



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>2468 of 2022</b>
<b>Date of filing.:</b>	<b>10.10.2022</b>
<b>First date of hearing.:</b>	<b>06.12.2022</b>
<b>Date of decision.:</b>	<b>04.05.2023</b>

Raj Kumari Ahuja & Jitesh Ahuja .....COMPLAINANT(S)  
Both R/o Flat No. I-301, Supertech Eco Citi  
Sector-137, Noida  
201305

VERSUS

TDI Infrastructure Pvt. Limited. ....RESPONDENT  
Upper Ground Floor, Vandana Building,  
11, Tolstoy Marg, Connaught Palace,  
New Delhi - 110001

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

**Nadim Akhtar Member**

**Date of Hearing: 04.05.2023**

**Present: -** Mr. Chaitanya Singhal, Counsel for the complainants  
through VC.  
Mr. Shubhnit Hans, Counsel for the respondent

*Dr. Geeta Rathee*

**ORDER (DR. GEETA RATHEE SINGH- MEMBER)**

1. Present complaint has 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.

**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 City, Kundli, Sonapat
2.	Nature of the project.	Plotted colony
3.	<b>RERA Registered/not registered</b>	Unregistered
4.	<b>Details of unit.</b>	Plot No. 235, Block-K.
5.	<b>Date of Builder buyer agreement</b>	None

6.	<b>Due date of possession</b>	Not available
7.	<b>Total sale consideration</b>	₹ 20,09,000/-
8.	<b>Amount paid by complainant</b>	₹ 22,16,125/-
9.	<b>Offer of possession.</b>	None

### **B. FACTS OF THE COMPLAINT**

3. In this case, a plot was booked by original allottee Mr. Manohar Lal Sethi in the project of the respondent namely 'TDI City' situated at Kundli, Sonapat in the year 2005. The booking rights in respect of the plot were transferred in the name of subsequent allottee Ms. Ritu Jain on 03.04.2008 and thereafter the rights were transferred in the names of complainants on 22.07.2008. It is submitted that complainants were allotted plot no. 235, Block- K measuring 350 sq.yds. No builder buyer agreement has been executed between the parties. On 19.03.2019 respondent had sent a letter to the complainants stating that respondent was not in a position to deliver possession of booked plot and suggested taking possession of an alternate plot located in the same project of the respondent. The complainants tried to explore the options for alternate plot given by respondent. However, the offer of alternate plot was not acceptable to the complainants due to poor location and

inhabitable conditions of the area. It is submitted by the complainants that respondent has miserably failed in completing the project and timely delivery of possession of the booked plot.

**C. RELIEF SOUGHT**

4. The complainants in present complaint seek following relief:

(i) to direct the respondent to refund the amount of ₹ 22,16,125/-

paid by the complainants along with interest as per HRERA

Rule 15.

(ii) to grant litigation expenses of ₹ 1,50,000/- to the complainants.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

5. Respondent in its reply submitted that the complainants in present complaint are seeking refund of the paid amount since respondent is not in a position to deliver possession. However, vide letter dated 19.03.2019, the respondent company had informed the complainants that due to some unforeseen circumstances the actual plot booked by the complainants could not be completed/constructed due to which complainants could not be offered possession of the original booked

plot. Vide letter of even date respondent had offered the complainants with an option for taking over possession of an alternate plot and the amount already paid by the complainants will be adjusted in that project. However, complainants who did not respond to said letter and failed to choose from the above. Instead complainants have filed present complaint. Copy of letter dated 19.03.2019 is annexed as annexure R-5. Therefore, it is submitted that the complainant is not entitled to any relief.

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

6. During course of oral hearing , learned counsel for both the parties reiterated their averments as mentioned in the complaint and reply filed therein. Learned counsel for the complainants stated that though vide letter dated 19.03.2019, respondent had given an option to the complainants for an alternative plot in the same project but in said letter respondent had failed to mention any specifications with regard to the alternative plot because of which complainants could not have trusted said offer of respondent. Now, since the respondent is not in a position to offer possession of booked plot i.e plot no. 235, Block- K and more than 14 years have already passed since the date of purchase of allotment rights of said plot , the complainants are no longer interested

in taking possession in any other project of the respondent and are only interested in seeking refund of the paid amount along with interest. Therefore, learned counsel for the complainants prayed that directions be issued to the respondent to refund the amount paid by complainants along with interest.

7. Learned counsel for the respondent raised no further arguments.

### **G OBSERVATIONS OF THE AUTHORITY**

8. In view of the submissions of both parties, Authority observes that complainants in this case had purchased the booking rights qua the plot in question in the project of the respondent in the year 2008 for a total sale consideration of ₹ 20,09,000/- against which a total amount of ₹ 22,16,125/- has been deposited with the respondent since 2009. However, even after delay of more than 14 years from date of transfer of booking rights respondent did not offer possession of the booked plot to the complainants. In the written statement submitted by the respondent, it has been admitted that due to unforeseen circumstances, possession of the plot booked by the complainants could not be delivered and therefore, vide letter dated 19.03.2019 respondent had given an option to the complainants to take possession of an alternative unit in the same project which was ready for delivery. However, as stated by the complainants in said letter respondent had failed to

mention any specifications in regard to the alternative plot in question thus raising doubts in the mind of complainants in regard to the genuineness of the offer and thus complainants chose not to respond to the same. Authority observes that the plot in question was booked in the year 2006. No builder buyer agreement has been executed between the parties. In absence of builder buyer agreement it cannot rightly be ascertained as to when the possession of said plot was due to be given to the complainants. In Appeal no 273 of 2019 titled as TDI Infrastructure Ltd Vs Manju Arya, Hon'ble Tribunal has referred to observation of Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr. in which it has been observed that period of 3 years is reasonable time of completion of construction work and delivery of possession.

9. In present complaint, the plot was booked by the original allottee in the year 2005 and taking a period of 3 years from the date of booking i.e 29.08.2005 as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 29.08.2008. In present situation, respondent failed to deliver the possession of booked plot even after a lapse of more than ten years. Thereafter, vide letter dated 19.03.2019 respondent apprised the complainants that due to some unforeseen circumstances possession of the booked plot could not be offered without explaining as to what

the circumstances had been. Although respondent offered the complainants with an option for an alternative plot, the same could not be considered a genuine offer since respondent failed to provide any details of the alternative plot available for possession and the proper adjustment of the already paid amount along with the interest for delay caused in offering possession. Complainant could not have accepted such a deficient proposition from the respondent considering the miserable default on the part of respondent towards originally booked plot. Complainants have unequivocally stated that they are interested in seeking refund of the paid amount along with interest on account of inordinate delay caused in delivery of possession.

10. Further, Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others" 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."*

11. In view of the observations made above , 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. 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;*

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 the amounts were paid by them till the actual realization of the amount.

12. Hence, Authority directs respondent to refund to the complainant the paid amount of ₹ 22,16,125/- 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. Authority has got calculated the interest payable to the complainant from date of payments till date of order(i.e 04.05.2023) and same works out to ₹ 36,53,432/-.
13. The amount of interest admissible to complainant has been calculated on total paid amount of ₹ 22,16,125/-. For calculation of interest statement of account dated 17.04.2018 annexed as annexure P-2 has been taken into account. It is pertinent to mention that out of ₹ 22,16,125/- , an amount of ₹ 75,000/- has been paid towards interest on delayed payments . It is pertinent to mention that complainants have not attached receipt of said amount of ₹ 75,000/- but it has been admitted by the respondent vide statement of account dated 17.04.2018. Therefore for calculation of interest the date of receipt for ₹ 75,000/- is being taken as 17.04.2018.
14. While filing the complaint in the relief sought, complainant has also prayed for payment of litigation cost of ₹ 1,50,000/- incurred by the complainants. 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.

#### **H. DIRECTIONS OF THE AUTHORITY**

15.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 ₹ 58,69,557/- (till date of order i.e 04.05.2023).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.

16. The complaint is, accordingly, **disposed of**. File be consigned to the record room after uploading order on the website of the Authority

*Nadim*

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

*Geeta*

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

