



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	3218 of 2022
Date of filing:	06.12.2022
Date of first hearing:	15.02.2023
Date of decision:	18.11.2024

Sh. Sanjeev Kumar Jindal,
S/o Sh. Jagdish Chand,
R/o H.No.213, Sector-15, Sonipat

....COMPLAINANT

VERSUS

TDI Infracorp (India) Limited
Private Limited Company, through its M.D/Chairman
Regd. Office: Upper Ground Floor, Vandana Building
11, Tolstoy Marg, Connaught Place,
New Delhi- 110001

....RESPONDENT

CORAM: Nadim Akhtar
Chander Shekhar

Member
Member

Present: - Mr. Gaurav Gupta, Counsel for the complainant through VC.
Mr. Shivdeep, proxy counsel for Mr. Ajay Ghangas, Arguing
Counsel for the respondent, through VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint was filed by the complainant on 06.12.2022 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	"Lake Drive Apartments", in TDI Lake Grove City, Kundli, Sonipat
2.	Unit no	T-14/601, 6 th floor
3.	Unit area	1000 sq. ft.
4.	Date of booking	16.09.2014
5.	Date of builder buyer agreement (executed with complainant)	Not executed
6.	Due date of offer of possession (30 months)	16.09.2017
7.	Possession clause in BBA	N.A
8.	Total sale price	₹ 36,50,000/-
9.	Amount paid by the complainant	₹ 39,34,077/-
10.	Offer of possession	Fit out offer of possession dated 29.12.2021 for unit T-12/0601
11.	Date of Occupation Certificate received	30.06.2023



B. FACTS OF THE COMPLAINT

3. Facts of the present complaint are that complainant booked a unit in the respondent's project, namely, "Lake Drive Apartments" at Kundli, Sonipat, Haryana by making the payment of Rs 2,50,000/- vide cheque dated 17.07.2014 against which receipt was issued by the respondent on 16.09.2014 for the purpose of residential unit with lake facing view in the above mentioned project of the respondent. Copy of receipt is attached as Annexure C-1.
4. That soon after the booking of the unit, complainant deposited an amount of Rs.5,50,000/- on 02.12.2014 as demanded by the respondent and respondent allotted an apartment/unit no.T-14/601 on 6th floor with "Lake Facing" view on the application form filled by the complainant. Copy of application form/registration form is attached as Annexure C-2. That as per the terms of registration form, basic sale price of the unit was fixed at Rs.36,50,000/- and apart of the same, payments under few heads were to be paid to the respondent, construction linked plan was opted by the complainant and apartment/unit was agreed to be provided as per the specifications mentioned in Annexure C of the registration form. However, no fixed date of possession of the unit was stipulated in the form.



5. That as and when any amount was demanded by the respondent, complainant made timely payments and this deposited a total amount of ₹39,34,077/- upto 19.03.2019. A copy of ledger is attached as Annexure C3.
6. That meanwhile, complainant enquired about the execution of the apartment buyer agreement, complainant was informed and assured by the respondent that there is no need for any separate agreement and unit will be delivered as per the terms agreed in the registration form. Further, whenever the complainant approached the respondent about handing over of the actual physical possession of the unit, complainant was informed that development is in full swing and possession will be handed over shortly.
7. That respondent offered "Fitout Possession" of the unit vide letter dated 29.12.2021 and raised additional demands of ₹13,42,530/- by way of Final Statement of Account dated 29.12.2021, under various heads without any justification and in an illegal manner. The complainant was shocked to find out that the respondent has unilaterally changed the booked unit of the complainant and allotted him a unit bearing no. T-12/0601 having super area of 1095 sq. ft and as such increased the area by 95 sq. ft. Complainant immediately contacted the respondent and requested for site visit to know about the location of the unit and was shocked to know that new unit is not lake facing rather an ordinary unit



as opposed to the unit assured and guaranteed at the time of registration. Copies of possession letter and final statement of account dated 29.12.2021 are attached as Annexure C-4 and C-5.

8. As far as fit out possession of the unit offered to the complainant is concerned, the same is not valid offer of possession and is not binding upon the complainant for the reason that till that date, no Occupation Certificate has been obtained by the respondent and therefore, said offer of possession is an invalid offer of possession. Furthermore, complainant is not desirous of taking possession of the unit not having lake facing view at any stage and wants originally booked unit, i.e., T-14/601 or any other similar unit with lake facing view and complainant wants to continue with the booking if actual possession of the unit with lake facing view can be delivered to him, but if same is not possible then the complainant does not want to continue with the booking and wants to withdraw from the project. Feeling aggrieved with the actions of respondent, present complaint has been filed by the complainant before this Authority.

C. RELIEFS SOUGHT

9. Complainant in his complaint has sought following reliefs:

(a) To give a finding to the effect that possession handed over to the complainant on 29.12.2021 was invalid and unlawful and a lawful offer of possession of the unit is yet to be made.



(b) The respondent may kindly be directed to make a valid and lawful offer of possession of the originally booked unit or alternate unit with the lake facing view after receipt of occupancy certificate from the concerned department.

(c) The respondent may kindly be directed to pay interest to the complainant on the amounts deposited by him calculated at the rate provided in Section 18 of the Real Estate (Regulation and Development) Act, 2016 from the deemed date of possession till the date of delivery of the actual physical possession of the unit complete in all respects;

Or alternatively when the possession of the originally booked unit or alternate unit with lake facing view cannot be handed over to him, then the respondent may kindly be directed to refund the amount deposited by the complainant, at the rate provided in Section 18 of the Real Estate (regulation and development)Act, 2016 to be calculated from the date of making payments till the date of actual realization to the complainant.

(d) Any other relief which this Hon'ble Authority may deem fit, may also be granted in the favour of the complainant and against the respondent.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

10. Learned counsel for the respondent filed a detailed reply on 31.10.2023 pleading therein:

- (i) That the complainant herein is an investor and not a consumer.
- (ii) That the provisions of the RERA Act, 2016 are prospective in nature and not retrospective.
- (iii) That complainant has deliberately failed to make timely payment of instalment as and when it became due or demand raised as per the agreed payment schedule. That complainant was not punctual in making timely payment of instalments and has made only part payment out of sale consideration of ₹53,10,453/-. Also, interest of Rs.2,69,459/- is chargeable on account of delay. The outstanding amount of Rs.16,11,989/- is also pending on part of complainant, but the complainant has not come forward to make the payment. Copy of the occupation certificate received on 30.06.2023 is annexed as Annexure R1.
- (iv) That the respondent had made huge investments in obtaining approvals and carrying on the construction and development of the project. Despite several adversities respondent had completed the construction of the project and offered fit out possession of the unit to the complainant on 29.12.2021 alongwith statement of account of the complainant. It is known to everyone that due to



COVID-19 pandemic, lockdown was imposed and labour left to native place and after lockdown due to non availability of the labour it was very difficult to resume the construction activity despite that opposite party resumed the construction activity and offered the possession to the complainant after completing the construction work.

- (v) That the agreement was entered between the parties on 10.04.2017. Initially at the time of booking, the unit no. T-14/601 was offered to the complainant, however, at the time of allotment on 29.06.2015, the unit no.T12/601 was allotted to the complainant, which is also lake facing and so there is no difference in location. In the allotment letter dated 29.06.2015, the unit no.T12/601 is duly mentioned and the complainant happily accepted the same and no objection of any kind was raised by him at any point of time. It is totally incorrect that the unit was changed by the respondent to T12/601 on 29.12.2021.
- (vi) Without prejudice to the fact that there is no delay on the part of the respondent in fulfilling its obligations under the agreement executed between the parties.



**E. ARGUMENTS OF LEARNED COUNSELS FOR COMPLAINANT
AND RESPONDENT**

11. During oral arguments learned counsel for the complainant informed that vide order dated 24.04.2024, respondent was directed to file details of available inventory which are similarly situated as of original unit of complainant and also, complainant can contact respondent for site visit of unit, if any chosen out of available inventory. Ld. counsel for complainant stated that respondent has neither provided details of available inventory nor contacted complainant for any other alternative lake facing unit despite the fact that respondent was burdened with exemplary cost of Rs 1,00,000/- payable to Authority. Further, complainant had placed on record photographs of both the units vide application dated 26.10.2023, which clearly depicts that complainant was allotted unit no. T-14/601 with a lake facing view but unit was arbitrarily changed by respondent to unit no. T-12/601 which is not lake facing. Therefore, by referring to the reliefs clause, counsel for complainant requested the Authority to allow the refund of paid amount alongwith with interest on basis of matter on record. No arguments were put forth by the respondent counsel.

F. ISSUES FOR ADJUDICATION

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



G.OBSERVATIONS AND DECISION OF THE AUTHORITY

13.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 respect to the objection raised by the respondent that complainant herein is an investor, it is observed that the complainant herein is the allottee/homebuyer who has made a substantial investment from his hard earned savings under the belief that the promoter/real estate developer will handover possession of the booked unit in terms of the application form dated 16.09.2014 but his bonafide belief stood shaken when the promoter failed to handover possession of the booked unit till date without any reasonable cause. Therefore, 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 unit in the project of respondent by the respondent/promoter itself and said fact is duly revealed in application form and fit out offer of possession. 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 to dismiss the complaint on the ground that complainant herein is investor does not hold merit and same is rejected.

(ii) Respondent in its reply has raised an objection that the provisions of RERA Act, 2016 cannot be applied retrospectively. Reference can be made to the case titled **M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc.** (supra), wherein the Hon Apex Court has held as under:-

“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 ongoing 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.

45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest.”



“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 ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016.”

The provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the Rules



applicable to the acts or transactions, which were in the process of the completion though the contract/ agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

(iii) Admittedly, complainant applied for the unit in the project of the respondent namely; "Lake Drive Apartments" at Kundli, Sonipat, Haryana by making the payment of Rs.2,50,000/- vide cheque dated 17.07.2014 against which receipt was issued on 16.09.2014. In consonance of registration form, respondent allotted unit no.T-14/601 with lake facing view to the complainant for a total sale consideration of ₹36,50,000/- against which an amount of ₹39,34,077/- has been paid by the complainant. Thereafter, complainant was issued "Fitout Possession" of the unit no.T-12/601 vide letter dated 29.12.2021 and raised additional demands of ₹13,42,530/- by the way of Final Statement of Account dated 29.12.2021. Allegation of the complainant is this regard is that respondent has unilaterally changed the booked unit, from T-14/601 to unit bearing no. T-12/0601 having super area of 1095 sq. ft. Contention of the respondent in its reply is that unit



no.T-12/601 was allotted to the complainant vide allotment letter dated 29.06.2015 and builder buyer agreement was executed between the parties w.r.t said unit on 10.04.2017. Further, complainant has not raised any objection with respect to allotment of unit no. T-12/0601 to the complainant and both the units are same and lake facing. In this regard, Authority observes that in registration form and booking receipt dated 16.09.2014 issued by the respondent which are annexed as Annexure- C-1 and C-2 clearly depicts that respondent had allotted unit no.T-14/601 having lake facing view to the complainant. Thereafter respondent issued fit out offer of possession with respect to unit no.T-12/601 to the complainant. That means there is change of unit by the respondent and contention of the respondent that complainant did not raise any objection with respect to change of unit after issuing allotment letter dated 29.06.2015 and builder buyer agreement dated 10.04.2017 does not hold good. In fact respondent has not attached any documents either allotment letter or BBA to substantiate that complainant agreed for change of unit from T-14/601 to T-12/601. Moreover, complainant clearly in its pleadings and also during the course of arguments stated that complainant is only in favour of accepting possession of the original unit or if possible any alternate unit with lake facing view. In this regard, Authority also vide its orders dated 29.04.2024 and 12.08.2024, gave opportunities to

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the respondent to offer complainant either the original unit allotted to the complainant or some similarly situated unit to the complainant. Despite giving opportunities and imposition of cost by the Authority, respondent failed to provide details of available inventory and also failed to contact the complainant for site visit for any other alternate unit with lake facing view. Now, ld. counsel for complainant during the course of arguments by referring to the relief clause unequivocally submitted that as respondent failed to fulfil its contractual obligations and also directions of the Hon'ble Authority, therefore, complainant is now pressing for relief of refund along with interest.

(iv) In view of these circumstances, Authority observes that the unit in question was allotted to complainant by way of booking form/registration form as no allotment letter and builder buyer agreement is executed between the parties. In absence of any specific time line to handover the possession of the unit to the complainant, reference can be made to M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr 2018 STPL 4215 SC wherein Hon'ble Apex Court has observed that period of 3 years is reasonable time of completion of construction work and delivery of possession. In present complaint, booking receipt/registration form dated 16.09.2014, accordingly, taking a period of 3 years from 16.09.2014, the deemed date of possession comes to 16.09.2017. Despite making substantial



payment towards booking of unit complainant has sought relief of refund of paid amount for the reason that respondent has not offered/deliver a valid possession of the original unit or alternate unit-similarly situated to the original unit.

Respondent has pleaded that force majeure factors like Covid-19 and lockdowns imposed in order to curb it, delayed the construction work. Fact remains that deemed date of possession of floor is in year 2017 whereas the pandemic affected the nation in year 2020. Any activity/lockdowns imposed/initiated post the deemed date of possession cannot be considered towards causing delay. 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 he is interested in seeking refund of the paid amount along with interest on account of inordinate delay caused in delivery of possession.

(v) When an allottee becomes a part of the project it is with hopes that he will be able to enjoy the fruits of his hard earned money in terms of a safety and security of his own home. However, in this case due to peculiar circumstances complainant has not been able to enjoy the fruits of his investment capital as the possession of the unit in question is shrouded by a veil of uncertainty. Complainant had invested a huge amount of about ₹39.34 lakh with the respondent by the year 2019 to



gain possession of a residential unit. Since respondent is not in a position to offer a valid offer of possession in foreseeable future, complainant who has already waited for more than 10 years does not wish to wait for a further uncertain amount of time or a valid possession. Complainant is at liberty to exercise his rights to withdraw from the project on account of default on the part of respondent to deliver possession and seek refund of the paid amount.

(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. The complainant wishes to withdraw from the project of the respondent, therefore, Authority finds it to be fit case for allowing refund in favour of complainant.

(vii) 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;



14. 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. 18.11.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

15. Rule 15 of IRRERA 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. In these circumstances the complainant cannot be kept waiting endlessly for possession of the unit. Therefore, Authority finds it to be fit case for allowing refund of the deposited along with interest in favour of complainant. Thus, respondent will be liable to pay the interest to the complainant from the date amounts were paid till the actual realization of the amount. Authority directs the respondent to refund the paid amount of Rs.39,34,077/- along with interest to the complainant 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 at the rate of 11.10% till the date of this order and total amount of interest works out to ₹73,23,250/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 18.11.2024 in ₹
1.	2,50,000/-	16.09.2014	282594/-
2.	5,50,000/-	02.12.2014	608827/-
3.	3,28,838/-	21.05.2015	347010/-
4.	3,77,776/-	13.08.2015	389002/-
5.	1,89,116/-	07.04.2016	181048/-
6.	5,32,000/-	20.10.2017	418541/-
7.	5,45,747/-	05.02.2018	411432/-
8.	60,600/-	19.02.2018	45428/-
9.	10,00,000/-	07.02.2019	642279/-
10.	1,00,000/-	19.03.2019	63012/-
	Total= 39,34,077/-		Total= 33,89,173/-
Total amount payable to the complainant = 39,34,077/- +33,89,173/- = ₹73,23,250/-			




H. DIRECTIONS OF THE AUTHORITY

17. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the RERA, Act of 2016 to ensure compliance of obligation cast upon the promoters 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 ₹39,34,077/- with interest of ₹33,89,173/-. It is further clarified that respondent will remain liable to pay interest to the complainant till the actual realization of the amount. Further, respondent is directed to pay exemplary cost of 1,00,000/- payable to the Authority which was imposed vide this Authority order dated 12.08.2024.
- (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 against the respondent.

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]