



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	996 of 2023
Date of filing:	01.05.2023
Date of first hearing:	05.07.2023
Date of decision:	18.03.2024

Nishtha Sehgal W/o Sh. Rajeev Sehgal
R/o G-1/56, First floor, Block-G,
Pocket-1, Sector-15, Rohini, New Delhi-110085

....COMPLAINANT

VERSUS

1. TDI Infracorp (India) Limited.
Vandana Building, Upper Ground Floor
11, Tolstoy Marg, Connaught Place,
New Delhi- 110001

2. TDI Realcon Pvt Limited.
Vandana Building, Upper Ground Floor
11, Tolstoy Marg, Connaught Place,
New Delhi- 110001

....RESPONDENT(S)

Complaint no.:	696 of 2023
Date of filing:	29.03.2023
Date of first hearing:	25.07.2023
Date of decision:	18.03.2024

Sanjeev Jain & Sandeep Jain
Both R/o GS-25, Greater Kailash Part-2,
Near KR Mangalam School

Delhi-110048

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CORAM: **Nadim Akhtar**
Chander Shekhar

Member
Member



Present: - Mr. Chaitanya Singhal, Counsel for the complainants in all complaint cases through VC.
Mr. Ajay Ghangas, Counsel for the respondents in all cases through VC.

ORDER (NADIM AKHTAR - MEMBER)

1. All the captioned complaints are taken up together for hearing as they involve similar issues and are against same project of respondent. This order is passed by taking the complaint no. 996/2023-Nishtha Sehgal vs TDI Infracorp (India) Ltd & TDI Realcon Pvt Ltd as a lead case.
2. Present complaint was filed on 01.05.2023 by the 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

3. 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	Lake Side Heights, TDI Lake Grove City, TDI City, Kundli, Sonipat
2.	RERA registered/not registered	Registered with registration no. 43 of 2017
3.	Unit no	T-7-602, 6 th floor
4.	Unit area	1170 sq. ft.
5.	Date of allotment	26.06.2015
6.	Date of builder buyer agreement	29.11.2017
7.	Due date of offer of possession (36+6 months)	29.05.2021
8.	Possession clause in BBA (Clause 28)	Clause 28 <i>".....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 Buyer 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."</i>
9.	Basic sale price	₹ 37,65,002/-
10.	Amount paid by complainant	₹ 44,29,738/-
11.	Offer of possession	Not given.

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B. FACTS OF THE COMPLAINT

4. Facts of complaint are that complainant had booked a 2 BHK flat in the project- Lake Side Heights, located in TDI Lake Grove City, Kundli, Sonipat of the respondent by making payment of Rs 2,00,000/- on 20.03.2015, following which allotment letter dated 26.06.2015 was issued in favor of complainant and unit no. T-7/0602, 6th floor, having an area measuring 1170 sq ft was allotted to her. Copy of allotment letter is annexed as Annexure P-2.
5. Complainant entered into Builder Buyer Agreement (BBA) with the respondent on 29.11.2017. As per clause 28 of the BBA, possession of the floor was to be made within 36 months+ 6 month grace period from the date of execution of agreement, thus deemed date of delivery comes out to 29.05.2021. An amount of Rs 44,29,738/- has been paid against basic sale price of Rs 37,65,002/-.
6. It is submitted by the complainant that despite a lapse of more than three years respondent has failed to offer possession of the booked unit. That till date, respondents have neither completed the construction of the project in question including the unit booked nor received occupation certificate even after receipt of 100% of total sale consideration of the unit.



7. That the complainant has trusted her hard earned money and with a view to purchase the said unit in question for residing therein and have in fact been paying EMIs on the loan and being denied the use of her property and has completely shattered her dreams of owning a house of their own. Respondents have committed grave deficiency in service so far as misrepresenting the complainants regarding the timeline for delivery and status of the unit, and also by not offering possession of the unit in question within the specific timeline agreed as per buyer's agreement. Feeling aggrieved, present complaint has been filed by the complainant before this Authority.

C. RELIEFS SOUGHT

8. Complainant in her complaint has sought following relief:
- i. The respondent be directed to refund the amount of Rs 44,29,738/- paid by the complainant alongwith interest as per HRERA Rule 15.
 - ii. To grant litigation expense of Rs 1,50,000/- to the complainants.
 - iii. Any other relief as the Hon'ble Authority may deem fit and proper in light of the facts and circumstances of the above case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

Learned counsel for the respondents filed detailed reply on 09.10.2023 pleading therein:

9. That complainant herein is an investor not a consumer/allotee.



10. That there is no delay on the part of the respondents in fulfilling its obligations under the agreement executed between the parties. It is submitted that delay and modifications, if any, have been caused due to the reasons/factors beyond the control of the respondents. Factors including the Covid-19 pandemic, restriction of constructions activity in NCR region due to pollution and farmers agitation impacted the development as it resulted in stoppage of construction work for more than 2 years in the past. Further, it has been stated that complainant has not come with clean hands and has concealed the material facts that she was not punctual in making timely payment of installments and has paid only Rs 44,29,738/- out of total sale consideration of Rs 55,29,951/-. Outstanding amount of Rs 11,00,213.50/- and interest of Rs 2,95,997.96/- is still payable on part of complainant.
11. That respondent had incurred huge expenses in obtaining approvals and carrying on the construction and development of the project and despite several adversities, is in the process of completing the construction of the project and the possession of the unit is expected to be delivered within next 2 months

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS

12. During oral arguments learned counsel for the complainant insisted upon refund of paid amount with interest, stating, that respondents are



not in a position to deliver possession of booked unit even in the near future as no construction activity is going on at the site. Learned counsel for the respondents reiterated arguments as were submitted in the written statement and further stated that respondents are in process of applying for occupation certificate.

F. ISSUES FOR ADJUDICATION

13. Whether the complainant is entitled to refund of amount deposited by her along with interest in terms of Section 18 of RERA, Act of 2016?

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

14. 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 respect to the objection raised by the respondents that complainant herein is an investor not a consumer/allotee, it is observed that the complainant herein is the allottee/homebuyer who has made a substantial investment from her hard earned savings under the belief that the promoter/real estate developer will handover possession of the booked unit in terms of buyer's agreement dated 27.11.2017 but her bonafide belief stood shaken when the promoter failed to handover possession of the booked unit till date without any reasonable cause. At that stage, complainant has approached this Authority for seeking refund of paid amount with interest in terms of



provisions of RERA Act,2016 being allottee of respondent-promoter. As per definition of 'allottee' provided in clause 2(d) of RERA Act,2016, present complainant is duly covered in it and is entitled to file present complaint for seeking the relief claimed by him. Clause 2(d) of RERA Act,2016 is reproduced for reference:-

“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”.

Complainant has been allotted flat in the project of respondents by the respondents/promoters itself and said fact is duly revealed in allotment letter dated 26.06.2015. Also, the definition of allottee as provided under Section 2 (d) does not distinguish between an allottee who has been allotted a unit for consumption/self utilization or investment purpose. So, the plea of respondent that complainant herein is investor does not hold merit and same is rejected.

(ii) Complainant in present case has impleaded two respondents, i.e, TDI Infracorp (India) Ltd as Respondent no. 1 and TDI Realcon Pvt Ltd. as Respondent no. 2. Authority vide order dated 11.10.2023 directed the complainant to give clarification by specifying the name of the respondent from memo of parties against whom relief of refund



have been sought. In compliance of it, complainant had filed an application in registry on 13.03.2024 stating that the relief of refund by the complainant be made against Respondent no. 1, i.e. M/s TDI Infracorp (India) Ltd since the Respondent no. 1 have solely received the payments from complainant on account of booked flat and not respondent no. 2. Considering said application and fact that no relief in particular is sought against respondent no. 2, this order is passed issuing directions to respondent no. 1 only.

(iii) Admittedly, complainant in this case had purchased the allotment rights qua the unit in question in the project of the respondent vide allotment letter dated 26.06.2015 for a basic sale consideration of ₹ 37,65,002/- against which an amount of ₹44,29,738/- has been paid by the complainant. Out of said paid amount, last payment of Rs 3,10,636/- was made to Respondent on 18.02.2019 by the complainant which implies that respondent no. 1 is in receipt of total paid amount till year 2019 whereas, fact remains that no offer of possession of the booked floor has been made till date.

(iv) In the written statement submitted by the respondent no. 1, it has been admitted that possession of the booked unit has not been delivered to the complainant. Regarding construction, it has been submitted in para 10 of the written statement that respondent is in process of completing the construction of the project and the



possession of the unit is expected to be delivered within next 2 months. No latest photographs of the site of the project or any documentary evidence has been placed on record to show that there are chances of completion of construction in next few months. Mere pleading for more time of 2 months without any concrete plan of action does not suffice to give assurance to the complainant for handing over of possession. Moreover, time of 2 months was assured by respondent at the time of filing reply, i.e. October, 2023, by now time of more than 6 months passed but respondent no. 1 is still not in a position to offer possession of booked unit to the complainant.

(v) Authority observes that the builder buyer agreement got executed between the complainant and respondent no. 1 on 29.11.2017 and in terms of clause 28 of it, the respondent was supposed to handover possession within 36+6 months i.e. upto 29.05.2021. In present case, respondent failed to honour its contractual obligations of offering possession of the booked unit within stipulated time without any reasonable justification. Further, respondent has not committed any specific timeline with proper documentary evidence in its reply regarding delivery of possession. However, respondent has pleaded that force majeure factors like Covid-19, ban on construction activities in NCR region and farmer's agitation resulted in delay in construction work. However, no documents have been placed on record in support



of it. Considering the fact that deemed date of possession falls in year 2020-2021 and it well known nation-wide as well as world-wide, that COVID-19 pandemic affected the whole country w.e.f March, 2020. In order to curb it, various nation-wide lockdowns and restrictions were imposed by government of India. Project of respondents duly falls in category wherein construction activities must have got affected/stopped due to lockdown and restrictions. Even if this factor is taken into account then time period of around 6-8 months or time period of 1 year at maximum can be considered as force majeure and deemed date of possession gets extended upto 29.05.2022. Had it been the case that respondents could have completed construction by end of 2022 or initial months of year 2023, then the complainant must have regained the trust/confidence in respondents and choose to wait for possession of booked unit. But act of respondent in not completing the construction and receiving of occupation certificate till date, i.e., year 2024 strengthens the belief of complainant as well as the Authority that possession of booked unit is not possible even in near future and in these circumstances, complainant cannot be forced to wait for an indefinite period in hope of getting possession of unit. Additionally, complainant has unequivocally stated that she is interested in seeking refund of the paid amount along with interest on account of inordinate delay caused in delivery of possession.



(vi) 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.



15. The project in question did not get completed within the time stipulated as per agreement and no specific date for handing over of possession has been committed by the respondent. In these circumstances the complainant cannot be kept waiting endlessly for possession of the unit, therefore, Authority finds it to be a fit case for allowing refund along with interest in favour of complainant.
16. 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;*
17. 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. 18.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%.



18. 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”.

19. Thus, respondent no. 1 is liable to pay the interest to the complainant 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 44,29,738/- 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 10.85% (8.85% + 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 at the rate of 10.85% till the date of this order and total amount of interest works out to Rs 33,59,276/- as per detail given in the table below:

In complaint no. 996/2023



Complainant claims to have paid an amount of Rs 44,29,738/-, but receipts of Rs 44,11,790/- only has been attached in file. Remaining amount of Rs 17,948/- is taken from statement of account dated 17.04.2023.

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 18.03.2024
1.	10,69,875	21.05.2015	10,25,651
2.	25,000	22.05.2015	23,959
3.	5,33,515	15.06.2017	3,91,566
4.	2,00,000	22.04.2015	1,93,457
5.	1,25,000	30.05.2015	1,19,499
6.	10,00,000	28.07.2015	9,38,451
7.	86,900	27.08.2015	80,776
8.	5,00,000	24.07.2018	3,06,921
9.	65,000	09.08.2018	39,591
10.	56,500	09.10.2018	33,389
11.	7,50,000	15.09.2021	2,04,218
12.	17,948	17.04.2023	1798
13.	Total=44,29,738/-		Total=33,59,276/-
14.	Total Payable to complainant	4429738 + 3359276=	77,89,014/-

In complaint no. 696/2023

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 18.03.2024
1.	4,85,013	12.09.2014	5,01,153
2.	4,50,000	01.07.2014	4,74,740
3.	23,12,730	26.05.2015	22,13,694
4.	3,40,000	06.01.2017	2,65,709
5.	10,00,000	16.01.2017	7,78,525
6.	13,00,000	24.04.2017	9,74,211
7.	2,32,281	31.07.2018	1,42,101
8.	22,812	12.10.2019	10,985
9.	93,531	17.10.2019	44,902
10.	46,385	18.10.2019	22,255
11.	44,865	23.10.2019	21,459
12.	23,573	23.11.2019	11,058
13.	22,812	25.11.2019	10,687

14.	23,573	26.11.2019	11,037
13.	Total=63,97,575/-		Total= 54,82,516/-
14.	Total Payable to complainant	63,97,575 + 54,82,516=	1,18,80,091/-

In complaint no. 697/2023


Complainant claims to have paid an amount of Rs 66,51,910/-, but receipts of Rs 66,05,620/- only has been attached in file. Remaining amount of Rs 46,290/- is taken from statement of account dated 27.01.2023.

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 18.03.2024
1.	5,33,515	16.09.2014	5,50,634
2.	4,50,000	03.07.2014	4,74,472
3.	2,50,000	01.12.2014	2,52,374
4.	20,20,314	15.05.2015	19,40,406
5.	3,36,276	04.01.2016	2,99,585
6.	3,12,931	28.07.2016	2,59,624
7.	6,58,714	16.01.2018	4,41,355
8.	6,36,675	14.02.2018	4,21,099
9.	3,42,094	15.02.2018	2,26,161
10.	6,52,207	27.07.2018	3,99,771
11.	2,66,442	07.06.2019	1,38,367
12.	23,878	12.10.2019	11,499
13.	24,674	18.10.2019	11,838
14.	24,674	23.10.2019	11,801
15.	24,674	23.11.2019	11,574
16.	23,878	25.11.2019	11,186
17.	24,674	26.11.2019	11,552
18.	46,290	27.01.2023	5738
13.	Total=66,51,910/-		Total=54,79,036/-
14.	Total Payable to complainant	6651910 + 5479036=	1,21,30,946/-

Handwritten signature

H. DIRECTIONS OF THE AUTHORITY

20. 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 no. 1 is directed to refund the paid amount to the respective complainants with interest as calculated in tables mentioned above in paragraph 19 of this order. It is further clarified that respondent will remain liable to pay interest to the respective complainants till the actual realization of the amount.
 - (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.
21. **Disposed of.** File be consigned to record room after uploading of order on the website of the Authority.


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CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]