



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>1588 of 2024</b>
<b>Date of filing:</b>	<b>14.10.2024</b>
<b>First date of hearing:</b>	<b>18.11.2024</b>
<b>Date of decision:</b>	<b>18.11.2024</b>

Mrs. Sonu Jain  
W/o Sh. Deepak Kumar Jain  
R/o KP-58, Pitampura  
Delhi- 110034

.....COMPLAINANT

Versus

**TDI Infrastructure Limited**  
2<sup>nd</sup> floor, Mahindra Tower, 2A, Bhikaji Cama Place,  
New Delhi-110066

....RESPONDENT

**CORAM: Nadim Akhtar**

**Member**

**Chander Shekhar**

**Member**

**Present: -** Adv. Karan Dang, Counsel for complainant through VC.

Adv. Arjun, Proxy Counsel for Adv. Shubnit Hans, Counsel for the  
respondent through VC.

**ORDER (NADIM AKHTAR - MEMBER)**

1. Present complaint has been filed on 14.10.2024 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 there under, 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 & location of project scheme	"TDI City-Kundli"
2.	RERA registered/not registered	Un- registered
3.	Plot no.	B-B 31/39
4.	Plot area	224.44 sq. yds as per conveyance deed dated 19.11.2007. 180 sq. yds



		physically available at site.
5.	Date of booking	17.01.2005
6.	Date of Allotment Letter	18.06.2005
7.	Basic/Total Sale Price	₹9,28,059.4/-
8.	Amount paid by complainant	₹10,01,115/-
9.	Conveyance Deed	19.11.2007

**B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT**

3. In the year 2004, original allottee namely, Mr. Hari Dutt Garg made an advance towards registration of plot in the future township-TDI City, Kundli, of respondent by paying Rs 2,70,000/- on 24.12.2004. Thereafter, allotment letter was issued for plot no. B-B 31/39, 250 sq. yds on 15.06.2005. Copy of allotment letter is annexed as Annexure P-4. In pursuance of it, plot buyer agreement was executed between original allottee and respondent on 15.03.2007 for the plot in question with an area as 224.44 sq. yds.
4. That Mr. Hari Dutt Garg (original allottee) transferred all the rights in the plot in question in favour of his daughter-in-law and in pursuance of which transfer was accorded by respondent by duly issuing NOC in favour of complainant and endorsement to this effect is attached at page 63-A of complaint. (No date as to when allotment rights were transferred has been specified in complaint pleadings as well as in endorsement). Thereafter,



conveyance deed in respect of plot in question was executed in favour of complainant on 19.11.2007 for an area measuring 224 sq. yds. instead of 250 sq. yds.

5. That conveyance deed was registered on 19.11.2007 but intentionally the possession was offered on 30.01.2008 after receipt of part completion certificate on 23.01.2008. Complainant was duped and defrauded by respondent by means of registration of conveyance deed prior to the issuance of part completion certificate wherein the plot was found only 180 sq. yds instead of 224.44 sq. yds. When the complainant questioned the same, the respondent assured the complainant that the balance possession of the plot will be offered soon.
6. That instead of offering the balance physical possession of the plot in order to further revive the confidence of the complainant, the respondent entered into a construction agreement of the plot in question within area of 224.44 sq. yds on 11.09.2008. Further, respondent instead of starting the construction and offering the balance area of 44.44. sq. yds demanded the enhanced EDC for an area of 224.44 sq. yds of Rs 91,684/-, said demand was honoured by complainant on 31.07.2009.
7. That the respondent obtained another Part Completion Certificate of B block in 2013 alongwith other blocks of the plotted project, but could not offer the



possession of the balance area of the plot in question and deferred to purchase adjoining area to the plot in question without any specific date. Further, it has been alleged that the respondent changed and revised the LOP (layout plan) in 2014 of the project on 20.08.2014 vide drawing no. 4842/1, but area of the plot remains to 224.44 sq. yds just to gain and DTCP was not verifying the land ownership of the respondent.

8. That when the endless complaints were coming from the project's allottees in the year 2020, the DTCP got conducted physical inspection of the project in question and prepared a report alongwith marking on the LOP (layout plan) that plot area partially is in the custody of the farmers. Respondent even after visiting of team of DTCP on project on 16.12.2022 did not start any development work. Instead respondent made refund of first instalment received for construction of the plot in question in 2008 with the refund of Rs 1,17,500/- on 23.04.2023 without giving any assured rent or interest or on this delay in carrying out construction on plot.
9. That respondent issued the CMC (common maintenance charges) bill dated 01.04.2024 of Rs 1,83,549/- with arrears and including the current year demand of Rs 14,302/- for the plot in question and within an area of 224.44.sq. yds. @Rs 50 per sq. yds per month. Complainant under compelling circumstances had issued the notice through his advocate on



13.09.2024 which has been duly delivered to respondent but yet no reply from the respondent.

10. That the part completion certificate has not been obtained for an area of 44.44 sq. yds and has been reconfirmed by the DTCP on 05.01.2021 after the visiting of project site and confirmed as 44.44. sq yds land is not purchased and is in the custody of farmers till date, grossly making the unilateral agreement made on the basis of part completion certificate.

**C. RELIEF SOUGHT**

Complainant has sought following reliefs:

- a) Respondent be directed to offer complete possession of the plot for an area admeasuring 224 sq. yards. as mentioned in the conveyance deed dated 19.11.2017 (correct date is 19.11.2007) executed in the favor of the complainant.
- b) The Respondent be directed to purchase the remainder area of the plot in question, i.e, 44 sq. yards from respective owners since the complainant has already paid the cost towards the whole area of 224.44 sq. yards and without the remainder area of the plot in question is not in a position for physical occupation.
- c) The Respondent be directed to execute a fresh conveyance deed incorporated the complete area of the allotted plot i.e 224.44 sq yards in favor



of the Complainant at the cost of the Respondent Company, Refund of excess of Rs.67,040/ paid in excess to the respondent.

d) Respondent be directed to pay to interest on the amount paid by the complainant towards the cost of the plot from the date beyond the 3 years from the date of registration payment and until the physical possession is handed over. The delayed interest as per HRERA rules w.e.f. 01.01.2008 to till date @interest @10.95% amounting to Rs.18,21,575/ and will accrued till physical possession.

e) Respondent be directed to pay to interest on the amount paid by the complainant towards the cost of the plot from the date beyond the 3 years from the date of registration payment and until the physical possession is handed over. The delayed interest as per HRERA rules w.e.f 01.01.2008 to till date @interest @10.95% amounting to Rs.18,21,575/ and will accrued till physical possession.

f) Refund of interest @10.95% with the amount paid for the the 1st installment of Rs.1,17,500/ paid by complainant and which refunded to my client without any interest on 23.04.2023 interest work out to Rs.178,166/

g) Refund of the maintenance charges paid by complainant Rs 5170/- to the on 28.09.2011 alongwith HRERA @ 10.95% amounting to Rs 7350/- and total amount of Rs 12,520/- and will accrue till further realization.

- h) Delete the maintenance charges claim from complainant on 01.04.2024 Rs 1,83,549/- claimed from my client vide bill no. KP/PI/24-254556 dated 01.04.2024.
- i) Delete the construction extension penalty Rs 2,82,253.16 imposed without offering possession of the plot in question.
- j) Refund of the interest free maintenance security deposit Rs 20,000/- alongwith the club membership charges Rs 50,000/- and evident through the payment receipt issued on 12.01.2023 until plot is not offered.
- k) A forensic audit of the title of land bank of project which has not been developed and part of the layout plan yet.
- l) An alternative offer of the plot in lieu of the plot in question may be considered subject to the satisfaction of the complainant, when various allottees had left out the project and their plot/plots has been forfeited by the respondent or from the developed or out of the undeveloped land in the custody of the respondent.
- m) To register the aforesaid project with the RERA Authority being a ongoing project and to complete the project which is kept pending for completion since 2004-2006.
- n) The learned Authority may pass any other order which it may deems fit.





**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

11. As per office record, a notice dated 16.10.2024 was issued to the respondent for filing reply. Same got delivered successfully on 21.10.2024. Today is first hearing of the case. Respondent has not filed its reply till date.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT**

12. Adv. Karan Dang appeared on behalf of complainant and argued that respondent had got conveyance deed executed of plot in question for an area of 224.44 sq. yds but at time of constructing said plot, it was found that plot size is only 180 sq. yds. Despite repeated requests and various fake assurances, respondent did not deliver possession of plot of size 224.44 sq. yds as mentioned in conveyance deed dated 19.11.2007. In lieu of issue in area, complainant as well as other allottees came to know that respondent did not acquire complete land, some portion of it is still in the hands of farmers. He requested that complaint be allowed and reliefs sought be awarded in favour of the complainant.

**F. ISSUES FOR ADJUDICATION**

13. Whether complaint is maintainable after the delay of 16 years from cause of action or not?

14. Whether complainant is entitled to the reliefs sought or not?



**G. OBSERVATIONS AND DECISION OF THE AUTHORITY**

15. The first issue to be adjudicated by the Authority is whether the complaint is maintainable as on date, being filed after 16 years from the date of cause of action, i.e. execution of Conveyance Deed on 19.11.2007 and execution of construction agreement 11.11.2008?
16. Authority observes that allotment of plot no. B-B 31/39 having area of 250 sq. yds was made by respondent in favour of original allottee vide allotment letter dated 18.06.2005. Following which builder buyer agreement was executed between the original allottee and respondent on 15.03.2007 for the same plot B-B 31/39 having an area of 224.44 sq. yds. Thereafter, complainant stepped into shoes of original allottee, endorsement to said effect has been attached at page no. 63-A of complaint. However, no date as to when allotment rights were transferred has been specified in complaint pleadings as well as in endorsement. But series of events like execution of agreement on 15.03.2007 and execution of conveyance deed on 19.11.2007, establishes the fact that endorsement must have been made in year 2007 only, that too between the month of March to November, 2007. In furtherance of it, conveyance deed in respect of plot in question with area of 224.44. sq yds was executed in favour of complainant on 19.11.2007. Besides this, complainant was issued 'Possession letter' by the respondent on 30.01.2008. It is pertinent to refer the



content of said letter- 'It gives us immense pleasure to handover the possession of Plot no. B-B 31/39 measuring 224.44 sq. yds to Mrs. Sonu Jain, S/o W/o D/o Mr. Deepak Kumar Jain, R/o KP-58, Pitampura, Delhi. We once again extend our sincere thanks to you for the trust endowed upon us and request you to support us with your continuous patronage. We promise you to serve the best. POSSESSION TAKEN '. Said letter has been signed by complainant on 30.01.2008. Thereafter, construction agreement was executed between the complainant and respondent on 11.11.2008 for carrying out the construction on plot in question by TDI for a total sum of Rs 7,20,000/-. Till stage of execution of construction agreement with respondent, no problem/grievance has been raised by complainant. In year 2012, complainant had written a letter to respondent with 'Subject-Apna ghar banao 2008 yojna'- Contents are-'As per your above scheme, I made an arrangement with your goodself in Sept,2008 for the construction of my house on plot no. B-31/39 at TDI Kundli. Several request was made for an early construction/completion of the same but only plinth level work was carried out earlier. I was told that the same will be completed soon at the availability of contractor/labour at the site. It is mentioned that I shall not be responsible for any extra expenses/payment for the lapses. It is also brought to your kind notice that there is a big electricity pillar in front of my house. The same may kindly be removed and installed at



*any other suitable place.* Vide said letter, complainant had raised issue only with respect to construction activities at plot and electricity pillar existing in front of his plot. No letter/objection in writing has been issued by complainant to respondent in respect of difference in area of plot, i.e. actual area is 180 sq. yds instead of 224.44. sq. yds till September, 2024 (Date of legal notice). Complainant duly accepted each and every terms and conditions, made payment for purchase of plot (first payment on 24.12.2004 to last payment on 31.07.2009) and even for construction on plot. There is no document on record to prove that complainant made any effort to pursue his issue with respect to difference in area, i.e., 180 sq. yds, not 224.44 sq. yds as provided in conveyance deed. During all these years ranging from 2007-2024 (before September,2024), before filing of this complaint on 14.10.2024, complainant had sent a legal notice dated 13.09.2024 raising all the issues stated in the complaint. Complainant very diligently got executed conveyance deed on 19.11.2007 and further got construction agreement executed on 11.11.2008. There is no explanation provided by complainant as to why she was silent till date over the issues raised today and why did she chose to file complaint after sleeping over her rights for good number of around 16 years.

17. Now, present complaint has been filed by the complainant on 14.10.2024 after 16 years from construction agreement, indicating a significant delay of nearly

15-16 years between the respondent's communication and the initiation of legal action. This long delay raises questions about the complainant's diligence in pursuing her claim. The delay could be viewed as a failure on the complainant's part to act within a reasonable time, as expected in such legal matters. Moreover, due to delay in taking action, respondent may have reasonably assumed that the complainant accepted the possession of plot on '**as is where basis**', i.e. area of 180 sq. yds after such a long period without any objection or legal action. This long gap between the cause of action and the complaint filing can lead to dismissal based on the doctrine of laches, which prevents individuals from asserting claims after unreasonably delaying action without just cause. Authority concludes that the lack of timely action by the complainant shows a failure to protect her own interests, and this prolonged delay significantly undermines the credibility and viability of her claim. In support, reliance is placed upon judgement dated 18.04.2024 passed by Hon'ble Apex Court in Civil Appeal nos. 5027 of 2024 (@ Special leave Petition (civil) no. 30152 of 2018) Mrinmoy Maity versus Chhanda Koley and others. Relevant part of the judgement is reproduced below for reference:-

*"9. Having heard rival contentions raised and on perusal of the facts obtained in the present case, we are of the considered view that writ petitioner ought to have been non-suited or in other words writ petition ought to have been dismissed on the ground of delay and laches itself. An applicant who*



approaches the court belatedly or in other words sleeps over his rights for a considerable period of time, wakes up from his deep slumber ought not to be granted the extraordinary relief by the writ courts. This Court time and again has held that delay defeats equity. Delay or laches is one of the factors which should be born in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. In a given case, the High Court may refuse to invoke its extraordinary powers if laxity on the part of the applicant to assert his right has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action.

10. The discretion to be exercised would be with care and caution. If the delay which has occasioned in approaching the writ court is explained which would appeal to the conscience of the court, in such circumstances it cannot be gainsaid by the contesting party that for all times to come the delay is not to be condoned. There may be myriad circumstances which gives rise to the invoking of the extraordinary jurisdiction and it all depends on facts and circumstances of each case, same cannot be described in a straight jacket formula with mathematical precision. The ultimate discretion to be exercised by the writ court depends upon the facts that it has to travel or the terrain in which the facts have travelled.

11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and laches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and laches, the High Court



ought to dismiss the petition on that sole ground itself, in as much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and laches on the part of the applicant in approaching a writ court. This Court in the case of *Tridip Kumar Dingal and others v. State of W.B and others.*, (2009) 1 SCC 768 has held to the following effect:

"56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhumed matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime (vide *State of M.P. v. Bhailal Bhai* [AIR 1964 SC 1006 : (1964) 6 SCR 261], *Moon Mills Ltd. v. Industrial Court* [AIR 1967 SC 1450] and *Bhoop Singh v. Union of India* [(1992) 3 SCC 136 : (1992) 21 ATC 675 : (1992) 2 SCR 969]). This principle applies even in case of an infringement of fundamental right (vide *Tilokchand Motichand v. H.B. Munshi* [(1969) 1 SCC 110], *Durga Prashad v. Chief Controller of Imports & Exports* [(1969) 1 SCC 185] and *Rabindranath Bose v. Union of India* [(1970) 1 SCC 84]).

58. There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose."

12. It is apposite to take note of the dicta laid down by this Court in *Karnataka Power Corporation Ltd. and another v. K. Thangappan and another*, (2006) 4 SCC 322 whereunder it has been held that the High Court may refuse to exercise extraordinary jurisdiction if there is negligence or omissions on the part of the applicant to assert his right. It has been further held thereunder:

"6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in *Durga Prasad v. Chief Controller of Imports and Exports* [(1969) 1 SCC 185 : AIR 1970 SC 769]. Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in *Lindsay Petroleum Co. v. Prosper Armstrong Hurd* [(1874) 5 PC 221 : 22 WR 492] (PC at p. 239) was approved by this Court in *Moon Mills Ltd. v. M.R. Meher* [AIR 1967 SC 1450] and *Maharashtra SRTC v. Shri Balwant Regular Motor Service* [(1969) 1 SCR 808 : AIR 1969 SC 329]. Sir Barnes had stated: "Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be





reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy."

8. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in *Rabindranath Bose v. Union of India* [(1970) 1 SCC 84 : AIR 1970 SC 470] that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.

9. It was stated in *State of M.P. v. Nandlal Jaiswal* [(1986) 4 SCC 566 : AIR 1987 SC 251] that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is



*invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."*

13. *Reiterating the aspect of delay and laches would disentitle the discretionary relief being granted, this Court in the case of Chennai Metropolitan Water Supply & Sewerage Board and others v. T.T. Murali Babu, (2014) 4 SCC 108 has held:*


*"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis."*

18. Thus, consequent upon the considerable consideration, the Authority is constrained to conclude that the present complaint is nothing but an ill-advised luxurious litigation and a classic example of litigation to enrich oneself at the cost of another and to waste the precious time of this Authority. The Real

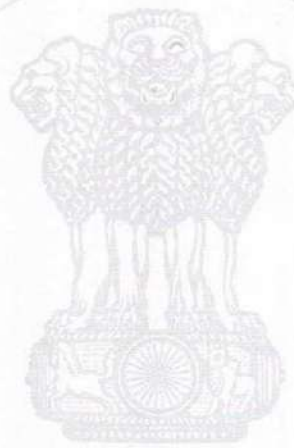


Estate (Regulation and Development) Act 2016 is a beneficial/ social legislation enacted by the Parliament to put a check on the malpractices prevailing in the real estate sectors and to address the grievances of the allottees who have suffered due to the dominant position of the promoter (s).

19. In view of above-mentioned terms, Authority concludes that present complaint filed by the complainant is hereby dismissed for the reasons stated in the aforesaid paragraphs. **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]



सत्यमेव जयते