



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2683 of 2022
Date of filing.:	11.10.2022
First date of hearing.:	06.12.2022
Date of decision.:	04.05.2023

1. Deepak Gupta s/o Shri Jai Prakash Gupta
2. Radha Rani Gupta w/o Sadhu Ram Gupta
Both R/o H. No 46, Raj Nagar, Pitampura
Delhi

...COMPLAINANT(S)

VERSUS

Intime promoters Pvt Ltd
9 Kasturba Gandhi Marg,
New Delhi 110001
now known as TDI Infrastructure Ltd.
Upper Ground Floor, Vandana Building,
11, Tolstoy Marg, Connaught Palace

....RESPONDENT

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

Hearing: 3rd

Present: - Mr. Roopak Bansal, Counsel for the complainant
 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.	Park street, Sector-19, village Kamaspur, District Sonipat Haryana
2.	Nature of the project.	Commercial
3.	RERA Registered/not registered	Unregistered

4.	Details of unit.	Restaurant No - 2
5.	Date of Builder buyer agreement	None
6.	Due date of possession	18.01.2010 (taking a period of 3 years from date of booking i.e 18.01.2007 as a reasonable period of time for completion of construction work in the absence of a builder buyer agreement)
7.	Total sale consideration	₹ 67,75,000/-
8.	Amount paid by complainant	₹ 41,20,234/-
9.	Offer of possession.	None

B. FACTS OF THE COMPLAINT

3. Complainants in this case had applied for a unit in a present and future project of the respondent which was to come up at Sonipat by paying a booking amount of ₹ 4,00,000/- on 18.01.2007. The total cost of the unit was fixed at ₹ 67,75,000/- against which the complainants have paid an amount of ₹ 41,20,234/- till the year 2014. Complainants were allotted a unit on the second floor in the commercial plaza. No builder buyer agreement has been executed between both the parties. It is alleged by the complainants that the project has been delayed beyond a

reasonable period. Till date respondent has failed to issue an offer of possession in respect of the booked unit to the complainants. On 18.11.2017, complainants issued a letter to the respondent for refund of the paid amount or to execute a builder buyer agreement in respect of the booked unit. However, respondent has failed to respond to the requests of the complainant.

C. RELIEF SOUGHT

4. The complainants in present complaint seek following relief:

- (i) to direct the respondent to refund the amount of ₹ 41,20,234/- along with interest till realization of amount.
paid by the complainants along with interest as per HRERA Rule 15.
- (ii) to direct the respondent to pay ₹ 5,00,000/- on account of mental harassment caused for delay in possession.
- (iii) to direct the respondent to pay ₹ 5,00,000/- under section 12 of the RERA Act.
- (iv) to direct the respondent to handover 10 % of the estimated

cost of the real estate project to complainant under Section 59 of the RERA Act.

(v) to direct the respondent to pay costs to the complainant

Equivalent to the cost of similar property in the area at

present prices.

(vi) to direct the respondent to reimburse litigation cost of

₹ 1,00,000/-.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

5. Respondent in its written statement has submitted that complainants in this case had voluntarily invested in the project of the respondent namely "Park Street" situated at Sector-19, village Kamaspur, District Sonapat Haryana. Said project is covered under licence no.s 999/2006, 1000/2006, 1001/2006 & 1002/2006 dated 16.06.2006 granted by Department of Town and Country Planning. It is submitted that complainants had applied for a unit in the project of the respondent in the year 2007. Respondent at various instances had requested the complainants to come forward to clear pending dues and execute the builder buyer agreement. However, it is the complainants who have failed to come forward to execute the same and make payment of

balance amount. It is denied that on 18.11.2017, complainants had issued a letter to respondent asking for refund of paid amount or execution of builder buyer agreement. Respondent is not in receipt of any such letter. It is the complainants who did not come forward to execute the agreement and are now making false allegations against the respondent. It is the complainants who have defaulted in present complaint on account of non payment of dues and thus they are 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 complainants in this case ad booked a unit in the project of the respondent in the year 2007. Till date respondent has failed to execute any builder buyer agreement with the complainants. Respondent has also failed to apprise the complainants with regard to the status of the project and handing over of possession of the units booked by the complainants. Till the year 2014 complainants had paid a total amount of ₹ 41,20,234/- against total sale consideration of ₹ 67,75,000/-. Complainants had already paid more than 60 % of the total sale consideration to the

respondent. In case complainants were in default on account of non payment of dues, respondent should have cancelled the allotment of the complainants and returned the amount after forfeiture. However, neither the respondent returned the amount to the complainants nor issued any offer of possession. Even in its written submission respondent has failed to provide current status of development of project and the unit booked by complainants. No offer of possession has been issued till date. In such situation complainants do not wish to remain a part of the project and pray for refund of the paid amount along with interest.

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

F OBSERVATIONS OF THE AUTHORITY

8. Considering submissions of both parties, Authority observes the main grouse of the complainants is that they had booked a unit in an upcoming project of the respondent in the year 2007 for which they had made a total payment of ₹ 41,20,234/- till the year 2014 against total sale consideration of ₹ 67,75,000/-. However, despite having made a payment of more than 60 % of total sale consideration respondent has failed to execute a builder buyer agreement with the complainants in respect of booked unit and deliver possession of the same. Further respondent has failed to apprise the complainants with regard to the

current status of development of the project in question. Respondent in its written submission has countered that it is the the complainants who have defaulted on account of non payment of dues and further failed to come forward to execute a builder buyer agreement.

9. Complainants had booked a unit in an upcoming project of the respondent in the year 2007. No builder buyer agreement was executed between both the parties. In absence of builder buyer agreement it cannot rightly be ascertained as to when the possession of said unit 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. Taking a period of 3 years from the date of booking i.e 18.01.2007 as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 18.01.2010. Possession of the booked unit should have been delivered by the year 2010. In this case, no offer of possession has been issued to the complainants till date even after a lapse of more than 13 years from deemed date of possession. Respondent has miserably failed to deliver possession of the booked unit to the complainants. By the

year 2014, respondent had already taken more than 60 % of the sale consideration without apprising the complainants the status of construction of the project and the booked unit. Respondent in its written submission has stated that it is the complainants who failed to come forward to execute a buyers agreement despite issuance of reminder letters. In support of its claim respondent has only attached three reminder letters dated 09.03.2016, 06.11.2017 & 08.09.2017 calling on the complainants to make payment of balance amount without attaching any postal receipts/delivery reports. In the absence of postal receipts/ delivery reports the authenticity of these documents cannot be verifiably ascertained. Further even in these reminder letters respondent has not apprised the complainants with regard to status of development of the project or against which stage the particular demand is being raised. Furthermore, 2 reminders dated 06.11.2017 and 08.09.2017 were issued to the complainants after RERA Act, 2016 coming into force. At that time the respondent was fully aware of the fact that as per section 13 of the RERA Act it cannot charge/ raise payment of more than 10 % of the total cost of the unit without first entering into the agreement for sale. Therefore, the promoter is in contravention of section 13 of the RERA Act of 2016. Also respondent has not attached any reminder letter in which the complainants have been asked to come and execute a builder buyer agreement. In absence

of documentary evidence the claim of the respondent that it is the complainants who did not come forward to execute the builder buyer agreement cannot be accepted.

10. Respondent has failed to apprise the Authority with regard to current status of the project and of the unit booked by the complainants. Such ambiguity on the part of the respondent raises a genuine apprehension in the mind of the complainants. There has been an inordinate delay caused in delivery of possession. Respondent has severely defaulted in its obligation to deliver the project within a reasonable period of time. Even at present respondents could not provide a specific time period by which the possession of the unit will be delivered to the complainants. Complainants who have already waited for more than 13 years do not wish to wait for an uncertain amount of time for delivery of possession of booked unit. Complainants have sought relief of refund of paid amount along with interest on account of default on the part respondent in delivery of possession of booked unit.

11. 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.”

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

13. 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. 04.05.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.70%.

14. 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. 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 ₹ 42,80,376/-.

15. While filing the complaint in the relief sought, complainant has also prayed for payment of a sum of ₹ 5,00,000/- on account of mental harassment and litigation cost of ₹ 1,00,000/- incurred by the complainant. 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.

16. While filing the complaint in the relief sought, complainant has also prayed for payment of a sum of ₹ 5,00,000/- under section 12 of the RERA Act. With respect to relief under section 12 of the RERA Act it is observed that in case any person is affected by incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act. Complainants have filed present complaint seeking refund of the paid, therefore said relief has already been granted to the complainants.

17. Complainant has also prayed for direction to respondent to handover 10 % of the estimated cost of the real estate project to complainant under Section 59 of the RERA Act. It is observed that proceedings under section 59 of the Act are penal in nature and compensatory. Therefore, allottee is not entitled to the penalty imposed upon a

promoter for violating the proviso of section 3 by not registering the project. To compensate the allottee for non fulfilment of obligations relief of refund along with interest, delayed interest and compensation is provided under section 18 of the RERA Act.

18. Complainant has also prayed that respondent be directed to pay costs to the complainant equivalent to the cost of similar property in the area at present prices. It is observed that complainants have filed present complaint seeking relief of refund of paid amount along with interest which is being granted to them vide this order. It is observed that the present relief was not pressed upon at the time of hearing and is also irrelevant in view of the main relief of refund of paid amount along with interest.

G. DIRECTIONS OF THE AUTHORITY

19. 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 ₹ 84,00,610/- (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.

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


.....
NADIM AKHTAR
[MEMBER]


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