



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	644 of 2022
Date of filing:	18.04.2022
Date of first hearing:	31.05.2022
Date of decision:	31.10.2023

Prem Singh S/o Sh. Shankar Lal
R/o RZ-30, Indra Park, Prajapati Colony,
Bindapur, Uttam Nagar, Mohan garden,
New Delhi-110059

....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: - Mr. Chandra Gupta Maurya, Counsel for the complainant
 through VC
 Mr. A.P.Nain, Proxy Counsel for Adv. Ajay Ghangas,
 Counsel for the respondent through VC

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint was filed on 18.04.2022 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	Lakeside Heights, TDI Lake Grove City, Kundli, Sonipat
2.	RERA registered/not registered	Registered vide no. 43 of 2017 dated 11.08.2017
3.	DTCP License no.	158 of 2008
	Licensed Area	28.905 acres
4.	Unit no.	T-6/1201
5	Unit area	1170 sq. ft.
6.	Date of booking	12.02.2019
7.	Date of builder buyer agreement	14.02.2019



8.	Due date of offer of possession (36+6 months)	14.08.2022
9.	Possession clause	However, if the possession of the apartment is delayed beyond the stipulated period of 36 months and a further period of 6 months granted as a grace period from the date of execution hereof and the reasons of delay are solely attributable to the wilful neglect or default of the Company then thereafter 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 purchaser 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 apartment.
10.	Total sale consideration	₹ 53,79,655/-
11.	Amount paid by complainant	₹ 49,12,615/-
12.	Offer of possession	No offer.

B. FACTS OF THE COMPLAINT

3. Facts of complaint are that complainant booked a unit by paying Rs 2,00,000/- on 12.02.2019 as advance against 'present project for 1170 sq ft residential flat'. Thereafter, builder buyer agreement dated 14.02.2019 got executed between the parties, according to it unit no. T-6/1201 having an area of 1170 sq ft in respondent's project-



'Lakeside Heights, TDI Lake Grove City, Kundli, Sonipat' was allotted to complainant. As per clause 28 of agreement, the possession of unit was supposed to be delivered latest by 14.08.2022 (36+6 months from date of execution of builder buyer agreement). Further, complainant has paid an amount of Rs 6,62,059/- vide receipt attached as Annexure P-3.

4. That, on 11.04.2019, respondent had issued a demand letter for an amount of Rs 40,50,556/- in the name of completion of external finishing. For payment of said amount, complainant has got his loan to the tune of Rs 43,00,000/- approved from the SBI, Rajapuri branch, Delhi. Out of said approved loan amount, an amount of Rs 40,50,556/- was directly transferred to account of respondent.
5. That respondent has failed to handover the possession of the unit till date or to refund the payment already received by the respondent alongwith interest of the bank loan.

C. RELIEF SOUGHT

6. Complainant in his complaint has sought following relief:
 - i. Peaceful possession of the apartment bearing no. T-6/1211 (correct unit no. is T-6/1201) be handed over to the complainant.
 - ii. Interest for the period for the amount deposited for delay in possession as the possession has to be given on 14.02.2022 but not till date.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

7. Respondent availed multiple opportunities to file reply but during 6th hearing of this case dated 25.07.2023, ld. counsel for respondent stated that respondent does not want to file written statement in the present case. Accordingly, no reply has been filed by respondent.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

8. During oral arguments learned counsel for the complainant insisted upon possession of booked unit alongwith delay interest stating that respondent is intentionally delaying the handing over of possession of unit as construction work of unit already stands complete. Learned counsel for the respondent has not put forward any arguments and simply requested for marking of his presence in this case.

F. ISSUES FOR ADJUDICATION

9. Whether the complainant is entitled to possession of booked plot alongwith delay interest in terms of Section 18 of Act of 2016?

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

10. 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) Complainant in this case had booked a unit in 'present project for 1170 sq ft' of respondent on 12.02.2019 by paying RS 2,00,000/-.



Booking receipt is attached as Annexure P-1 to complaint. Thereafter, unit no. T-6/1201 in respondent's project-Lakeside Heights was allotted to complainant via execution of builder buyer agreement on 14.02.2019. Copy of builder buyer agreement is annexed as Annexure P-2 to complaint. Out of total sale consideration of Rs 53,79,655/-, an amount of Rs 49,12,615/- stands paid by complainant to respondent.

(ii) For the paid amount of Rs 49,12,615/- complainant took loan of Rs 43,00,000/- from SBI, Rajapuri, Delhi. Out of said approved loan an amount of Rs 40,50,556/- was directly transferred in account of respondent on 15.04.2019 and letter from bank regarding disbursal of said amount is attached with affidavit filed by complainant in registry on 27.10.2023. Apart from said amount, Rs 2,00,000/- was paid as booking amount on 12.02.2019 and Rs 6,62,059/- was paid to respondent vide NEFT on 02.04.2019.

(iii) As per clause 28 of the builder buyer agreement, the possession was supposed to be delivered upto 14.08.2022 i.e. 36 months+6 months grace period from execution of builder buyer agreement. But respondent has not even offered possession of booked unit till date. Respondent has failed to fulfil its obligation of delivering possession of unit within stipulated time without assigning any justification for it.



Despite availing opportunities respondent has not denied any claim/allegation made by the complainant meaning thereby that the respondent has nothing to file in rebuttal to the claims made by the complainant. Further, respondent during the course of hearing has neither submitted any written statement nor provided any construction status of unit of complainant. As per version of complainant, construction of the unit is lying complete. In order to ascertain the status of unit, the details of occupation certificate was fetched from website of Town and Country planning wherein it has come into picture that occupation certificate for tower G,H,J,K,L,O,P,T(EWS),M,D,E and convenient shopping has already been received by respondent on 30.06.2023. However, occupation certificate in respect of tower-T in which complainant's unit is located has not yet been received. Complainant is insisting upon possession of booked unit only. It is the respondent who has failed to handover the possession of booked unit till date. It is pertinent to mention here that complainant in its relief sought has mentioned unit no. T-6/1211 instead of correct unit no. T-6/1201, which is evident from builder buyer agreement and receipts of paid amount. So, said unit no. T-6/1211 is not taken into consideration for passing of this order being a typographical error. Further, complainant has sought delay interest w.e.f 14.02.2022 i.e. only 36 months from execution of builder buyer



agreement. No argument has been put forth by complainant's counsel nor anything has been stated in pleadings of complaint as to why grace period of 6 months already agreed between the parties in clause 28 of builder buyer agreement be not taken into consideration for calculating the deemed date of possession. Moreover, Authority cannot alter/modify/re-write the agreed clauses of builder buyer agreement on its own so the deemed date of possession in this case works out to 14.08.2022 (36+6 months).

(iv) In the present complaint, the complainant intend to continue with the project and is seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act. Section 18 (1) proviso reads as under :-

“18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-

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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”.

(v) Per contra respondent has failed to put forth any valid reason/ground for not offering the possession of the booked unit. Complainant however is interested in getting the possession of the booked unit. He does not wish to withdraw from the project. In



the circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising option of taking possession of the apartment the allottee can also demand, and respondent is liable to pay, monthly interest for the entire period of delay caused at the rates prescribed. The respondent in this case has not made any offer of possession to the complainant till date nor has obtained the occupation certificate of the project in question. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date i.e. 14.08.2022 till the date on which a legally valid offer is made to him after obtaining occupation certificate.

(vi) The definition of term 'interest' is defined under Section 2(z) 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;

(vii) 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. 31.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.75%.

(viii) 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”.

11. Authority has got calculated the interest on total paid amount from the deemed date of possession till the date of this order at the rate of 10.75% till and said amount works out to ₹ 6,42,409/- as per detail given in the table below:



Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 31.10.2023
1.	₹ 49,12,615/-	14.08.2022	6,42,409/-
	Total = ₹ 49,12,615/-		₹ 6,42,409/-
2.	Monthly interest		₹ 43,406/-

12. Accordingly, the respondent is liable to pay the upfront delay interest of Rs. 6,42,409/- to the complainant towards delay already caused in handing over the possession. Further, on the entire amount of Rs. 49,12,615/- monthly interest of Rs. 43,406/- shall be payable up to the date of actual handing over of the possession after obtaining occupation certificate. The Authority orders that the complainant will remain liable to pay balance consideration amount to the respondent when an offer of possession is made to him.

H. DIRECTIONS OF THE AUTHORITY

13. 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 pay upfront delay interest of Rs. 6,42,409/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of



this order. Further, on the entire amount of Rs. 49,12,615/- monthly interest of Rs. 43,406/- shall be payable by the respondent to the complainant up to the date of actual handing over of the possession after obtaining occupation certificate.

(ii) Complainant will remain liable to pay balance consideration amount to the respondent at the time of possession offered to them.

(iii) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e, 10.75% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

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


.....
DR. GEETA RATHIE SINGH
[MEMBER]


.....
NABIM AKHTAR
[MEMBER]