



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1867 of 2022
Date of filing:	29.07.2022
Date of first hearing:	28.09.2022
Date of decision:	15.11.2023

Parmod Kumar, S/o Sh. Budhi Prakash,
R/o Gokul Bhawan, Gur Mandi, Sonapat-131001

....COMPLAINANT

VERSUS

M/s TDI Infrastructure Pvt. Ltd.
9, Kasturba Gandhi Marg, Connaught Place
New Delhi-110001

....RESPONDENT

CORAM: **Dr. Geeta Rathee Singh** **Member**
 Nadim Akhtar **Member**

Present: - Mr. Vikas Deep, 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 29.07.2022 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 fulfill 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	Kingsbury Flats, TDI City, Kundli , Sonipat
2.	RERA registered/not registered	Not registered.
3.	Unit no.	No particular unit allotted
4.	Unit area	Not applicable
5.	Date of allotment	Not available



6.	Date of builder buyer agreement	Not executed.
7.	Due date of offer of possession	Not available.
8.	Possession clause	Not available.
9.	Total sale consideration	₹ 18,15,000/-
10.	Amount paid by complainant	₹ 5,50,000/-
11.	Offer of possession	No offer.

B. FACTS OF THE COMPLAINT AS STATED IN COMPLAINT

3. Facts of complaint are that complainant had booked a residential flat of 1000-1100 sq ft in respondent' s project – Kingsbury atTDI City, Kundli, Sonipat by making payment of Rs 3,00,000/- on 18.02.2006. Sale consideration of the unit was fixed at Rs 1650 per sq. ft. At the time of booking, the requisite license had not been obtained from the Town and Country Planning Department, Haryana, which is mandatory as provided under Haryana Development and Regulation of Urban Area Act and Rules.
4. That further amount was payable in installments, which were scheduled to start after allotment of flat, as stipulated in the advance registration form annexed as Annexure C-2. Respondent failed to allot the flat in terms of booking, so no amount was ever due on part of complainant. It has been

J. Pathee

alleged that the respondent did not allot the flat in terms of booking and also failed to develop the project as per schedule. But still complainant on demand had to pay the amount of Rs 2,50,000/- against receipt dated 07.09.2006 issued by the respondent.

5. That complaint no. 811/2012 was filed by complainant before District Consumer Forum, New Delhi which was dismissed as withdrawn vide order dated 13.10.2017.

C. RELIEF SOUGHT

6. Complainant in his complaint has sought following relief:
 - i. Respondent be directed to refund the amount deposited with statutory interest as per Rule 15.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 17.04.2023 pleading therein:

7. That due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely- Kingsbury flats at TDI City Kundli, Sonipat, Haryana.
8. 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. 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.

9. That the project was completed way before the enactment of RERA Act and the occupation certificates dated 21.04.2010, 01.06.2010, 25.05.2012 in respect of the project have been obtained by respondent much before the commencement of the RERA Act, 2016 and as such the project is a delivered project where the promoter has executed conveyance deed of majority of the allottees.
10. The project in question is not registered with the Authority therefore, the complainant could not have approached the Authority for seeking reliefs stated in the complaint.
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 handing over of possession has always been tentative and subject to force majeure conditions and the respondent vide its letter dated 07.07.2011 had offered the allotment to complainant in the existing towers which were almost complete and were at advanced stages, however, no response was



ever received by the complainant. This fact has been concealed by the complainant and complainant has misled the Authority. Copy of letter dated 07.07.2011 alongwith proof of service is being annexed as Annexure R-3.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

13. During oral arguments learned counsel for the complainant insisted upon refund of paid amount with interest for the reason that respondent failed to allot any specific unit till date and had illegally kept money of complainant from 2006 till date. Learned counsel for the respondent reiterated arguments as were submitted in written statement and further submitted that it is the complainant who is sleeping over his rights by not choosing out any unit in compliance of letter dated 07.07.2011.

F. ISSUES FOR ADJUDICATION

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

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

15. The Authority has gone through the contentions of both the parties. 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 :



(i) Respondent has raised a plea that provisions of RERA Act,2016 are applicable with prospective effect only and therefore same were not applicable as on 18.02.2006 when the complainant had booked a unit in respondent's project, 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:-

“ 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) Respondent has raised an objection 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 to 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;

In view of the above-mentioned definition of “allottee” as well as upon careful perusal of application form and booking receipt dated 18.02.2006, it is clear that complainant is an “allottee” as respondent had taken advance from him for allotment of unit in future housing projects, in the real estate project “Kingsbury flats at TDI City”, Sonipat. 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) Further, the respondent has raised an objection that occupation certificate stands received in respect of the project so project shall not be considered as “on-going project” and therefore is not within ambit of this Authority. This issue has been dealt with and settled by the Hon’ble Supreme court in **Newtech Promoters and developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021** herein reproduced:

“ 37. Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all “ongoing projects” that commence prior to the Act and in respect to which completion certificate has not been issued are covered



under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority.”

Wherein Hon'ble Apex held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects. Furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder.

(v) 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. As admitted by both parties, complainant in this case had paid booking amount of Rs 3,00,000/- on 18.02.2006 as 'advance against present and future project for 1000-1100 sq ft residential flat'. Further, an amount of Rs 2,50,000/- was paid on 07.09.2006 against customer ID-



KFL-13102. Grievance of the complainant is that neither any allotment of specific unit was issued in favour of complainant nor any builder buyer agreement was ever signed between the parties. Nonetheless respondent had illegally kept the money of the complainant till date. Per contra, stand of the respondent is that a letter dated 07.07.2011 was issued to complainant to choose out the unit out of existing towers but complainant has never replied to said letter and kept sleeping over his rights.

(vi) In the case in hand, none of the parties have disputed to paid amount i.e. Rs 5,50,000/-. Out of said paid amount, last payment of Rs 2,50,000/- was made on 07.09.2006. Thereafter, respondent had issued a letter dated 07.07.2011 offering option to complainant to choose the unit out of existing towers of project-Kingsbury flats. In respect of the impugned letter dated 07.07.2011, complainant's counsel has denied receipt of said letter by complainant-allotee. In this regard Authority observes that in order to substantiate its stance, respondent has annexed said letter dated 07.07.2011 as Annexure R-3 to reply alongwith dispatch receipt of courier. However, tracking record of delivery of said letter upon complainant is not placed on record by respondent. Thus, respondent has failed to establish the fact that said letter was received by



complainant and it is the complainant who has defaulted by not choosing unit out of the existing towers. Authority further observes that both the parties remained silent during the period 2006 (last payment)-2012 (filing of consumer complaint) and made no communication whatsoever. Money of the complainant to the tune of Rs 5,50,000/- still lies with the respondent and respondent has been utilising said money till date without taking any appropriate action. In such circumstances, when the complainant did not approached the respondent for a good number of 6-7 years to enquire about allotment of any unit even after paying a decent amount, the respondent-builder who is well aware of practices in real estate transaction should have acted in a reasonable/appropriate manner either by allotting a particular unit to complainant and raising demand of further instalments or by cancelling the booking/application form and refunding the amount to complainant with or without forfeiture. However, the respondent neither allotted an unit nor refunded the said amount even after 2011, when it did not get any response from the complainant, instead respondent has been illegally holding the money of the complainant since year 2006 without any valid justification. Complainant after waiting for 6-7 years choose to file consumer complaint in year 2012 against respondent which got dismissed as



withdrawn vide order dated 13.10.2017. Copy of said order is annexed as Annexure C-4 to complaint. Due to said complaint, the respondent must have gained knowledge about the transaction with complainant which did not get finalised towards allotment of any unit so at that time there was chance with respondent to make efforts to communicate with complainant to refund the amount received from him. However, respondent kept complete silence and is still holding money of complainant without any allotment letter/agreement issued in favour of complainant. Meaning thereby that the purpose of advance (money) received by respondent for allotment of residential unit to complainant has not been fructified till date so the only obligation which was left on the part of the respondent was to refund the amount paid by the complainant as per real estate market practice which has not been done till date therefore, cause of action still survives with the complainant.

(vii) The RERA Act, 2016 was enacted for safeguarding interest of consumers in real estate sector. In this case, complainant is neither getting refund nor allotment of unit issued since year 2006 whereas as per general market practice/trend the builders generally allot unit/execute builder buyer agreement for a specific unit within reasonable period of receipt of booking amount, which has not been done so till date. Hence,



Authority finds it to be fit case for allowing refund of paid amount with interest in favour of complainant. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.

(viii) 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;

(ix) 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".



- (x) 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. 15.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.75%.
- (xi) 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 5,50,000/- 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 10,34,872/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 15.11.2023
1.	3,00,000	18.02.2006	572548
2.	2,50,000	07.09.2006	462324
3.	Total=5,50,000/-		Total= 10,34,872/-
8.	Total Payable to complainant	550000+ 1034872=	15,84,872/-



G. DIRECTIONS OF THE AUTHORITY

16. 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 ₹ 15,84,872/- 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.

17. **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]