



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2607 of 2022
Date of filing:	10.10.2022
Date of first hearing:	06.12.2022
Date of decision:	02.08.2023

Praveen Bhasin S/o Sh. K.K.Bhasin
R/o GA-11, Shivaji Enclave
New Delhi-110027

....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. Karan Dang, Counsel for the complainant through
 VC
 Mr. Shubhnit Hans, Counsel for the respondent through
 VC.

ORDER (DR. GEETA RATHEE SINGH – MEMBER)

1. Present complaint has been filed on 10.10.2022 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.	Name of the promoter	TDI Infrastructure Ltd
3.	RERA registered/not registered	Not registered.
4.	DTCP License no.	183-228 of 2004, 153-157 of 2004 and 101-144 of 2005.
	Licensed Area	927 acres
5.	Unit no.(residential plot)	C-C25/8
6.	Unit area	350 sq yards
7.	Date of allotment in favour of original	23.06.2005

	allotee	
8.	Date of endorsement in favour of complainant	26.09.2005
9.	Date of builder buyer agreement	Not executed.
10.	Due date of offer of possession	Not available.
11.	Possession clause in BBA	Not available.
12.	Total sale consideration	₹ 18,37,500/-
13.	Amount paid by complainant	₹ 15,66,500/-
14.	Offer of possession	No offer.

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

3. Facts of complaint are that original allottee, namely, Sushil Kumar Bansal had booked a plot in the future project of the respondent by making payment of Rs 3,67,000/- on 01.02.2005, following which allotment letter dated 23.06.2005 was issued in favor of original allottee and plot no. C-C-25/8 having area 350 sq yards in project TDI Ciy, Kundli, Sonipat was allotted. Thereafter allotment rights of plot were purchased by present complainant (second allottee) on 26.09.2005, however no builder buyer agreement was executed for the plot in question.

S. K. Bansal

4. It is alleged that the respondent was not having the ownership of land at the time of registration/booking of the unit and was accepting the money in the shape of registration deposit for the upcoming future project. Even as of today the land of booked plot has not been acquired by the respondent and farming practices are still being carried out which clearly establishes that the respondent arbitrarily issued allotment letter dated 23.06.2005 without acquiring the land and obtaining necessary licenses.
5. That the complainant was compelled to make 90% of payment towards the cost of the plot and EDC by 28.03.2006 under the pressure of forfeiture of paid amount but the respondent never intimated about the real/acual status of the progress on site. Complainant visited the site of the aforementioned plot and was shocked to see that crops were standing at the site and there was no basic infrastructure/development work was carried out.
6. That the respondent issued a statement of account alongwith letter dated 25.10.2018 stating therein that respondent has been unable to offer the booked unit to the complainant. 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 not completed till date as respondent has failed in purchasing the necessary land, no development works like road and sewerage lines

are connected to said plotted area 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 reliefs:
 - i. To appoint an independent Commissioner to look into the facts and the ground reality of the project.
 - ii. To register the aforesaid project with the RERA Authority being a ongoing project and to complete the project which is kept pending for completion since 2004-2006.
 - iii. Direct the respondent to refund the cost of the plot with interest as the respondent has failed to give possession of plot no. C-C25/8 as there being no land in the ownership of respondent of this plot, and the project and the remaining plots are not developed to accept as an alternative.
 - iv. Direct the respondent pay back the amount of Rs 15,66,500/- and interest of Rs 25,55,833/- @9.80% P.A. as on 31.08.2022 total amount of Rs 41,22,333/- to the complainant, interest will further accrue till the date of final payment for the aforesaid plot as well as interest.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 01.08.2023 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. Part completion certificate for the said project-927 acres approx. with respect to the township has already been received on 23.01.2008, 18.11.2013 and 22.09.2017.
9. That when the respondent company commenced the construction of the said project, the RERA Act,2016 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 annexed as Annexure R-5 to reply, 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 11 years. He admitted that offer of alternative unit was made by respondent on 25.10.2018, however said offer was not acceptable to complainant. Complainant is



not interested in alternate plot and is seeking refund only. 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. ISSUES FOR ADJUDICATION

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

G. 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) With regard to plea raised by the respondent that provisions of RERA Act,2016 are applicable with prospective effect only and therefore same were not applicable as on 23.06.2005 when the complainant was allotted plot no. C-25/8, TDI City, Kundli, it is observed that issue regarding operation of RERA Act,2016 whether retrospective or retroactive has already been decided by Hon'ble Supreme Court in its judgment dated 11.11.2021 passed in *Civil Appeal No. (s) 6745-6749 OF 2021 titled as Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others.*

Relevant part is reproduced below for reference:-

"47. The legislative power to make the law with prospective/retrospective effect is well recognized and it would not be permissible for the appellants/promoters to say that they have any vested right in dealing with the completion of the project by leaving the allottees in lurch, in a helpless and miserable condition that at least may not be acceptable within the four corners of law.

48. The distinction between retrospective and retroactive has been explained by this Court in **Jay Mahakali Rolling Mills Vs. Union of India and Others**, which reads as under:-

"8. "Retrospective" means looking backward, contemplating what is past, having reference to a statute or things existing before the statute in question. Retrospective law means a law which looks backward or contemplates the past; one, which is made to affect acts or facts occurring, or rights occurring, before it comes into force. Retroactive statute means a statute, which creates a new obligation on transactions or considerations or destroys or impairs vested rights."

49. Further, this Court in **Shanti Conductors Private Limited and Another Vs. Assam State Electricity Board and Others**, held as under:-

"67. Retroactivity in the context of the statute consists of application of new rule of law to an act or transaction which has been completed before the rule was promulgated.

68. In the present case, the liability of buyer to make payment and day from which payment and interest become payable under Sections 3 and 4 does not relate to any event which took place prior to the 1993 Act, it is not even necessary for us to say that the 1993 Act is retroactive in operation. The 1993 Act is clearly prospective in operation and it is not necessary to term it as retroactive in operation. We, thus, do not subscribe to the opinion dated 31-8-2016 [Shanti Conductors (P) Ltd.

v. Assam SEB, (2016) 15 SCC 13] of one of the Hon'ble Judges holding that the 1993 Act is retroactive."

50. *In the recent judgment of this Court rendered in the case of Vineeta Sharma Vs. Rakesh Sharma and Others' wherein, this Court has interpreted the scope of Section 6(1) of the Hindu Succession Act, 1956, the law of retroactive statute held as under:-*

"61. The prospective statute operates from the date of its enactment conferring new rights. The retrospective statute operates backwards and takes away or impairs vested rights acquired under existing laws. A retroactive statute is the one that does not operate retrospectively. It operates in futuro. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or requisites which had been drawn from antecedent events. Under the amended Section 6, since the right is given by birth, that is, an antecedent event, and the provisions operate concerning claiming rights on and from the date of the Amendment Act."

51. *Thus, it is clear that the statute is not retrospective merely because it affects existing rights or its retrospection because a part of the requisites for its action is drawn from a time antecedent to its passing, at the same time, retroactive statute means a statute which creates a new obligation on transactions or considerations already passed or destroys or impairs vested rights.*

52. *The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term "converting and existing building or a part thereof into apartments" including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.*

53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."

(ii) The objection of the respondent that the project in which the complainant is seeking refund of paid amount is not registered with this Hon'ble Authority and therefore this Hon'ble Authority does not have jurisdiction to entertain the present complaint. This issue that whether this Authority has jurisdiction entertain the present complaint as the project is not registered has been dealt and decided by the Authority in **complaint no. 191 of 2020** titled as **Mrs. Rajni**

and Mr. Ranbir Singh vs Parsvnath Developers Ltd. Relevant part of said order is being reproduced below:

“Looked at from another angle, promoter of a project which should be registered but the promoter is refusing to get it registered despite the project being incomplete should be treated as a double defaulter, i.e. defaulter towards allottees as well as violator of Sector 3 of the Act. The argument being put forwarded by learned counsel for respondent amounts to saying that promoters who violate the law by not getting their ongoing/incomplete projects registered shall enjoy special undeserved protection of law because their allottees cannot avail benefit of summary procedure provided under the RERA Act for redressal of their grievances. It is a classic argument in which violator of law seeks protection of law by misinterpreting the provisions to his own liking.

14. *The Authority cannot accept such interpretation of law as has been sought to be put forwarded by learned counsel of respondent. RERA is a regulatory and protective legislation. It is meant to regulate the sector in overall interest of the sector, and economy of the country, and is also meant to protect rights of individual allottee vis-a-vis all powerful promoters. The promoters and allottees are usually placed at a highly uneven bargaining position. If the argument of learned counsel for respondent is to be accepted, defaulter promoters will simply get away from discharging their obligations towards allottee by not getting their incomplete project registered. Protection of defaulter promoters is not the intent of RERA Act. It is meant to hold them accountable. The interpretation sought to be given by learned counsel for respondent will lead to perverse outcome.*

15. *For the foregoing reasons, Authority rejects the arguments of respondent company. The application filed by respondent promoter is accordingly rejected.”*

(iii) The respondent in its reply has contended that the complainant is “speculative buyer” who has invested in the project

for monetary returns and taking undue advantage of RERA Act, 2016 as a weapon during the present down side conditions in the real estate market and therefore he is not entitled to the protection of the Act of 2016. In this regard, Authority observes that “any aggrieved person” can file a complaint against a promoter if the promoter contravenes the provisions of the RERA Act, 2016 or the rules or regulations. In the present case, the complainant is an aggrieved person who has filed a complaint under Section 31 of the RERA Act, 2016 against the promoter for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here, it is important to emphasize upon the definition of term allottee under the RERA Act of 2016, reproduced below: -

Section 2(d) of the RERA Act:

(d) "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;

(iv) In view of the above-mentioned definition of “allottee” as well as upon careful perusal of allotment letter dated 23.06.2005, it is clear that complainant is an “allottee” as plot bearing no. C-25/8 in the real estate project “TDI, City, Kundli”, Sonipat was allotted



to him by the respondent promoter. The concept/definition of investor is not provided or referred to in the RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there will be “promoter” and “allottee” and there cannot be a party having a status of an investor. Further, the definition of “allottee” as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as **M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. And Anr.** had also held that the concept of investors not defined or referred to in the Act. Thus, the contention of promoter that allottees being investor are not entitled to protection of this Act also stands rejected.

(v) Admittedly, complainant in this case had purchased the booking rights qua the plot in question in the project of the respondent in the year 2005 for a total sale consideration of ₹ 18,37,500/- against which an amount of ₹ 15,66,500/- has been paid by the complainant. Out of said paid amount, last payment of Rs 1,84,000/- was made to respondent on 12.06.2008 by the complainant which implies that respondent is in receipt of total



paid amount since year 2008, whereas fact remains that no offer of possession of the booked plot has been made till date even after delay of 15 years from receipt of paid amount.

(vi) 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, respondent had given an option to the complainant to take possession of an alternative unit in the same project which was ready for delivery of possession. 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 offer of alternate plot.

(vii) Authority observes that the plot in question was booked in the year 2005 by the original allottee. Allotment letter dated 23.06.2005 was issued in favour of original allottee. Thereafter, allotment rights of the unit were purchased by complainant on 26.09.2005 i.e within 3 months of allotment to original allottee. But no builder buyer agreement got executed between the complainant and respondent. In absence of execution of builder buyer agreement and no specific clause of deemed date of possession in



allotment letter, it cannot rightly be ascertained as to when the possession of said floor 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 2005 and allotment letter was issued on 23.06.2005 by the respondent which was further endorsed in favour of complainant on 23.09.2005, accordingly, taking a period of 3 years from the date of allotment i.e 23.06.2008 as a reasonable time to complete development works in the project and handover possession to the allottee-complainant, the deemed date of possession comes to 23.06.2008. As a matter of fact, the complainant has stepped into shoes of original allottee before the deemed date of possession.

(viii) In present situation, respondent failed to honour its contractual obligations without any reasonable justification. Thereafter, vide letter annexed as Annexure R-5 to reply, respondent apprised the complainant that due to some unforeseen


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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 intentional default on the part of respondent towards originally booked plot. Complainant has unequivocally stated in his complaint that he is interested in seeking refund of the paid amount along with interest on account of inordinate delay caused in delivery of possession.

(ix) 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.

(x) 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.



(xi) 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;

(xii) 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. 02.08.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.75%.

(xiii) 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”.

16. 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 15,66,500/- 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 10.75% (8.75% + 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 10.75% till the date of this order and total amount works out to Rs 45,25,109/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 02.08.2023
1.	3,67,500	01.02.2005	7,31,353
2.	2,97,500	05.05.2005	5,83,899
3.	3,67,500	26.09.2005	7,05,701
4.	3,06,500	23.08.2006	5,58,684
5.	43,500	23.08.2006	79,291
6.	1,84,000	12.06.2008	2,99,681
7.	Total=15,66,500/-		Total= 29,58,609/-
8.	Total Payable to complainant	15,66,500+ 29,58,609=	45,25,109/-



17. Ld. counsel for complainant has neither argued nor pressed upon the remaining reliefs.

H. DIRECTIONS OF THE AUTHORITY

18. 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 ₹ 45,25,109/- 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.

19. **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]