



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>2340 of 2022</b>
<b>Date of filing:</b>	<b>01.09.2022</b>
<b>Date of first hearing:</b>	<b>17.01.2023</b>
<b>Date of decision:</b>	<b>06.07.2023</b>

Rekha Gupta W/o Sh. Vijender Babu Gupta &  
Vijender Babu Gupta S/o Jai Bhagwan Gupta, Both  
R/o E-2-A, DDA MIG Flats, Vatika apartments,  
Mayapuri, New Delhi-110064

....COMPLAINANT(S)

VERSUS

TDI Infracorp India 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: -**       Ms. Nidhi Jain, Counsel for the complainants.  
                          Mr. Karan Inder Singh, Counsel for the respondent through  
                          VC.

### **ORDER (NADIM AKHTAR - MEMBER)**

1. Present complaint was filed on 01.09.2022 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 table:

S.No.	Particulars	Details
1.	Name of the project	Lake Side Heights, TDI Lake Grove City, TDI City, Kundli, Sonipat
2.	RERA registered/not registered	Registered with registration no. 43 of 2017
3.	Unit no	T-7-702
4.	Unit area	1170 sq. ft.
5.	Date of allotment	28.03.2014
6.	Date of builder buyer agreement	28.03.2014
7.	Due date of offer of possession	28.09.2016
8.	Possession clause in BBA (Clause 28)	.....However, if the possession of the apartment 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 buyer shall be entitled to a fixed monthly compensation/damages/penalty quantified @ Rs.5 per square foot of the total super area of the apartment. 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.
9.	Basic sale price	₹ 42,90,000/-
10.	Amount paid by complainants	₹ 47,57,635/-
11.	Offer of possession	No offer.

### B. FACTS OF THE COMPLAINT

3. Facts of complaint are that complainants had booked a built up flat in the project- Lake Side Heights, part of TDI City, Kundli, Sonipat of the respondent by making payment of Rs 3,50,000/- on 15.01.2014, following which allotment letter dated 28.03.2014 was issued in favor of complainants and unit no. T-7/0702 having area 1170 sq ft in was allotted to them.
4. Complainants entered into builder buyer agreement with the respondent on 28.03.2014. 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 28.09.2016. An amount of Rs 47,57,635/- has been paid against basic sale price of Rs 42,90,000/-.



5. It is submitted by the complainants that despite a lapse of more than seven 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.
6. That delay in development of project by the respondent has shattered the faith of complainants and such inordinate delay has frustrated the purpose of purchasing the unit and in pursuance of it, a letter dated 08.03.2022 has also been written to respondent requesting for refund of paid amount with interest but no response has been received till date. Therefore, complainants are left with no other option but to approach this Authority. Hence the present complaint has been filed.

**C. RELIEF SOUGHT**

7. Complainants in their complaint has sought following relief:
  - i. The respondent may kindly be directed to refund the amount deposited alongwith statutory interest with cost of the present litigation, in the interest of justice.

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

Learned counsel for the respondent filed detailed reply on 27.04.2023 pleading therein:

8. That complainants herein as an investors have 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.

9. That there is no delay on part of the respondent in fulfilling its obligations under the agreement executed between the parties. It is submitted that delay and modifications, if any, have been caused due to the reasons beyond the control of the respondent. Due to Covid-19, lockdown was imposed and labour left to native place and after lockdown due to non-availability of labour it was very difficult to resume the construction activities.
10. That respondent had incurred huge expenses in obtaining approvals and carrying on the construction and development of the project and despite several adversities, is in the process of completing the construction of the project and the possession of the unit is expected to be delivered within next 3-4 months

#### **E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT**

11. During oral arguments learned counsel for the complainants insisted upon refund of paid amount with interest, stating, that respondent is not in a position to deliver possession even in near future as no construction activity is going in process. Learned counsel for the respondent reiterated arguments as were submitted in written statement.



**F. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT.**

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

The complainants herein are the allottees/homebuyer who have paid a substantial amount from their hard earned savings alongwith borrowing of money from bank under the belief that the promoter/real estate developer would handover possession of the booked unit in terms of buyer's agreement but their bonafide belief stood shaken when the promoter failed to handover possession of the booked unit till date without any reasonable cause. At that stage, complainants have approached this Authority for seeking refund of paid amount with interest in terms of provisions of RERA Act,2016 being allottees of respondent-promoter. As per definition of allottee provided in clause 2(d) of RERA Act,2016, present complainants are duly covered in it and are 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”.*

Complainants have been allotted floor in the project of respondent by the respondent/promoter itself and said fact is duly admitted by the respondent in the allotment letter dated 28.03.2014 and builder buyer agreement dated 28.03.2014. 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 complainants herein are investor does not hold merit and the same is rejected.

**F.II Objections raised by the respondent regarding force majeure conditions.**

The obligation to deliver possession within a period of 30 months from builder buyer agreement was not fulfilled by respondent. There is delay on the part of the respondent and the reasons given by the respondent is the lockdown imposed due to Covid-19 outbreak and no-availability of labour etc. are not convincing enough as the due date of possession was in the year 2016 and the lockdown/Covid-19 referred by the respondent pertains to year 2020. Therefore, respondent cannot be allowed to take advantage of the delay on his





part by claiming the delay which took place due to advent of pandemic lockdown. As far as delay in construction due to outbreak of Covid-19 is concerned Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020* dated 29.05.2020 has observed that:

*“69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March,2020 in India. The contractor was in breach since septemeber,2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.*

*The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September,2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself.”*

So, the plea of respondent to consider force majeure condition towards delay caused in delivery of possession is without any basis and the same is rejected.





**G. ISSUES FOR ADJUDICATION**

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

**H. OBSERVATIONS AND DECISION OF THE AUTHORITY**

13. 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, complainants in this case had purchased the allotment rights qua the unit in question in the project of the respondent in the year 2014 for a basic sale consideration of ₹ 42,90,000/- against which an amount of ₹47,57,635/- has been paid by the complainants. Out of said paid amount, last payment of Rs 7,00,000/- was made to respondent on 30.04.2018 by the complainants which implies that respondent is in receipt of total paid amount since year 2018 whereas fact remains that no offer of possession of the booked floor has been made till date.

(ii) In the written statement submitted by the respondent, it has been admitted that possession of the booked unit has not been delivered to the complainant. Regarding construction, it has been submitted in para 9 of the written statement that respondent is in process of completing the construction of the project and the possession of the unit is expected to be delivered



within 3-4 months. No latest photographs of the site of the project or any documentary evidence has been placed on record to show that there are chances of completion of construction in next few months. Mere pleading for more time of 3-4 months without any concrete plan of action does not suffice to give assurance to the complainants for handing over of possession.

(iii) Authority observes that the builder buyer agreement got executed between the complainants and respondent on 28.03.2014 and in terms of clause 28 of it, the respondent was supposed to handover possession upto 28.09.2016. In present case, respondent failed to honour its contractual obligations of offering possession of the booked unit within stipulated time without any reasonable justification. Further, respondent has not committed any specific timeline even in its reply regarding delivery of possession. Moreover, complainants have already conveyed their intention of withdrawing from the project vide letter dated 03.08.2022 annexed as Annexure C-5 of complaint. 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.

(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.





14. This project did not get completed within the time stipulated as per agreement and no specific date for handing over of possession has been committed by the respondent. In these circumstances the complainants cannot be kept waiting endlessly for possession of the unit, therefore, Authority finds it to be fit case for allowing refund along with interest in favor of complainants.

15. 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;

16. 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.

17. 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. 06.07.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.70%.

18. 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”.*

19. Thus, respondent will be liable to pay the complainants interest from the date amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainants the paid amount of Rs 47,57,635/- 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 at the rate of 10.70% till the date of this order and total amount of interest works out to Rs 37,71,373/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 06.07.2023
1.	350000	15.01.2014	355005
2.	100000	04.03.2014	100023
3.	417577	13.03.2014	416571
4.	663384	14.11.2014	613946
5.	70000	19.05.2018	38476
6.	21206.68	19.03.2014	21118
7.	459192	11.04.2014	454182
8.	199921.33	20.06.2014	193638
9.	333684	31.07.2014	319186
10.	13514	03.04.2017	9056
11.	448306	27.07.2017	285315
12.	240240	16.09.2017	149304
13.	720720	15.02.2018	415798
14.	6630	09.04.2018	3722
15.	6630	21.04.2018	3699
16.	700000	30.04.2018	388659
17.	6630	30.05.2018	3623
13.	Total=4757635/-		Total=3771321/-
14.	Total Payable to complainant	47,57,635 + 37,71,321=	85,28,956/-

#### H. DIRECTIONS OF THE AUTHORITY


20. 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 ₹ 85,28,956 /- to the complainants in equal share.
- (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. **Disposed of.** File be consigned to record room after uploading of order on the website of the Authority.

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

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