



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	454 of 2023
Date of filing:	13.03.2023
Date of first hearing:	10.05.2023
Date of decision:	29.08.2023

VedChaudhary S/o Late Sh. Sunder DassChaudhary
R/o House No.G-93,
Saket, New Delhi-110017

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Limited through its Managing Director/
Authorised Signatory
Vandana Building, Upper Ground Floor
11, Tolstoy Marg, Connaught Place,
New Delhi- 110001

....RESPONDENT(S)

CORAM: **Dr.GeetaRathee Singh** **Member**
 NadimAkhtar **Member**

Present: - Mr. Tarjit Singh, Counsel for the complainant through VC
 Mr. Shubhnit Hans, Counsel for the respondent through VC.

ORDER(NADIM AKHTAR - MEMBER)

1. Present complaint was filed on 13.03.2023 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 tabular form:

S.No.	Particulars	Details
1.	Name of the project.	Kingsbury Flats, TDI City, Kundli, Sonipat
2.	Nature of the project.	Residential
4.	RERA Registered/not registered	Unregistered
5.	Details of unit.	S-1-0604
6.	Super Area of unit	1110 sq.ft.
7.	Date of allotment	29.10.2010
7.	Date of builder buyer agreement	Not available



8.	Basic sale consideration	₹ 30,63,923/-
9.	Amount paid by complainant	Not mentioned
10.	Possession Certificate	16.06.2014

B. FACTS OF THE COMPLAINT

3. A residential apartment in the project of the respondent namely 'Kingsbury Flats' situated at Kundli, Sonapat had been booked by complainant in the year 2010. Vide allotment letter, dated 29.10.2010, he was allotted apartment no.S-1-0604, admeasuring 1110sq.ft in the project. Final statement of account wherein only stamp duty charges remains to be paid was issued by respondent on 18.03.2014. Possession certificate of apartment/flat was issued to complainant on 16.06.2014. Apartment was transferred in favour of complainant on 19.09.2018. Respondent received occupation certificate from the department concerned on 28.08.2017. The Resident Welfare Association issued a no dues certificate in favour of complainant, who has been elected as General Secretary of the Association, on 15.02.2023. Thereafter, complainant visited the office of the respondent many times for execution of conveyance deed but the same has not been executed by respondent till date.



C. RELIEF SOUGHT

4. That the complainant seek the following relief and directions to the respondent:-

- i. To execute the conveyance deed in favour of the complainant.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

5. Learned counsel for the respondent filed its reply in registry on 28.08.2023. In the written statement, it is stated that the occupation certificate in respect of the project has already been obtained on 25.05.2012. Possession certificates has already been issued to complainant in year 2014 and he is already residing in his unit. Allottees have already taken over the project and formed a Resident Welfare Association. Respondent company has requested the complainant several times to come forward and execute the conveyance deed after clearing their pending dues. However, it is the complainant who is not coming forward. A letter dated 25.03.2019 sent to the complainant in this regard is annexed as Annexure R-2 along with the reply. Respondent company has already issued a public notice dated 19.01.2020 in the national newspaper, namely "The Sunday Times of India" to all allottees of the project including complainant to get their conveyance deeds executed after payment of outstanding amounts. Since the complainant failed to



make requisite payments, the respondent again got issued a public notice dated 21.09.2021 in the local newspaper, namely “ The Indian Express”. Thus, despite repeated public notices and reminders, complainant has not come forward to get conveyance deeds executed after payment of outstanding amount, therefore, complainant himself is at fault.

E. ARGUMENTS BY LEARNED COUNSEL FOR COMPLAINANT

6. During oral arguments, Mr. Tarjit Singh Chikara, learned counsel for the complainant reiterated the averments made in the complaint. He further submitted that the complainant in this case is similarly situated and covered under the order dated 23.11.2021 passed by this Authority in a bunch of complaint cases with lead case as **Complaint No. 1137 of 2021 Mrs. Parveen Sharma v TDI Infrastructure Limited** since the grievances of complainant in the present complaint are of similar nature and pertains to the same project of the respondent. Vide order dated 23.11.2021 Authority had observed that conveyance deeds must be immediately executed in favour of the complainants and other similarly placed allottees. Complainant in above mentioned cases is also similarly situated and aggrieved by the act of non-compliance on part of the respondent. Considering the same facts and circumstances, learned counsel for the complainant requested that present case may also be decided in same terms as vide



order dated 23.11.2021 passed in Complaint no. 1137 of 2021 titled as “Mrs. Parveen Sharma v TDI Infrastructure Limited”.

F. ARGUMENTS BY LEARNED COUNSEL FOR RESPONDENT

7. Learned counsel for respondent reiterated the averments stated in the reply.

G. JURISDICTION OF THE AUTHORITY

8. Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

G.1 Territorial Jurisdiction

As per notification no. 1 /92/2017 ITCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be entire Haryana except Gurugram District for all purpose with offices situated in Panchkula. In the present case the project in question is situated within the planning area Sonipat district. Therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

G.2 Subject Matter Jurisdiction

Section 11(4)(f) and Section 17(1) of the Act, 2016 provides that the promoter shall be responsible to execute a registered conveyance deed for the respective unit in favour of the allottees. Section 11(4)(f) and Section 17(1) are reproduced as hereunder:



Section 11(4)(f)

execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;

Section 17(1)

The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment or building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

Section 34-Functions of the Authority

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

In view of the provisions of the Act of 2016 quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation



which is to be decided by learned Adjudicating Officer if pursued by the complainants at a later stage.

H. ISSUES FOR ADJUDICATION

9. Whether the complainant is entitled to seek execution of conveyance deed in terms of Section 17(1) of the RERA Act 2016?

I. OBSERVATIONS OF THE AUTHORITY

10. Upon hearing both sides and perusal of record , the factual matrix of the present case is that complainant had purchased an apartment in the project of the respondent namely “Kingsbury Flats, in the year 2010 and complainant is residing in their apartment since the issuance of possession certificate dated 16.06.2014. The resident welfare association for said project has already issued a ‘no dues certificate’ in favour of the complainant on 15.02.2023. Complainant is aggrieved of the fact that despite clearing all dues respondent promoter has failed to execute conveyance deed in respect of the apartment till date. Respondent in rebuttal has stated that despite repeated public notices and reminders, complainant has not come forward to get conveyance deeds executed after payment of outstanding amount, therefore, complainant himself is at fault. On the other hand, learned counsel for the complainant submitted that the facts and grievances of the complainant are of similar nature and pertain to the same project of



the respondent as in an earlier bunch of complaints with lead case as Complaint no. 1137 of 2021 already decided by the Authority vide order dated 23.11.2021. Learned counsel for complainant further submitted that vide order dated 23.11.2021, Authority, after considering submissions of both parties, had issued direction to respondent for immediate execution of conveyance deeds in favour of the complainants and other similarly placed allottees. He prayed for relief in same terms as vide order dated 23.11.2021 passed in Complaint no. 1137 of 2021 as “Mrs. Parveen Sharma v TDI Infrastructure Limited”. Relevant part of order dated 23.11.2021 is reproduced below for reference:

“ 4. Upon hearing arguments of both sides and perusal of record, Authority observes that possession of apartments to the complainants was handed over in the year 2014-15. The complainants have been residing in those apartments and enjoying possession thereof. When possession of an apartment is handed over it is to be presumed that allottee had cleared all the dues till then. If any due remained pending, the same ordinarily should have been demanded at the time of handing over of possession. No evidence has been adduced by respondent that any dues remained outstanding towards complainants on the date of handing over of possession. Accordingly, the Authority presumes that the possession was handed over after the complainants had cleared all the dues.



5. Further law of the land is that allottees are entitled to get their conveyance deed executed along with or immediately upon taking over of the possession. Execution of conveyance deed is a legal right. Such a right has been further confirmed by various provisions of the RERA Act, 2016. Such a right existed even prior to commencement of RERA Act.

Now respondents are putting a precondition that complainants have to execute agreement with the maintenance company i.e. M/s Cannes management Property ltd. and pay maintenance dues etc. which may have accrued from the year 2014 and onwards after handing over of possession, as a precondition for execution of conveyance deeds. Authority observes that the right to get conveyance deed executed accrued in the 2014 itself and that right cannot be made subject to conditions which came into existence on a later date.

6. The Authority, therefore, is of the considered view that conveyance deeds must be executed immediately in favour of the complainants and other similarly placed allottees. Further, if there are any dues outstanding towards allottees/flat buyers of the project the respondent is entitled to recover the same in ordinary course of law of the land. They may approach any appropriate forum or adopt any lawful means for recovery of lawful dues. Further, regarding execution of agreement with the maintenance agency, action must be taken as per terms of builder buyer agreement and law of the land. The Authority would observe that after such a long period of time the project should have been handed over to Association of Allottees who in turn should be free to appoint any maintenance agency



for maintenance of the project. The Authority without making any specific remarks on the subject of execution of agreements with maintenance agency would observe that it cannot be made a pre-condition for execution of conveyance deeds. Conveyance deed is a separate and standalone right which had crystalized in favour of the complainants many years ago and the same cannot be denied at this late stage.

*All complaints stand **disposed off** in above terms. Files be consigned to the record room after uploading of this order on the website of the Authority.”*

11. After considering all materials on record, Authority observes that in present complaint, respondent promoter had already handed over possession of the apartment to complainant/allottee and possession certificate to that effect was issued in the year 2014 itself. Complainant had been using his apartment and further was granted ‘no dues certificate’ by the Resident Welfare Association in year 2023. When possession has been handed over and no dues certificate stands granted, it can be presumed that the allottee has cleared all the dues. If any due remained pending on the part of the complainant, as a general practice same are demanded at the time of handing over of possession which in present case is in the year 2014. Respondent has not submitted any document to prove his case that any dues remained outstanding towards complainant at the time of handing over of possession. Fact and nature of grievances involved in present



complaint is similar and pertain to same project of the respondent as in a bunch of other six complaints with lead **Complaint No. 1137 of 2021 titled Mrs. Parveen Sharma v TDI Infrastructure Limited .** At the time of disposing of Complaint no. 1137 of 2021 & other complaints, Authority after hearing submissions of both sides and perusing the record had passed a detailed order dated 23.11.2021 observing that respondent is duty bound to execute conveyance deed in favour of the complainants and other similarly placed allottees with immediate effect. Since the complainant/allottee in present complaint is similarly situated as the complainants/allottees in Complaint no. 1137 of 2021 & other complaints, Authority deems it fit to dispose of the present complaint in same terms as decided vide order dated 23.11.2021 as reproduced in para 10 of this order.

J. DIRECTIONS OF THE AUTHORITY

12. 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 immediately execute conveyance deed in favour of the complainant not later than a period of 30 days.



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



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



.....
NADIM AKHTAR
[MEMBER]