur w/o Kawaljit Singh
48-49 Baba Deep Singh Avenue, Near
Bharat Palace, Tarn Taran Road,
Amritsar, Punjab
-COMPLAINANTS

VERSUS

- TDI Infracorp (India) Limited..
UG Floor, Vandana Building,
11 Tolstoy Marg, Connaught Place,
New Delhi-110001
-RESPONDENT

CORAM: **Dr. Geeta Rathee Singh** **Member**

Nadim Akhtar **Member**

Present: Mr. Dilpreet S.Gandhi, Counsel for complainant
 through VC.
 Mr Karan Inder Singh, Counsel for respondent
 through VC

Dr. Geeta Rathee

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.	Water side floors, Lake drive, Lakeside heights, Sonapat, Haryana
2.	Nature of the project.	Residential (Group Housing)
3.	Rera Registration	Registered with registration no. 43 of 2017

4.	Details of unit.	WF-176, 3rd floor, W-tower
5.	Date of Builder buyer agreement	22.06.2015
6.	Due date of possession	22.12.2017 (as per clause 28 of the floor buyer agreement)
7.	Possession Clause	<p>.....However, if the possession of the Floor 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 buyers shall be entitled to a fixed monthly compensation damages/penalty quantified @ Rs.5 per square foot of the total super area of the Floor. The Buyer 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 Floor.</p>
8.	Total sale consideration	₹ 52,99,280/-
9.	Amount paid by complainants	₹ 27,25,345/-
10.	Offer of possession.	13.07.2021

B. FACTS OF THE COMPLAINT

3. Complainants in this case had booked a floor in the project of the respondent namely "Waterside Floors in Lake Grove City" situated at Kundli, Sonapat in the year 2013. Floor No. WF-176 3rd floor, W-Tower measuring 1400 sq. ft. was allotted to complainants on 24.12.2013. Floor Buyer Agreement (hereinafter referred to as FBA) was executed between parties on 22.06.2015. As per clause 28 of the FBA, possession of the floor was to be made within 30 months from the date of agreement including a grace period of six months, thus deemed date of delivery was on 22.12.2017. Complainants have paid ₹. 27,25,345/- against total sale consideration of ₹. 52,99,280/- till date. It is submitted by the complainants that despite a lapse of more than four years respondent has failed to offer possession of the booked floor. That till date, respondent has not completed the construction of the project in question including the floor booked. Complainants have annexed latest photographs of the project and the floor, clicked in the year 2021, which show that the project is still at a raw stage of construction.

C. RELIEF SOUGHT

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

- (i) That respondent be directed to refund the paid amount along with interest.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

5. Respondent in its written submissions has submitted that respondent is in the process of completing construction of the project. The delay caused in handing over of possession is not solely attributed to respondent company. There has been default on the part of the complainants in making payments towards the booking made in the said project of the company. Various reminder letters had been sent to the complainants to pay the outstanding dues to the respondent company. However, despite various reminders the complainants failed to come forward and perform their part of the obligations.

E. OBSERVATIONS MADE BY AUTHORITY VIDE ORDER

DATED 08.07.2022.

6. During the course of hearing dated 08.07.2022, learned counsel for the respondent had submitted that the respondent has completed construction of the project and has also offered fit out possession of unit to the complainants vide letter dated 13.07.2021 . Respondent had placed a copy of offer of fit out possession dated 13.07.2021

along with latest photographs of the floor booked by the complainant.

7. On the other hand, learned counsel for the complainants had principally argued that respondent has offered them fit out possession of the floor on 13.07.2021, after delay of four years from the deemed date of delivery, and further vide statement of accounts dated 26.10.2021 raised an unreasonable and illegal additional demand of ₹. 47,63,674/-. As a result of this additional demand the cost of the floor has now increased from ₹. 49,00,000/- to ₹. 96,63,674/- which is almost twice the initial sale price of the floor. Learned counsel for the complainants stated that complainants do not have the financial capacity to pay aforesaid additional demand.
8. Authority after hearing both parties vide order dated 08.07.2022 prima facie had observed that, it is a fit case for allowing refund of the amount paid by the complainants along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017. Relevant part of order dated 08.07.2022 including the reasoning and observations made therein is reproduced below for reference:

“5. After hearing arguments of both the parties and perusal of record, Authority observed that respondent has offered fit out possession of unit to the complainants on 13.07.2021 after delay

of four years from the deemed date of delivery, which is accompanied with additional demand of Rs. 47,63,674/. Said additional demand of Rs. 47,63,674/- has now increased cost of the unit from Rs. 49,00,000/- to Rs. 96,63,674/- which is about twice the initial sale price of the unit. Complainants plea that they are unable to pay aforesaid additional demand appeared to be genuine. Learned counsel for the complainants has also alleged that the unit is incomplete.

Admittedly, offer for fit out possession has been made to the complainants after a delay of four years from agreed date of delivery as per BBA. Application for grant of Occupation Certificate has been filed on 21.05.2021, thus, respondent has not yet obtained Occupation Certificate; and as per averment of the complainants, unit is still incomplete therefore they have not taken actual possession of the unit. Authority further observed that respondent had been using amount deposited by the complainants for last four years without any reasonable justification. In addition, respondent has now increased cost of the unit from Rs. Rs. 49,00,000/- to Rs. 96,63,674/ by raising additional demand of Rs. 47,63,674/. There is no justification to raise such a huge demand. Respondent cannot unilaterally make such a huge increase in the cost of the unit.

BBA executed between the parties annexed as Annexure P-3 of the complaint, reflects that basic sale consideration was Rs. 49,00,000/-. Thus, increase in sale consideration of the shop from Rs. 49,00,000/- to Rs. 96,63,674/ amounts to material change of the agreed terms between the parties and frustrates the very purpose of the whole transaction. Complainants cannot be compelled to pay additional amount of Rs. 47,63,674/-. So, Authority prima facie, finds it to be a fit case for allowing refund of the amount paid by the complainants along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017.

6. *On request of respondent, last opportunity is granted to respondent to justify additional demand of Rs. 47,63,674/- failing which Authority will proceed to grant refund of the amount paid by the complainants along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017."*

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT

9. During oral arguments, learned counsel for the complainants submitted that complainants had booked a floor in the project of the respondent in the year 2013. As per FBA, possession of the floor was

to be delivered by the year 2017. However, despite a lapse of more than four years respondent has failed to offer possession of the booked floor. During the proceedings in present complaint, learned counsel for the respondent had placed on record a copy of offer of possession for fit out dated 13.07.2021 issued to the complainants. Further vide statement of accounts dated 26.10.2021 respondent had also raised a demand of ₹ 47,63,674/- as outstanding amount against balance sale consideration. It is submitted that the complainants had booked a floor measuring 1400 sq ft whereas in said statement of accounts the final area of the unit has been mentioned as 1520 sq. ft. That the respondent had unilaterally increased the area of the unit by 120 sq. ft without providing any intimation or justification for the same which has caused an additional financial burden on the complainants. Thus increased demand of ₹ 47 lakh has nearly doubled the total cost of the floor to ₹ 96 lakh which is an unbearable financial burden for the complainants. Not only the respondent has delayed the delivery of possession beyond the stipulated time but is also harassing the complainants with frivolous demands. Authority vide order dated 08.07.2022 had granted the respondent an opportunity to justify additional demand of ₹. 47,63,674/-. It is submitted that despite availing time, respondent has failed to justify the demand of

₹. 47,63,674/-. Further, the project is yet to receive occupation certificate, without occupation certificate, the offer of possession dated 13.07.2021 cannot be called a valid offer of possession. Respondent has failed to apprise the status of grant of occupation certificate. Complainants who have already waited for more than five years are not interested in waiting for an indefinite period for delivery of possession of booked floor.

10. Learned counsel for the complainants apprised the Authority that as per the last order dated 28.02.2023, the complainants were directed to apprise about the status of pending litigation, if any, qua the same issue before Hon'ble SCDRC, Delhi. It is submitted that the complainant had filed Complaint bearing no. CC/658/2019 before Hon'ble State Consumer Dispute Redressal Commission, Delhi which has already been withdrawn on 11.05.2022. A copy of order dated 11.05.2022 vide which said complaint stands dismissed as withdrawn has been filed vide application dated 05.05.2023.

11. Therefore, they prayed that directions be issued to the respondent to refund the paid amount along with interest.

G. ARGUMENTS OF LEARNED COUNSEL FOR RESPONDENT

12. Learned counsel for the respondent had rebutted that there is no sudden increase in the cost of the unit. Said amount is due against complainants qua remaining instalments against cost of the unit inclusive of interest levied on account of non-payment of demands raised by the respondent from time to time as per stage of construction of unit.

H. ISSUES FOR ADJUDICATION

13. Whether the complainants are entitled to refund of amount deposited by them along with interest in terms of Section 18 of Act of 2016?

I. OBSERVATIONS OF THE AUTHORITY

14. 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 residential floor in the project of the respondent in the year 2013. Complainants had paid a total amount of ₹ 27,25,345/- against total sale consideration of ₹ 52,99,280/-. As per buyers agreement possession of the booked unit was to be delivered by 22.12.2017. However, respondent failed to complete the project and issue an offer of possession in respect of the booked floor to the complainants. Admittedly, the respondent has issued an offer

of possession for fit out to the complainants on 13.07.2021. Main grouse of the complainants is that respondent has issued said offer of possession after a delay of more than five years and that too without obtaining occupation certificate. Further, respondent has unilaterally increased the area of the unit from 1400 sq. ft to 1520 sq. ft without providing any justification for the same. Respondent has unjustifiably raised a demand of ₹ 47 lakh from the complainants which has increased the total sale price to ₹ 96 Lakh as against the initial price of ₹ 52 Lakh.

15. Upon perusal of record, it is observed that at the time of filing of complaint, complainants had attached latest photographs of the site in question. A perusal of said photographs reveals that even by the year 2021, the project in question was still under construction. In its reply respondent has submitted that application for grant of occupation certificate is still pending before the concerned department, meaning thereby that offer of possession dated 13.07.2021 for fit out works was made without obtaining occupation certificate. Authority has laid a criteria as to what shall be called lawful offer/ handing over of possession in **Complaint Case No. 903 of 2019- Sandeep Goyal Vs. Omaxe Ltd.** Relevant part of the said order is reproduced below:

"7. At this stage, the Authority would express its views regarding the concept of 'valid offer of possession'. It is necessary to clarify this concept because after valid and lawful offer of possession liability of promoter for delayed offer of possession comes to an end and liability of allottee for paying holding charges as per agreement commences. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The Authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession of an apartment must have following components:

(i) Firstly, the apartment after its completion should have received occupation certificate from the department concerned certifying that all basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm water drainage, electricity supply, roads and street lighting.

(ii) Secondly, the apartment should be in habitable condition. The test of habitability is that the allottee should be able to live in the apartment within 30 days of the offer of possession after carrying out basic cleaning works and getting electricity, water and sewer connections etc. from the relevant authorities. In a habitable apartment all the common facilities like lifts, stairs, lobbies, etc. should be functional or capable of being made functional within 30 days after completing prescribed formalities. The Authority is further of the view that minor defects like little gaps in the windows or minor cracks in some of the tiles, or chipping plaster or chipping paint at some

places or improper functioning of drawers of kitchen or cupboards etc. are minor defects which do not render an apartment uninhabitable. Such minor defects can be rectified later at the cost of the developers. The allottees should accept possession of an apartment with such minor defects under protest. This Authority will award suitable relief or compensation for rectification of minor defects after taking over of possession under protest. However, if the apartment is not habitable at all because the plastering work is yet to be done, flooring works is yet to be done, common services like lift etc. are non-operational, infrastructural facilities are non-operational then the apartment shall be deemed as uninhabitable and offer of possession of an uninhabitable apartment will not be considered a legally valid offer of possession.

(iii)

Therefore, the offer of possession dated 13.07.2021 cannot be considered a valid offer of possession. Since the respondent has still not received occupation certificate qua the project in question, thus a valid offer of possession is yet to be issued to the complainants.

16. Vide order dated 14.10.2022, respondent was directed to file an affidavit providing details with regard to component wise increase in area of the unit, status of construction of unit of complainant and component wise detailed justification of the additional demand of ₹. 47,63,674/- charged under various heads as per statement of account dated 26.10.2021. Despite availing several opportunities,

respondent has failed to submit requisite information. Even today, proxy counsel for the respondent has sought time to file the affidavit. Since proceedings before this Authority are summary proceedings and respondent has already availed several opportunities for filing the requisite information, Authority decides to proceed based on the material/documents available in file and grant no further opportunities.

17. It is observed that the respondent is merely engaging in delay tactic. The deliberate delay on part of respondent in filing the necessary justification raises a valid apprehension in respect of the genuineness of the conduct of the respondent in respect of the increase in area and the demand raised vide statement of account dated 26.10.2021. It can rightly be ascertained that respondent has unjustifiably increased the area of the unit by 120 sq. ft which has caused additional financial burden of the pocket of the complainants. Respondent has failed to justify the impugned demands. As per the buyers agreement, the basic sale consideration of the floor was fixed at ₹ 49,00,000/-. Now the increase in sale consideration of the floor to ₹ 96,63,674/- which is quite a considerable increase amounts to a material change in the agreed terms between the parties and frustrated the very purpose of the purchase. Complainants cannot be forced to accept such an offer of possession. Further, the

complainants do not wish to take possession without occupation certificate. Since the respondent is not able to provide a concrete timeline for completion of construction work and grant of occupation certificate, complainants who have already waited for more than five years are not willing to wait any further.

18. Therefore, Authority reconfirms its views as already expressed vide order dated 08.07.2022 and deems it to be a fit case for allowing refund along with interest in favour of complainant. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.

19. 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;

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.

20. 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. 18.05.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.70%.

21. Authority has got calculated the interest payable to the complainants till date of order i.e 18.05.2023 which works out to ₹ 27,31,204/-. Accordingly, total amount payable to the complainants including interest calculated at the rate 10.70% works out to ₹ 54,56,549/-.

J. 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 ₹ 54,56,549/- to the complainants.
- (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 order on the website of the Authority



.....
NADIM AKHTAR
[MEMBER]



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

