



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2751 of 2019
Date of filing:	14.11.2019
Date of first hearing:	07.01.2020
Date of decision:	01.06.2023

Jacintha Pinto & Gaurav Gilbert Pinto

R/o Flat No. B-10-E, Block -K, Saket, New Delhi-110017

....COMPLAINANT(S)

VERSUS

DhingraJardineInfrastrcutrePvt. Ltd.

71, Chitra Gupta Road, Paharganj, South Delhi,

New Delhi-110055

....RESPONDENT(S)

CORAM:

Dr.GeetaRathee Singh
Nadim Akhtar

Member
Member

Present: - Mr. Sajal Dhawan, proxy counsel for the complainants through VC

None for the respondent

ORDER (NADIM AKHTAR-MEMBER)

1. Present complaint has been filed on 14.11.2019 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 possession, delay period, if any, have been detailed in the following table:

S.N.	Particulars	Details
1.	Name of the project	California Country, Sector-80, Faridabad
2.	Nature of the Project	Commercial Unit
3.	RERA Registered/not registered	Un-Registered
4.	Shop no.	01



5.	Unit area	400 sq. ft.
6.	Booking Date	September, 2014
7.	Buyers' agreement	Not executed
8.	Total sale consideration	40,00,000/-
9.	Amount paid by the complainant	20,74,160/-

B.FACTS STATED BY THE COMPLAINANT:

3. That complainant had booked a shop bearing no.01 in the project of the respondent namely "California Country, Faridabad, Sector 80 and paid the booking amount of Rs. 1,00,000/- on 29.09.2014. The payment plan was linked with construction plan and the total sale consideration was Rs 40,00,000/-. A copy of the application form along with payment receipt are annexed as Annexure P-1 colly.

4. That on 24.11.2014, respondent raised a demand of Rs 20,74,160/- as per the payment plan and complainants had paid the entire amount till 2014. Copies of the payment receipts are annexed as Annexure P-2.

5. That the complainants visited the project site and was shocked to see that construction has been stopped at the site. Copies of photographs of the project site are annexed as Annexure P-3.

6. That on 03.11.2019, complainants sent an email (annexure P-4) to the respondent to issue the allotment letter, execute the buyer agreement in his favour, issue latest statement of account and handover the legally valid possession.

7. That the complainants paid approximately 50% of the actual amounts of shop/unit. However, respondent has failed to deliver the possession of the fully constructed and developed shop due to which complainants were not able to carry out self-owned shop.

8. That respondent has promised to handover the possession to the complainants within 36 months after the completion of the construction. However, possession has not been handed over to the complainants after the lapse of 5 years from the date of booking.

9. Aggrieved from the above facts and circumstances, complainants have filed this present complaint.

C. RELIEF SOUGHT:

10. Complainants are seeking relief of the following stated as under:

- i) To direct the respondent to issue allotment letter and execute the shop buyer's agreement in favour of the complainants.
- ii) To direct the respondent to handover the possession of the shop after obtaining Occupation Certificate and also directed the respondent to pay delay interest for every month of delay from the due date of possession.

iii) To direct the respondent to provide for third party audit to ascertain actual construction of shop and facilities.

iv) To direct the respondent to complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity, environmental etc. before handing over the physical possession of the shop.

D.REPLY SUBMITTED BY THE RESPONDENT:

11.Despite opportunities given to the respondent neither the respondent nor their counsel had put up appeals before the Authority. Vide order dated 10.12.2022 an opportunity was granted to the respondent, but none appeared, therefore the authority proceeded to decide the matter on the basis of the documents on record.

E.ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT

ANDRESPONDENT

12.None appeared on behalf of the respondent. Proxy counsel for the complainant reiterated the same facts as stated in the complaint. He further stated that complainant has not handed over the possession of the shop till date and already inordinate delay of almost seven years have been caused in handing over of the possession of the booked unit. Therefore, aggrieved of above



circumstances, complainant prayed before this Authority to pass the orders as it deem to be fit.

F. OBSERVATIONS AND DECISION OF THE AUTHORITY

13. In light of the facts of the case and perusal of document placed on record, Authority observes as follows:

i). That complainants have booked a commercial shop in the project of the respondent in the year 2014 and complainants have paid the amount of ₹ 20,74,160/- against the total sale consideration of Rs 40,00,000. However, respondent has neither responded to the complainants nor given any status report regarding the construction of unit till date.

ii) No doubt in the present complaint the unit was booked in the year 2014 thereafter no allotment letter or Builder Buyer Agreement was executed between the parties. As per Section 2(d) of the Real Estate Regulatory Authority Act, 2016 the present complainant falls within the definition of the allottee because out of the total sales consideration Rs. 40,00,000/-, complainant has paid Rs. 20,74,160/- to the respondent on different dates and the amount paid was duly acknowledged by the respondent. It is pleaded case of the complainant that the respondent failed to allot any unit to them or even executes a Builder Buyer Agreement. In the absence of the execution of agreement to sell between the parties would not imply that the respondent who is in the business of



the real estate development has accepted payment of Rs. 20,74,160/- and issued receipts to the complainant for nothing in return, which is possible and hard to believe. Failure on the part of the respondent to issue allotment letter and execution of the builder buyer agreement will not affect the rights of the complainants/allottees. Further accepting the payment towards a unit shows that there was meeting of mind on the point that promoter will give possession of the booked unit. Therefore the complainants are very much allottees of unit in the project of the respondent as is covered within the definition of Section 2(d) of the Real Estate Regulatory Authority Act, 2016. An inordinate delay of more than eight years has already been caused from the date of booking. Such huge delay defeats the very purpose of booking a unit and no reasonable cause for such huge delay has been presented by the respondent.

iii) Complainants have prayed for relief of the possession of the unit. Since, complainants despite all delay on the part of the respondent in completing the project intends to continue with the project and seek the relief of possession along with delay interest. Hence, the complainant is entitled for the interest on account of delay caused in handing over the possession as per the mandate of provisions of section 18 of the RERA Act.

Section 18 of the RERA Act is reproduced here for ready reference:



“18. Return of amount and compensation.—(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

14. Further, Authority observes that the unit in question was booked in the year 2014. Since then, no shop buyer agreement has been executed between the parties. In absence of any agreement, it cannot rightly be ascertained as to when the possession of said plot was due to be given to the complainant. Therefore, the reasonable period of three years will be taken for the deemed date of possession. 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. Therefore, the date will be taken as the deemed date of

possession from the period of three years of booking of the unit i.e., 29.09.2014 which comes out to 29.09.2017. Hence, complainants are entitled for the delay interest from the period of 29.09.2017 till the date of this order i.e., 01.06.2023. in terms of section 18 of the RERA Act read with Rule 15 of HRERA Rules,2017.

As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The 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. 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”.

15. Consequently, as per website of the state Bank of India i.e., <https://sbi.co.in>, the 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%.

16. Therefore, respondent is directed to pay the delay interest from the deemed date of possession i.e., 29.09.2017 till the date of this order i.e., 01.06.2023. Authority has got calculated the delay interest payable to the complainant which works out to ₹12,59,862/-.

Further, respondent is liable to pay each monthly interest from the date of order i.e., from 01.06.2023 onwards till the handing over of possession which comes out to ₹18,241/-.

G.DIRECTIONS OF THE AUTHORITY

17. 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) Authority directs the respondent to handover the possession of the unit to the complainants.

ii) Authority further directs the respondent to pay delay interest to the complainant of ₹ 12,59,862/- and further pay monthly interest of ₹18,241/- till handing over of possession.

(iii) Respondent is directed to make entire payment to the complainants as depicted above within 90 days from the date of this order, as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017.

18. Complaint is, accordingly, **disposed of**. Files be consigned to the record room after uploading the order on the website of the Authority.


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


.....
NADIM AKHTAR
[MEMBER]