



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

| | |
|-------------------------------|-------------|
| Complaint no.: | 712 of 2021 |
| Date of filing: | 26.07.2021 |
| Date of first hearing: | 24.08.2021 |
| Date of decision: | 02.09.2024 |

Ms. Rita Gupta, W/o Sh. Ashwani Kumar Gupta,
R/o, A-60, Pushpanjali Enclave, Pitampura
Delhi – 110034

....COMPLAINANT
VERSUS

TDI Infrastructure Limited.
10, Bhagat Singh Marg, Near Gole Market
Near Jain Bhawan,
New Delhi- 110001

....RESPONDENT

CORAM: **Nadim Akhtar** **Member**
 Chander Shekhar **Member**

Present: - Mr. Ashish Middha, Counsel for the complainant.
 Mr. Shubhnit Hans, Counsel for the respondent

ORDER (NADIM AKHTAR – MEMBER)

1. Present complaint has been filed on 26.07.2021 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

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, 101-144 of 2005, 200-285 of 2002, 652-722 of 2006, 729-872 of 2006, 42-60 of 2005, 51 of 2010 and 177 of 2007. |
| | Part completion received for an area | 927 acres |
| 5. | Unit no.(SCO-commercial plot) | JC-1/8 |



| | | |
|-----|---|---|
| 6. | Unit area | 204 Sq. yards |
| 7. | Date of allotment in favour of original allottee | 21.09.2006 |
| 8. | Date of endorsement in favour of complainant | 11.06.2010 |
| 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 (Annexure C-4 at page no. 33 of complaint) | ₹ 43,86,000/- (Rs 21,500/- per sq. yds+ EDC charges) |
| 13. | Amount paid by complainant | ₹ 43,33,776/- As per order dated 02.11.2023 passed in captioned complaint. |
| 14. | Offer of possession | 19.04.2017. |

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

3. Facts of the present complaint are that original allottee, namely, M/s Cubical Financial Services Ltd had booked a plot in the future project of the respondent by paying Rs 5,00,000/- on 22.03.2006. Following which plot no. JC-1/8 having an area of 204 sq yards in the project 'TDI Ciy, Kundli, Sonipat' was allotted in favour of original allottee vide allotment letter dated 21.09.2006. Thereafter allotment rights of



plot were purchased by the present complainant (second allottee) on 11.06.2010, however, no builder buyer agreement was executed for the plot in question.

4. That the complainant has paid total amount of Rs. 48,45,459/- (however, proof of only Rs 43,33,776/- annexed as Annexure-9) against the total sale consideration of Rs 43,86,000/-. That the complainant had been visiting the site on regular basis but there had been no development as regards the roads and other development. The complainant had also filed a Consumer Complaint before Delhi State Commission bearing no. C/321/2015. During the pendency of the said consumer complaint, the respondent offered the possession of alternative plot because of the lack of basic amenities of the plot in question. The possession of the plot has been due since year 2009 but the respondent has failed to offer a valid possession till date. Further, offer of possession of plot in question was issued to the complainant on 19.04.2017 with demand of Rs 5,71,425/- but said offer was not acceptable to complainant as development works were not completed in the project by the respondent. Copy of said offer of possession is attached as Annexure-18 with the complaint. Even as on date, development works are not complete so the complainant is seeking refund of paid amount along with interest.



5. That complainant had placed on record an affidavit for withdrawal of consumer complaint filed before the Delhi State Consumer Disputes Redressal Forum, New Delhi in the registry on 22.08.2022. Further, she relied upon report of local commissioner pertaining to adjoining plot no. JC-1/9 appointed by this Authority in complaint no. 713/2021 titled as "Ashu Gupta vs TDI Infrastructure Ltd" decided on 05.08.2022 by allowing refund in favour of complainant observing that offer of possession made by respondent is not a valid offer of possession in terms of principles laid down in complaint no. 903/2019- Sandeep Goyal vs Omaxe Ltd.

C. RELIEFS SOUGHT

6. Complainant in his complaint has sought following reliefs:
- a. Direct the respondent for an immediate 100% refund of the total amount of Rs 48,45,459/- paid by the complainant, alongwith a interest of 21% per annum from the date of receipt of payments made to the opposite party till the date of refund.
 - b. Direct the respondent to pay damages for mental agony and legal expenses suffered by the complainant.
 - c. Grant any other relief in favor of the complainant as the Hon'ble Authority may deem fit under the facts and circumstances of the case.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 17.05.2023 pleading therein, as under:

7. That due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely-TDI City, Commercial plots at Kundli, Sonipat, Haryana. Part completion certificates for the said project-927 acres approx. with respect to the township have already been received on 23.01.2008, 18.11.2013 and 22.09.2017.
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. 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.
9. 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 her 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.

10. That complainant herein is an investor and 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.
11. That complainant has already been offered possession back in the year 2017, vide letter dated 19.04.2017, however it is the complainant who is not coming forward to take over the same.
12. 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

13. 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 15 years. He admitted that offer of unit was made by respondent on 19.04.2017, however said offer was not acceptable to complainant because of lack of basic facilities at project site. Complainant is not interested in having possession of plot after this much delay and is therefore interested in seeking refund only. Further, he clarified that paid amount be taken as



Rs 43,33,776/-Learned counsel for the respondent reiterated arguments as were submitted in written statement. He further stated that valid offer of possession was made to complainant in year 2017 but he did not come forward to accept it. Further, he stated that alternate plot can be offered to complainant. To this, ld. counsel for complainant denied by stating that complainant does not want to have possession of plot.

F. ISSUES FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

15. 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 21.09.2006 when the original allottee(endorsed in favour of complainant) was allotted plot no. JC-1/8, 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:-

“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 respondent in its reply has contended that the complainant is “speculative buyer” who has invested the money 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;

(iii) In view of the above-mentioned definition of "allottee" as well as upon careful perusal of allotment letter dated 21.09.2006, it is clear that complainant is an "allottee" as plot bearing no. JC-1/8 in the real estate project "TDI, City, Kundli", Sonipat was allotted to them 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.

(iv) Admittedly, complainant in this case had purchased the booking rights qua the plot in question in the project of the respondent in the year 2010 (vide endorsement from original allottee on 11.06.2010) for a total sale consideration of ₹ 43,86,000/- against which an amount of ₹ 43,33,776/- has been paid by the complainant. Out of said paid amount, last payment of Rs 5,30,400/- was made to respondent on 04.06.2010 by the complainant which implies that respondent is in receipt of total paid amount since year 2010, whereas fact remains that offer of possession of the booked plot was made on 19.04.2017, i.e. after delay of 7 years from receipt of last paid amount. No explanation of any sort has been provided by respondent for said delay.

(v) In the written statement submitted by the respondent, it has been admitted that possession of the commercial plot was made to complainant on 19.04.2017. Said offer was not accepted by the complainant for the reason that it was delayed for around 8 years and at that time also project was still lacking basic infrastructure facilities like road, sewage, electricity connections etc. In order to seek refund, complainant approached Consumer Forum by filing complaint no. 321/2015 initially for possession of unit and in



alternative, refund of paid amount with interest. As is evident from the affidavit filed by complainant in the registry on 22.08.2022, the complainant has withdrawn the complaint pending before Consumer Forum in order to have present complaint adjudicated by this Authority. Perusal of file alongwith relevant documents reveals that it is the stand of complainant that development works have not been carried out by respondent at the site so the offer dated 19.04.2017 for plot in question was not a valid offer of possession and respondent is not in a position to provide physical possession of plot as project still lacks basic infrastructural facilities. In support, he relied upon report of local commissioner pertaining to adjoining plot, i.e., JC-1/9 which was relied upon to award refund in complaint no. 713/2021. It is pertinent to mention here that respondent has not filed any submissions in rebuttal of it and not even disclosed in its reply as to under which part completion certificate plot of complainant is located. No explanation of any sort has been provided by respondent for causing delay in offering the possession to complainant. Respondent has not attached any documentary evidence to support the fact that development works at the project site stands completed. In these circumstances, it raises doubt towards the validity of offer of possession dated

A handwritten signature in blue ink, consisting of stylized initials and a horizontal line underneath.

19.04.2017 and complainant cannot be held liable for not accepting the said offer of possession.

(vi) Authority observes that the plot in question was booked in the year 2006 by the original allottee. Allotment letter dated 21.09.2006 was issued in favour of original allottee. Thereafter, allotment rights of the unit were purchased by complainant on 11.06.2010. However, no builder buyer agreement got executed between the complainant/original allottee 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 2006 and allotment letter was issued on 21.09.2006 by the respondent which was further endorsed in favour of complainant on 11.06.2010, accordingly, taking a period of 3 years from the date of allotment,



i.e, 21.09.2006 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 21.09.2009.

(vii) In present situation, respondent failed to honour its contractual obligations of offering possession within stipulated time without any reasonable justification. Thereafter, vide letter dated 19.04.2017 respondent had offered the possession to complainant but complainant did not accept the same due to non-completion of development work at site and there was huge delay of around 8 years. Complainant could not have accepted such a deficient proposition from the respondent considering the intentional default on the part of respondent towards delay in making the offer of possession without even completing development works at site. Respondent in its written statement has not attached any documentary evidence to prove the fact that development works are lying complete at project site and complainant can peacefully enjoy the physical possession of plot. On the other hand, complainant has unequivocally stated in her complaint that she is interested in seeking refund of the paid amount along with interest on account of inordinate delay caused in delivery of possession.



(viii) Further, Hon'ble Supreme Court in the matter of "***Pioneer Urban land and infrastrutre ltd vs Govindan Raghavan***" in Civil Appeal no. 12238 of 2018 decided on 02.04.2019 has stated that the allottee cannot be forced to accept possession even if it issued after two years of grace period. Para 9 of this judgement is reproduced below:

"9. We see no illegality in the Impugned Order dated 23.10.2018 passed by the National Commission. The Appellant – Builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the Respondent – Purchaser within the time stipulated in the Agreement, or within a reasonable time thereafter. The Respondent – Flat Purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the Agreement expired. During this period, the Respondent – Flat Purchaser had to service a loan that he had obtained for purchasing the flat, by paying Interest @10% to the Bank. In the meanwhile, the Respondent – Flat Purchaser also located an alternate property in Gurugram. In these circumstances, the 22 Respondent – Flat Purchaser was entitled to be granted the relief prayed for i.e. refund of the entire amount deposited by him with Interest."

(ix) Besides this, 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 discussed in aforesaid paragraphs and possession of the booked plot is not acceptable to complainant after delay of around 8 years. In these circumstances, Authority finds it to be fit case for allowing refund along with interest in favor of complainant in terms of provisions of Section 18 (1) (a) of RERA Act,2016.



(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. 02.09.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

(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 43,33,776/- 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 11.10% (9.10% + 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 11.10% till the date of this order and total amount works out to Rs 75,77,328/- as per detail given in the table below:

| Sr. No. | Principal Amount in ₹ | Date of payment | Interest Accrued till 02.09.2024 |
|---------|------------------------------|-----------------------------|----------------------------------|
| 1. | 5,00,000/- | 06.01.2006 | 10,36,253/- |
| 2. | 4,38,600/- | 19.04.2006 | 8,95,263/- |
| 3. | 4,38,600/- | 30.10.2007 | 8,20,702/- |
| 4. | 4,38,600/- | 06.05.2008 | 7,95,493/- |
| 5. | 1,73,200/- | 26.06.2008 | 3,11,448/- |
| 6. | 7,53,576/- | 06.05.2010 | 11,99,474/- |
| 7. | 15,91,200/- | 04.06.2010 | 25,18,695/- |
| 8. | Total=43,33,776/- | | Total= 75,77,328/- |
| 9.. | Total Payable to complainant | 43,33,776+75,77,328 = /- | 1,19,11,104/- |

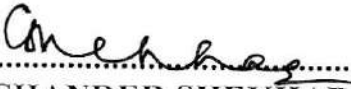
H. DIRECTIONS OF THE AUTHORITY

17. 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 paid amount of ₹43,33,776/- with interest of ₹75,77,328/- to the complainant. It is further clarified that respondent will remain liable to pay interest to the complainant 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.

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


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]