# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

| Complaint no.: | 1908 of 2023 |
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| Date of filing: | 18.09.2023 |
| Date of first hearing: | 18.10.2023 |
| Date of decision: | 02.09.2024 |

1. **Chander Panjwani (HUF)**
Through its Karta Chander Panjwani
S/o Sh. Kodamal Panjwani R/o D-21,
Rajan Babu Road, Adarsh Nagar,
North West Delhi – 110033

2. **Sunder Dass Panjwani S/o Sh. K.M Panjwani**
R/o D-21, Rajan Babu Road, Adarsh Nagar,
North West Delhi – 110033
2nd Address- C-15,Netaji Road, Adarsh Nagar,
North West Delhi – 110033

....COMPLAINANT(S)

VERSUS

**TDI Infrastructure Limited.through its Managing Director,**
Vandana Building, Upper Ground Floor
11, Tolstoy Marg, Connaught Place,
New Delhi- 110001
2nd Address- D-92, G/F, Lajat Nagar-I,
South Delhi, New Delhi ....RESPONDENT(S)

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

**Present: -** Mr. Arjun Kundra, Counsel for the complainants
Mr. Shubhnit Hans, Counsel for the respondent

**ORDER (NADIM AKHTAR – MEMBER)**

1. Present complaint has been filed by the complainants on 18.09.2023 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, 153-167 of 2004, |

| | | |
|---|---|---|
| | | 101-144 of 2005, 200-285 of 2005, 652-722 of 2006, 729-872 of 2006. |
| | Licensed Area | 927 acres |
| 5. | Unit no.(residential plot) | F-612 |
| 6. | Unit area | 500 Sq. yards |
| 7. | Date of allotment in favour of original allotee | 15.01.2006 |
| 8. | Date of endorsement in favour of complainant | 02.07.2008 |
| 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-3 at page no. 28 of complaint) | ₹ 34,43,075/- |
| 13. | Amount paid by complainants | ₹ 35,84,825/- |
| 14. | Offer of possession | No offer. |

## B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

3. Facts of the resent complaint are that original allotee, namely, Mrs. Jaishree Gupta had booked a plot in the future project of the respondent by paying Rs 1,00,000/- on 26.11.2005. Following which

plot no. F-612 having an area of 500 sq yards in the project 'TDI Ciy, Kundli, Sonipat' was allotted in favour of original allotee vide allotment letter dated 15.01.2006. Thereafter allotment rights of the said plot were purchased by the present complainants (second allotee) on 02.07.2008. However, no Builder Buyer Agreement (BBA) was executed for the plot in question.

4. That complainant no.1 is a HUF (Hindu Undivided Family), and is preferring the present complaint through his Karta, whereas, complainant no. 2 is residing at the same address. Further, complainants are the allottees of a residential plot in the respondent's project. It has been alleged by the complainants that complainants have requested the respondent several times for delivery of possession of plot and execution of plot buyer agreement but all their requests have fallen on deaf ears.

5. That the complainants have paid an amount of Rs. 35,84,825/- against the total sale consideration of Rs. 34,43,075/-. Copies of payment receipts & bank statement are annexed as Annexure C-3 (Colly). That the complainants have made all the payments on time. The respondent has miserably delayed the construction and development of the project. The possession of the residential plot has been due since 15.01.2009 but the respondent has failed in offering the possession till

date so the complainants are now entitled for the refund of paid amount along with interest.

## C. RELIEFS SOUGHT

6. Complainants in their present complaint have sought following reliefs:

   i. Direct the respondent to refund amount of Rs 35,84,825/- to the complainants, with prescribed rate of interest as per the RERA Act, from the date of respective payment of installments until the actual realization; and / OR

   ii. May pass any other order or orders as this Hon'ble Authority may deem fit under the facts and circumstances of the matter.

## D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 01.03.2024 pleading therein:

7. That due to the reputation of the respondent company, the complainants had voluntarily invested in the project of the respondent company namely-TDI City, Residential 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 complainants cannot approach Ld. Authority for adjudication of their 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 complainants herein are an investors 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 vide letter dated 22.05.2019, annexed as Annexure R-4 (correct date of letter is 15.11.2017) with reply, respondent had already offered an alternative plot to the complainants for the reason that actual plot booked by complainants could not be completed/constructed by the

respondent due to some unforeseen circumstances. It is the complainants who are 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 complainants have been well aware about the same.

## E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT

13. During oral arguments learned counsel for the complainants 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 alternative unit was made by respondent on 15.11.2017, however said offer was not acceptable to complainants. Complainants are not interested in alternate plot and are seeking refund only. They requested that relief of refund amount along with interest be awarded. Learned counsel for the respondent reiterated arguments as were submitted in the written statement. He further stated that alternate plots are not available with respondent for allotment to the complainants.

## F. ISSUES FOR ADJUDICATION

14. Whether the complainants are entitled to refund of amount deposited by them 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 the 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 15.01.2006, when the complainants were allotted plot no. F-612, 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 complainants are "speculative buyers", who have 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 they are 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 framed thereunder. In the present case, complainants are aggrieved persons who have filed the present 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 15.01.2006, it is clear that complainants are "allottee" as plot bearing no. F-612 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, complainants in this case had purchased the booking rights qua the plot in question in the project of the respondent in the year 2008 (vide endorsement from original allotee on 02.07.2008) for a total sale consideration of ₹ 34,43,075/- against which an amount of ₹ 35,84,425/- has been paid by the complainants. Out of said paid amount, last payment of Rs 2,18,125/- was made to respondent on 26.11.2009 by the complainants which implies that respondent is in receipt of total paid amount since year 2009, whereas fact remains that no offer of

possession of the booked plot has been made till date even after delay of 15 years from receipt of paid amount.

(v) In the written statement submitted by the respondent, it has been admitted that due to unforeseen circumstances, possession of the plot booked by the complainants could not be delivered and therefore, respondent vide latter dated 15.11.2017 had given an option to the complainants to take possession of an alternative unit in the same project which was ready for delivery of possession. However, as stated by the complainants, in said letter respondent had failed to mention any specifications in regard to the alternative plot in question thus raising doubts in the mind of complainants in regard to the genuineness of the offer and thus complainants chose not to accept to the offer of alternate plot.

(vi) Authority observes that the plot in question was booked in the year 2005 by the original allotee. Allotment letter dated 15.01.2006 was issued in favour of original allotee. Thereafter, allotment rights of the unit were purchased by complainants on 02.07.2008. But no builder buyer agreement was executed between the complainants/original allotee 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 allotee in the year 2005 and allotment letter was issued on 15.01.2006 by the respondent which was further endorsed in favour of complainant on 02.07.2008. Accordingly, taking a period of 3 years from the date of allotment, i.e, 15.01.2006 as a reasonable time to complete development works in the project and handover possession to the allottee-complainants, the deemed date of possession comes to 15.01.2009. As a matter of fact, complainants have stepped into shoes of original allotee before the deemed date of possession.

(vii) In present situation, respondent failed to honour its contractual obligations without any reasonable justification. Thereafter, vide letter dated 15.11.2017 (annexed as Annexure R-4) with the reply, respondent apprised the complainants that due to some unforeseen circumstances possession of the booked plot could not be offered without explaining as to what the

circumstances had been. Although respondent offered the complainants with an option for an alternative plot, the same could not be considered a genuine offer since respondent failed to provide any details of the alternative plot available for possession and the proper adjustment of the already paid amount along with the interest for delay caused in offering possession. Complainants could not have accepted such a deficient proposition from the respondent considering the intentional default on the part of respondent towards originally booked plot. Complainants have unequivocally stated in their complaint that they are 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 "***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.

(ix) This project did not get completed within the time stipulated as per agreement and possession of the booked plot is not possible due to some unforeseen circumstances as stated by respondent in his written statement. Possession of alternative unit is not possible as there is alternate plot available with respondent nor the offer of alternate plot is acceptable to complainants. In these circumstances, Authority finds it to be a fit case for allowing refund of the paid amount along with interest in favour of the complainants.

(x) 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;*

(xi) 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%.

(xii) 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 is liable to pay the amount deposited by the complainants alongwith interest from the date amounts were paid till the actual realization of the amount. Thus, Authority directs respondent to refund to the complainant the paid amount of Rs 35,84,825/- 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 1,01,83,483/-/- as per detail given in the table below:

| Sr. No. | Principal Amount in ₹ | Date of payment | Interest Accrued till 02.09.2024 |
|---|---|---|---|
| 1. | 1,00,000/- | 26.11.2005 | 2,08,498/- |
| 2. | 1,00,000/- | 31.01.2006 | 2,06,490/- |
| 3. | 98,750/- | 31.01.2006 | 2,03,909/- |
| 4. | 24,50,500/- | 24.01.2008 | 45,21,253/- |
| 5. | 2,96,250/- | 24.01.2008 | 5,46,591/- |
| 6. | 2,18,125/- | 26.11.2009 | 3,57,871/- |
| 7. | 2,18,125/- | 26.11.2009 | 3,57,871/- |
| 8. | 78,075/- | 24.01.2008 | 1,44,051/- |
| 9. | 25,000/- | 26.11.2005 | 52,124/- |
| 10 | Total=35,84,825/- | | Total= 65,98,658/- |

| 11. | Total Payable to complainant | 35,84,825 + 65,98,658 = 1,01,83,483/- | |
|---|---|---|---|

## H. DIRECTIONS OF THE AUTHORITY

17. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the RERA 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 ₹35,84,425/- with interest of ₹65,98,658/- to the complainants in equal share. It is further clarified that respondent will remain liable to pay interest to the 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.

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]