



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2951 of 2022
Date of filing:	10.11.2022
Date of first hearing:	18.01.2023
Date of decision:	05.07.2023

Prakhar Kaushik S/o Sh. Dinesh Kaushik
R/o House No. 89, Sandesh Vihar,
Pitampura, Delhi-110034

...COMPLAINANT(S)

VERSUS

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

....RESPONDENT(S)

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

Present: - Mr. Gaurav Gupta, Counsel for the complainant
 Mr. Shubhmit Hans, Counsel for the respondent through
 VC.

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Initially present complaint has been filed on 10.11.2022 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	TDI City, Kundli , Sonipat
2.	RERA registered/not registered	Not registered.
3.	DTCP License no.	183-228 of 2004, 153-157 of 2004 and 101-144 of 2005.
	Licensed Area	927 acres
4.	Unit no.(residential plot)	J-510
5.	Unit area	250 sq yards
6.	Date of allotment	19.01.2006
7.	Date of builder buyer agreement	15.05.2015
8.	Due date of offer of possession	Not available

9.	Possession clause in BBA	Not specified in BBA.
10.	Total sale consideration	₹ 22,78,125/-
11.	Amount paid by complainants	₹ 21,34,010/-
12.	Offer of possession	No offer.

B. FACTS OF THE COMPLAINT

3. Facts of complaint are that original allottee, namely, Saranjit Singh had booked a plot in the future project of the respondent by making payment of Rs 6,25,000/- in year 2005, following which allotment letter dated 19.01.2006 was issued in favor of original allottee and plot no. J-510 having area 250 sq yards in project TDI Ciy, Kundli, Sonipat was allotted. Thereafter allotment rights of plot were transferred in favor of Smt. Sarla Kaushik (second allottee) on 17.08.2010 and then allotment rights were purchased by present complainant (third allottee) on 28.02.2015.
4. Complainant entered into builder buyer agreement with the respondent on 15.05.2015. But no deemed date of possession has been specified in said agreement. As per reasonable period of 3 years, the deemed date of possession comes out to 15.05.2018. An amount of Rs 21,34,010/- has been paid against total sale consideration of Rs 22,78,125/-.

S. K. Rastogi

5. That a letter dated 10.01.2019 was issued by respondent whereby complainant was informed that respondent is unable to deliver possession of the plot and as such actual physical possession of the booked plot cannot be handed over to the complainant and further offer of alternative plot was made. Immediately after receipt of said letter, complainant had visited the office of respondent for clarification of the matter and requested for refund of paid amount but no heed was paid by the respondent. In this regard, a letter dated 07.10.2019 was also written to respondent by the complainant.
6. That possession of the booked plot has not been handed over to complainant till date. Respondent has miserably failed to comply with their part of contractual as well as legal obligations. The project in which the plot was booked is still under development and there is no hope of its completion even in near future. Therefore, complainant is left with no other option but to approach this Authority. Hence the present complaint has been filed.

C. RELIEF SOUGHT

7. Complainant in his complaint has sought following relief:
 - i. The respondent may kindly be directed to refund an amount of Rs 21,34,010/- alongwith interest at the rate prescribed in Rule 15 of RERA RAules,2017 to be calculated from the date of deposit till the date of actual realization, to the complainant.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 20.04.2023 pleading therein:

8. That due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely-TDI City, Residential plots at Kundli, Sonipat, Haryana.
9. That when the respondent Company commenced the construction of the said project, the RERA Act was not in existence, therefore, the respondent Company could not have contemplated any violations and penalties thereof, as per the provisions of the RERA Act, 2016. The Act penalizes the developers of the project much more severely than stipulated in the terms and conditions of the allotment of the said plot, signed and submitted by the complainant to the respondent company.
10. That the project was completed way before the RERA Act came into force and even the possession was offered before the enactment of RERA Act, the complainant cannot approach Ld. Authority for adjudication of its grievances. The said project does not fall under the ambit of RERA. That the provisions of RERA Act are to be applied prospectively. Therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act.

11. That complainant herein as an investor has accordingly invested in the project of the Respondent Company for the sole reason of investing, earning profits and speculative gains, therefore, the captioned complaint is liable to be dismissed in limine.
12. That vide letter dated 10.01.2019 respondent has already offered an alternative plot to the complainant for the reason that actual plot booked by complainant could not be completed/constructed by the respondent due to some unforeseen circumstances. It is the complainant who is not coming forward to take over the same.
13. That handing over of possession has always been tentative and subject to force majeure conditions and the complainant has been well aware about the same.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

14. During oral arguments learned counsel for the complainant insisted upon refund of paid amount with interest stating that possession has been delayed by the respondent for around 5 years and thereafter offer of alternative unit was made by respondent on 10.01.2019 but said offer was not acceptable to complainant. Several visits and letter dated 07.10.2019 was sent to respondent for refund of paid amount but no response has been received from respondent till date. He requested that relief of refund amount along with interest be awarded. Learned

counsel for the respondent reiterated arguments as were submitted in written statement.

F. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT.

F.I Objection regarding execution of BBA prior to the coming into force of RERA Act,2016.

One of the averments of respondent is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act,2016. Accordingly, respondent has argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the same cannot be examined under the provisions of RERA Act. In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act,

2016 was already dealt in detail by this Authority in **complaint no. 113 of 2018 titled as Madhu Sareen v/s BPTP Ltd** decided on 16.07.2018. Relevant part of the order is being reproduced below:

“The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller.”

Further, as per recent judgement of Hon'ble Supreme court in **Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021** it has already been held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act,2016 shall be applicable to such real estate projects, furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the



promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaint.

Execution of builder buyer agreement is admitted by the respondent. Said builder buyer agreement is binding upon both the parties. As such, the respondent is under an obligation to hand over possession on the deemed date of possession as per agreement and in case, the respondent failed to offer possession on the deemed date of possession, the complainant is entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

F.II Objections raised by the respondent stating that complainant herein is an investor and have invested in the project of the Respondent Company for the sole reason of investing, earning profits and speculative gains.

The complainant herein is the allottee/homebuyer who has made a substantial investment from her hard earned savings alongwith borrowing of money from bank under the belief that the promoter/real estate developer will handover possession of the booked unit in terms of buyer's agreement but her bonafide belief stood shaken when the promoter failed to handover possession of the booked unit till date without any reasonable cause. At that stage,

complainant has approached this Authority for seeking refund of paid amount with interest in terms of provisions of RERA Act,2016 being allottee of respondent-promoter. As per definition of allottee provided in clause 2(d) of RERA Act,2016, present complainant is duly covered in it and is entitled to file present complaint for seeking the relief claimed by him. Clause 2(d) of RERA Act,2016 is reproduced for reference:-

“Allottee-in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter and includes the person who subsequently acquires the said allotment through sale, transfer, or otherwise but does not include a person to whom such plot, apartment or building as the case may be , is given on rent”.

Complainant has been allotted plot in the project of respondent by the respondent/promoter itself and said fact is duly admitted by the respondent in the allotment letter dated 19.01.2006 and builder buyer agreement dated 15.05.2015. Also, the definition of allottee as provided under Section 2 (d) does not distinguish between an allottee who has been allotted a unit for consumption/self utilization or investment purpose. So, the plea of respondent to dismiss the complaint on the ground that complainant herein is investor does not hold merit and same is rejected.

G. ISSUES FOR ADJUDICATION

15. Whether the complainant is entitled to refund of amount deposited by him along with interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

16. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:

(i) Admittedly, complainant in this case had purchased the booking rights qua the plot in question in the project of the respondent in the year 2016 for a total sale consideration of ₹ 22,78,125/- against which an amount of ₹21,34,010/- has been paid by the complainant. Out of said paid amount, last payment of Rs 1,16,000/- was made to respondent on 31.07.2009 by the original allottee which implies that respondent is in receipt of total paid amount since year 2009 whereas fact remains that no offer of possession of the booked plot has been made till date even after delay of 14 years from receipt of paid amount.

(ii) In the written statement submitted by the respondent, it has been admitted that due to unforeseen circumstances, possession of the plot booked by the complainant could not be delivered and therefore, vide letter dated 10.01.2019 respondent had given an option to the complainant to take possession of an

alternative unit in the same project which was ready for delivery. However, as stated by the complainant 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 complainant in regard to the genuineness of the offer and thus complainant chose not to accept to the same and replied by way of letter dated 07.10.2019 asking for refund of paid amount.

(iii) Authority observes that the plot in question was booked in the year 2005 by the original allottee. Allotment letter dated 19.01.2006 was issued in favour of original allottee. Thereafter, allotment rights of the unit were purchased by second allottee Smt. Sarla Kaushik on 17.08.2010 and then finally purchased by complainant on 28.02.2015. Builder buyer agreement got executed between the complainant and respondent on 15.06.2015 however no date has been specified towards delivery of possession. In absence of said clause, it cannot rightly be ascertained as to when the possession of said plot was due to be given to the complainant. 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. In present complaint, the plot was booked by the original allottee in the year 2006 and plot buyer agreement was executed between the parties on 15.06.2015, accordingly, taking a period of 3 years from the date of agreement i.e 15.06.2015 as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 15.06.2018. In present situation, respondent failed to honour its contractual obligations without any reasonable justification. Thereafter, vide letter dated 10.01.2019 respondent apprised the complainant 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 complainant 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. Moreover, complainant has already conveyed his intention of withdrawing from the project vide letter dated 07.10.2019 annexed as Annexure C-7 of complaint. Complainant has unequivocally stated that he is interested in seeking refund of the paid amount along with interest on account of inordinate delay caused in delivery of possession.

(iv) 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. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. 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."

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.

17. This project did not get completed within the time stipulated as per agreement and possession of the booked plot is not possible due to some unforeseen circumstances as stated by respondent in his written statement. Possession of alternative unit is not acceptable to complainant. In these circumstances, Authority finds it to be fit case for allowing refund along with interest in favor of complainant.

18. 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;

19. The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

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. 05.07.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.70%.

21. 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 (MCLR) 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".

22. Thus, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainant the paid amount of Rs 21,34,010/- 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 total amount along with interest calculated at the rate of 10.70% till the date of this order and total amount works out to Rs 58,56,580/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 05.07.2023
1.	6,25,000	27.10.2005	1183779
2.	3,06,251	21.02.2006	569550
3.	49,375	21.02.2006	91825
4.	98,750	25.05.2006	180958
5.	1,86,250	25.05.2006	341300
6.	2,35,625	17.07.2007	402906
7.	3,23,124	26.09.2008	511131
8.	49,375	26.09.2008	78103
9.	1,02,125	31.07.2009	152325
10.	1,16,000	31.07.2009	173020
11.	37,500	28.02.2015	33529
12.	4,635	28.02.2015	4144
13.	Total=21,34,010/-		Total=37,22,570/-
14.	Total Payable to complainant	21,34,010 + 37,22,570=	58,56,580/-

G. Kataria

H. DIRECTIONS OF THE AUTHORITY

23. 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:

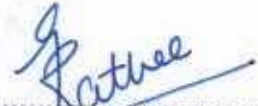
(i) Respondent is directed to refund the entire amount of ₹ 58,56,580/- to the complainant.

(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.

24. **Disposed of.** File be consigned to record room after uploading of order on the website of the Authority.



.....
NADIM AKHTAR
[MEMBER]



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