



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	3077 of 2022
Date of filing:	01.12.2022
Date of first hearing:	14.02.2023
Date of decision:	09.11.2023

Kamal Bansal S/o Sh. Ramesh Kumar Bansal
R/o House No. 51A-/52, Chintapurni Colony Gali no. 1
Ward no. 8, Near Sharma Hospital,
Sector-14, Sonipat, Haryana s

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Pvt 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. Ramesh Malik, Counsel for the complainant through
 VC
 Mr. Shubhnit Hans, Counsel for the respondent through
 VC.

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint was filed on 01.12.2022 by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016

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(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	Park Street, Sector-19, Village Kamaspur, District Sonipat, Haryana
2.	RERA registered/not registered	Not registered.
3.	DTCP License no.	999-1002 of 2006
4.	Licensed area	8.31 acres
5.	Unit no.(Shop)	GF-193
6.	Unit area	631.63 sq. ft.
7.	Date of allotment	21.02.2007
8.	Date of builder buyer agreement	17.04.2019
9.	Due date of offer of possession (18+6 months)	17.04.2021

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10.	Possession clause	Clause 4.1 That, the seller shall try to devolve the ownership of the unit upon purchaser within eighteen months from the date of execution of this agreement (handing over period) which handing over period can further be extended by another six months, which shall be treated as the grace period.
11.	Total sale consideration	₹ 18,81,625/-
12.	Amount paid by complainant	₹20,26,441/-, complainant in pleadings claimed paid amount as Rs 20,27,234/- however proof only of Rs 20,26,441/- has been placed on record.
13.	Offer of possession	No offer.

B. FACTS OF THE COMPLAINT

4. Facts of complaint are that original allottee Ms. Pinder Jit Kaur had booked a shop in in the project- Park Street, Village Kamaspur, Sonipat of the respondent by paying Rs 2,50,000/- on 17.05.2006. Thereafter, second allottee Mr. Surendra Mohan Makhija purchased allotment rights of shop in year 2008. Subsequently, allotment rights were purchased by complainant on 30.03.2018. Allotment in favor of original allottee dated 21.02.2007 of shop no. GF-193 having area 631.63 sq. ft. in respondent's project got endorsed in favor of complainant on 30.03.2018.

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5. Builder buyer agreement was executed between the complainant and respondent on 17.04.2019 and as per Article 4 of it, the possession of the shop was to be handed over latest by 17.04.2021 (18+6 months). But respondent has failed in fulfilling its obligation of delivering the possession of the shop within stipulated time. Said act of respondent is contrary to the contractual terms and in violation of the provision of Act of 2016.
6. That there is no scope of handing over possession of the shop in question in near future as on the project site the development of the area is very limited. It has been alleged that respondent has not taken requisite approvals from the concerned authorities which further strengthens the belief of the complainant that respondent has committed fraud on public at large by alluring them towards project in question.
7. That the respondent company has withheld the hard earned money of the complainant for their benefit and have used the money for their own purpose and did not invest the money in the completion of the project. The respondent company had given false assurances to complainant and had malafide intention to cheat and extract money on various illegal grounds from the complainant.

C. RELIEF SOUGHT

8. Complainant in his complaint has sought following relief:



- i. Direct respondent to offer actual physical possession of the shop in question i.e. Shop no. 193, GF having super area of 631.63 sq ft (covered area 423.19 sq fts.)
- ii. Direct the respondent company to obtain license from Haryana Town and Country Planning, Haryana of the project-Park Street Mall, Sonipat, Haryana.
- iii. Direct respondent to get conveyance deed executed within a time bound manner qua shop no. GF-193, Sonipat, Haryana.
- iv. Direct the respondent to pay interest on delayed possession for more than 19 months as per Rule 16 of Haryana Real Estate (Regulation and Development) Rules,2017 to the complainant.
- v. Direct the respondent to pay Rs 10,00,000/- as part of damages to the complainant on account of mental agony, torture and harassment.
- vi. Direct the respondent to pay affront interest and monthly interest to the complainant.
- vii. Direct the respondent to refund of all legal cost of Rs 1,00,000/- incurred by the complainant.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 17.05.2023 pleading therein:

9. That due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company



namely- Park Street, Sector-19, Village Kamaspur, Sonipat, Haryana. Said project is covered under the license nos. 999/2006, 1000/2006, 1001/2006 and 1002/2006 dated 16.06.2006. Copy of licenses is annexed as Annexure R-2.

10. 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. 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 the respondent has applied for grant of occupation certificate with respect to the present project and same is awaited. Further, it is submitted that the application for registration of the project in question has been filed and the same is pending consideration before Authority.
12. That complainant herein is 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.
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 as clearly stipulated in the builder buyer agreement.



E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

14. During oral arguments learned counsel for the complainant insisted upon possession of booked shop alongwith delay interest stating that complainant wants to stay with the project and is interested only in possession of booked shop. Learned counsel for the respondent reiterated arguments as were submitted in written statement and further submitted that project in which booked shop is located is at standstill from last 3-4 years, however the structure of the shops is ready but it is not complete. He stated upon instructions that project will take time to get it completed and since then awarding of delay interest for indefinite period is not justified.

F. ISSUES FOR ADJUDICATION

15. Whether the complainant is entitled to possession of booked shop alongwith delay 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 that respondent has taken the following objections w.r.t maintainability of the complaint :


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(i) Respondent has raised an objection that provisions of RERA Act,2016 are applicable with prospective effect only and therefore same were not applicable as on 21.02.2007 when the complainant was allotted shop no. 193-GF, Park Street, Sector-19, Sonipat. Here, Authority observes that 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:-

"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) Further, the respondent has taken an objection of the respondent that the project in which the complainant is seeking possession 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) Furthermore, 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;

In view of the above-mentioned definition of "allottee" as well as upon careful perusal of allotment letter dated 21.02.2007

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and builder buyer agreement dated 17.04.2019, it is clear that complainant is an "allottee" as shop bearing no. 193-GF in the real estate project "Park Street, Sector-19", 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 allottee being investor is not entitled to protection of this Act also stands rejected.

(iv) In view of the aforesaid observations there remains no doubt that the complaint is maintainable as per provisions of RERA Act,2016 and the Authority has complete jurisdiction and mandate to adjudicate the same on merits. Admittedly, there is no

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dispute between the parties regarding the fact that complainant in this case had purchased the allotment rights qua shop no. GF-193, admeasuring 631.63 sq ft in the project-'Park Street, Sector-19, Kamaspur' being developed by the respondent in the year 2018 from second allottee Surendra Mohan Mankhija, against which an amount of ₹ 20,26,441/- already stands paid to the respondent, out of said paid amount, last payment of Rs 2,29,128/- was made to respondent on 12.01.2015 by the second allottee, which implies that respondent is in receipt of total paid amount since year 2015 whereas fact remains that no offer of possession of the booked shop has been made till date.

(v) Even in its written statement respondent has admitted that possession of the booked shop has not offered till date to the complainant. With respect to status of handing over of possession, respondent has submitted that it had applied for grant of occupation certificate with respect to the project in question however the same is awaited. In regard to delay caused, though respondent has submitted that deemed date of possession was tentative and was subject to force majeure, however no reason/factor that attributed towards causing delay in offer of possession has been specified in the written statement. Authority observes that mere writing of force



majeure for causing delay in offering the possession is not sufficient to justify the delay caused.

(vi) Authority observes that the builder buyer agreement was executed between the parties on 17.04.2019 and as per clause 4.1, the possession was to be delivered upto 17.04.2021. Fact remains that possession has not been offered to complainant till date for the reason that project is lying incomplete. In present situation, it is apparent that respondent failed to honour its contractual obligations without any reasonable justification.

(vii) Complainant is insisting upon possession of booked shop as structure of the shop is ready. During arguments, it has been admitted by both the parties that basic structure of shop is ready but the finishing part is not complete. It has been stated by Id. Counsel for respondent that construction of the project is at standstill stage since last 3-4 years and it is not known as to how much further time will be taken to complete the project and deliver possession of the booked shop to the complainant. In this regard, Authority observes that it is the respondent who has failed to develop/complete the booked shop till date. However, no such circumstances has been specified in written statement/ oral arguments which can be relied upon to convince the Authority that physical possession of the booked shop is actually not possible.



Moreover, it is not the case that project has been completely abandoned by the respondent and license for the same has been surrendered. Complainant-allottee has duly paid the demanded amount to the respondent to the tune of Rs 20 lacs for the booked shop under a construction linked plan. As per section 18 of the RERA Act,2016, if the promoter fails to complete or give possession of an apartment, plot or building in accordance with terms of agreement for sale or as the case may be, duly completed by the date specified therein, the allottee may demand the refund of amount paid and in case the allottee do not wish to withdraw from the project, then he shall be entitled to interest for every month of delay till handing over of possession. As of today, complainant-allottee wants to stay with the project and respondent is duty bound to develop the project unless license to develop the project stands surrendered.

17. In the present complaint, respondent has till date not obtained the occupation certificate, on the other hand the complainant intends to continue with the project and thus the Authority finds it a fit case to allow delayed possession charges from the deemed date i.e. 17.04.2021 to the date on which a valid offer is sent to him after obtaining completion/occupation certificate as provided under the

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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-

.....

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”.

18. 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;

19. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

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“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”.

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. 09.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.75%.

21. 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% as per detail given in the tables below:

Complainant claims to have paid an amount of Rs 20,27,234/- as per para 2 of complaint file. However, as per statement of account dated 03.08.2018, total paid amount is Rs 20,26,441/- (19,91,115 towards basic sale price +35,326 towards service tax) and it is taken as final amount for calculation of interest.



Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 09.11.2023
1.	₹ 20,26,441/-	17.04.2021	5,59,228/-
	Total = ₹ 20,26,441/-		₹ 5,59,228/-
4.	Monthly interest		₹ 17,905/-

22. Accordingly, the respondent is liable to pay the upfront delay interest of Rs. 5,59,228/- to the complainant towards delay already caused in handing over the possession. Further, on the entire amount of Rs. 20,26,441/- monthly interest of Rs. 17,905/- shall be payable up to the date of actual handing over of the possession after obtaining completion 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 them.

23. In respect of relief clause no. (iii) pertaining to execution of conveyance deed, Authority directs that respondent shall execute/register a conveyance deed in favour of allottee within three months from date of issue of occupation certificate on payment of requisite stamp duty charges.

24. The complainant is seeking compensation on account of mental agony, torture and harassment caused for delay in possession. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of

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2027 titled as “*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*” (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

25. Ld. counsel for complainants has neither argued nor pressed upon the relief claimed at serial no. ii of the relief sought. However, it is pertinent to mention here that respondent has already obtained license no. 999-1002 of 2006 for the project in question.

H. DIRECTIONS OF THE AUTHORITY

26. 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. 5,59,228/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of

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this order. Further, on the entire amount of Rs. 20,26,441/- monthly interest of Rs. 17,905/- 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.

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


.....
NADIM AKHTAR
MEMBER]


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