



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1482 of 2023
Date of filing:	17.07.2023
Date of first hearing:	23.08.2023
Date of Decision:	20.03.2024

M/s Jain Name Label Company

A Partnership Firm, through its Authorized Partner

Sh. Jagdish Kumar Jain

GF, A-67/4, Industrial Area, G.T. Karnal Road,
Azadpur, Delhi-110033.

....COMPLAINANT

VERSUS

M/s TDI Infrastructure Pvt. Ltd.

9, Kasturba Gandhi Marg, Connaught Place
New Delhi- 110001

....RESPONDENT

CORAM:

Dr. Geeta Rathee Singh
Mr. Chander Shekhar

Member
Member

Date of decision:

Present: Mr. Gaurav Gupta, Counsel for the complainant through VC.
Mr. Shubhnit Hans, Counsel for the respondent through VC.

Geeta Rathee

ORDER

1. Present complaint was filed on 17.07.2023 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 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	Kingsbury Apartments, TDI City, Kundli, Sonipat
2.	RERA registered/not Registered	Not registered.
3.	Unit no.	No particulars of 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.

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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.

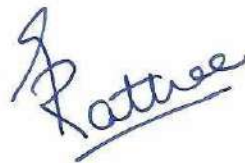
B. FACTS OF THE COMPLAINT AS STATED IN COMPLAINT

3. Facts of complaint are that complainant had booked a 2 BHK residential unit, measuring 1000-1100 sq. ft. approximately in the future project of the respondent by submitting an application form dated 24.02.2006 and deposited an amount of Rs.3,00,000/- as advance against "present and future projects" vide receipt dated 24.02.2006.
4. That after booking of the flat, respondent started raising demands from the complainant and served a demand letter dated 30.10.2006 for an amount of Rs.2,50,000/-. As evident from the contents of the said letter, the residential unit was agreed to be handed over at the rate of Rs.1650/- per sq. ft. excluding external development charges (as applicable) as per schedule of payments and it was also assured at the time of such demand that the complainant will be given priority at the time of allotment of the residential units to the allottees like complainant. In order to fulfill the demands of the respondent and to avail such offer of allotment on priority basis, the complainant accepted such offer and made a payment of Rs.2,50,000/- vide receipt dated 01.12.2006.
5. In this way, the complainant deposited a total amount of Rs.5,50,000/-

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towards the booking of residential unit measuring 1000-1100 sq. ft. in future project of the respondent.

6. That after receiving an amount of Rs.5,50,000/- towards the booking without any allotment, the respondent did not give any kind of update regarding any development and latest status of the upcoming project and about allotment and possession of the unit in such project. The complainant served letters dated 07.09.2007, 12.03.2008, 13.06.2008, 25.07.2008, 12.05.2009 but the respondent, despite receipt of each and every letter neither gave any update regarding any development and latest status of the upcoming project nor confirmed allotment of a flat in the name of the complainant. As such, the respondent left the booking of the complainant in dark for all these years and continued reaping monetary benefits out of the money deposited by the complainant.
7. That it was only after a gap of more than 5 years from the date of application that the respondent served a letter dated 07.07.2011 and offered allotment of a residential unit in Towers S/W, U4, U5, Y1, Y2, V1 and V2 in the Kingsbury apartments of TDI City, Kundli. After receiving the said letter, the complainant visited the site to know about the actual development at the site where these towers/ flats were situated, but the complainant was shocked to find out that the construction activity at the towers mentioned in the letter was not even commenced at the relevant point of time. The complainant immediately raised objection to


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the offer of allotment made by the respondent, to which the respondent has not paid any heed till date.

8. That from the perusal of the letter dated 07.07.2011, it is clearly visible that the respondent had already constructed and handed over possession of units situated in tower A of the Kingsbury Apartments but failed to allot any allotment in such tower despite promising allotment on priority basis vide letter dated 30.10.2006. The respondent, out of mala-fide and ulterior motives, made a bogus offer of allotment of residential flat in towers which were not even constructed despite receiving an amount of Rs.5,50,000/- towards the booking till 01.12.2006. Thus, respondent played fraud upon the complainant and enjoyed monetary benefits out of the hard-earned money deposited by the complainant without making any allotment of a residential flat in the name of complainant.
9. That despite being aware of the objection by complainant, the respondent did not pay any heed to make allotment of a residential unit in a better situated tower with better aspects and defeated the rights of the complainant and as such the respondent has not made any provisional/regular allotment of a residential flat in the project "Kingsbury Apartments" of TDI City in the name of the complainant till date.
10. That the project of the respondent was highly delayed along with the process of allotment of unit, execution of builder buyer agreement and handing over of actual physical possession of a residential unit to the



complainant. The complainant having applied for allotment of a residential unit vide application form dated 24.02.2006 was entitled for allotment of the same latest by 24.08.2006, i.e., within a period of six months from the date thereof.

11. That till date no allotment has been made and no offer of possession of the flat has been made by the respondent to the complainant and as such the complainant is awaiting to get actual physical possession of the flat from the last more than 17 years from the date of booking and 14 years from the date of deemed date of possession but the respondent has failed miserably to comply with its part of contractual as well as legal obligations and has committed breach of contract with the complainant.
12. That thereafter, in the year 2015, the complainant instituted a civil suit titled as "M/s Jain Name Label Company Vs. M/s TDI Infrastructure Ltd." before the Hon'ble District Judge, District Courts Rohini, Delhi against the respondent with the relief of issuance of directions to the respondent to handover peaceful possession of two bedroom flat in the TDI City Kundli as per Application Form dated 24.02.2006 along with other reliefs as mentioned in the plaint. However, upon application under the provisions of Order 7 Rule 10 of CPC, the Hon'ble District Judge, District Court Rohini, Delhi, vide its order dated 08.02.2023, without deciding the case on merits, returned the plaint of the plaintiff on the ground of lack of territorial jurisdiction and the complainant/ plaintiff was


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granted liberty to file afresh the same before the appropriate court having jurisdiction in the matter. Hence this complaint before this Hon'ble Authority.

C. RELIEF SOUGHT

13. Complainant in its complaint has sought following reliefs:

- i. The respondent be directed to deliver actual physical possession of a 2 BHK residential flat measuring 1000-1100 sq. ft. at the terms and conditions and at such rate agreed between the complainant and the respondent at the time of booking.
- ii. The complainant be granted interest at the rate provided in Section 18 of the Real Estate (Regulation and Development) Act, 2016 for delay in handing over of possession of the flat from the deemed date of possession till the date of actual physical possession.
- iii. Issuance of latest statement of account to the complainant reflecting remaining amount to be paid, if any.

OR

- iv. In the alternative, if the respondent is not in a position to hand over actual physical possession of a residential unit to the complainant, then the respondent be directed to refund the amount of Rs.5,50,000/- deposited towards the booking along with interest as per the provisions of RE(R&D) Act and Rules framed thereunder.
- v. Any other relief.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

14. Learned counsel for the respondent filed detailed reply on 28.11.2023 pleading therein:

(i) That due to the reputation of the respondent company, complainant had voluntarily invested in the project of the respondent namely 'Kingsbury Flats' at TDI City Kundli, Sonipat, Haryana.

(ii) That occupation certificates in respect of the project have been obtained by the respondent much before the commencement of the Real Estate Regulatory Act, 2016 and Haryana Rules thereof, and as such the project is a delivered project where the promoter has executed conveyance deed of majority of the allottees.

(iii) That the respondent has also received occupation certificate for the said project and the allottees have already been living in the said project i.e. 'Kingsbury Flats' at TDI City, Kundli, Sonapat, Haryana. Copy of the Occupation Certificates is annexed as Annexure-R1 (Colly).

(iv) The perusal of the above makes it clear that the said project does not fall under the purview of the provisions of the RERA Act as the occupation certificate has been received by the respondent for the said project much prior to the commencement of the RERA Act. Therefore, the present complaint is not maintainable as it falls outside the purview of the provisions of the RERA Act.

(v) That when respondent commenced the construction of the said project, the RERA Act, 2016 was not in existence, therefore, the present

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complaint is not maintainable and falls outside the purview of provisions of RERA Act.

(vi) The project in question is not registered with the Authority, therefore, complainant could not have approached the Authority for seeking reliefs stated in the complaint.

(vii) That complainant is an investor has accordingly invested in the project of the respondent for the sole reason of investing, earning profits and speculative gains, therefore, the complaint is therefore liable to be dismissed.

(viii) 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. The respondent had issued letter dated 17.01.2012 whereby reminder was given to the complainant to clear his outstanding dues for his provisional allotment of flat in the said project but it is the complainant who has not come forward for same to clear his dues in respect to the allotted unit. Copy of letter dated 17.01.2012 is annexed as Annexure R-3

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

15. During oral arguments, learned counsel for the complainant insisted



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:-

"41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an on going project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case."

Respondent has also 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 Parsynath 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 argument of Respondent Company. The application filed by respondent promoter is accordingly rejected."

Further 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

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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 24.02.2006, 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 "allotted" 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.

Furthermore, 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 Court 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

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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.

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.

18. As admitted by both parties, complainant in this case had paid book amount of Rs 3,00,000/- on 24.02.2006 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 01.12.2006 against customer ID-KFL-14605. Grievance of the complainant is that neither any allotment of specific unit was issued in favour of the complainant nor any builder buyer agreement was ever signed between the parties. Nonetheless respondent had illegally kept the money of the complainant till date.

19. Per contra, stand of the respondent is that a letter dated 07.07.2011 and thereafter a letter dated 17.01.2012 was issued to the complainant as a reminder to clear his outstanding dues for his provisional allotment but it is the complainant who has not come forward to clear its dues.

20. 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 01.12.2006. 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' and a letter dated 17.01.2012 in order to remind the complainant to clear his outstanding dues for his provisional allotment but complainant did not come forward. In respect of letter dated 07.07.2011, the complainant has specifically raised objection to the offer made through such letter due to the fact that construction activity at the towers mentioned in the letter had not even commenced at the relevant point of time and In respect of the impugned letter dated 17.01.2012, complainant's counsel has denied receipt of said letter by complainant-allottee. In this regard Authority observes that in order to substantiate its stance, respondent has annexed said letter dated 17.01.2012 as Annexure R-3 to reply along with 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 where an objection was raised by the complainant-allottee as above mentioned.

21. Authority further observes that the complainant served letters dated 07.09.2007, 12.03.2008, 13.06.2008, 25.07.2008 and 12.05.2009 regarding status of development at the project and allotment of a unit therein but the respondent remained silent during the entire period and



made no communication whatsoever. Money of the complainant amounting to Rs 5,50,000/- still lies with the respondent and respondent has been utilizing said money till date without taking any appropriate action. In such circumstances, when the complainant had not confirmed the allotment and raised objection for offer of allotment of unit vide letter dated 07.07.2011, 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 a 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.

22. Complainant after waiting for 8-9 years choose to file a civil suit in the year 2015 against respondent which plaint was returned on the ground of lack of territorial jurisdiction and a liberty was granted to file afresh the same before the appropriate court having jurisdiction in the matter vide order dated 08.02.2023 (Annexure-C10). Due to said civil suit, respondent must have gained knowledge about the transaction with complainant which did not get finalized towards allotment of any unit so at that time there was chance with respondent to make efforts to

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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.

23. The RERA Act, 2016 was enacted for safeguarding interest of consumers in real estate sector. In the present case, complainant has neither got refund nor allotment of unit 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. Authority observed that complainant/ allottee cannot be made to wait endlessly for allotment and possession of unit. Hence, Authority finds it to be fit case for allowing refund of paid amount along with interest at prescribed rate in favour of complainant. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.

24. 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;

25. 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".

26. 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. 20.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%.

27. 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 10.85% (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 calculated at the rate of 10.85% till the date of this order and total amount works out to **Rs.16,08,246/-** as per detail given in the table below:

Sr.No.	Principal Amount in (Rs.)	Date of payment	Interest Accrued till 20.03.2024 (Rs.)
1.	3,00,000	24.02.2006	5,88,575
2.	2,50,000	01.12.2006	4,69,671
	Total=5,50,000/-		Total= 10,58,246/-


G. DIRECTIONS OF THE AUTHORITY

28.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 **Rs.16,08,246/-** 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.



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


.....
CHANDER SHEKHAR
[MEMBER]


.....
Dr. GEETA RATHEE SINGH
[MEMBER]

