



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2598 of 2023
Date of filing:	04.12.2023
Date of first hearing:	05.02.2024
Date of decision:	21.10.2024

Smt. Sakshi, D/o Sh. Ranbir Singh,
Flat no.2, Neelgiri Apartment, Sector-9,
Rohini, New Delhi-110085

....COMPLAINANT

VERSUS

M/s TDI Infracorp (India) Limited.
Vandana Building, Upper Ground Floor
Tolstoy Marg,11, Connaught Place,
New Delhi- 110001

....RESPONDENT

Complaint no.:	2599 of 2023
Date of filing:	04.12.2023
Date of first hearing:	05.02.2024
Date of decision:	21.10.2024

Smt. Sushma Malik, D/o Sh. Ranbir Singh,
Flat no.116, Prashant Vihar, Sector-14,
Rohini, New Delhi-110085

....COMPLAINANT

VERSUS

M/s TDI Infracorp (India) Limited.
Vandana Building, Upper Ground Floor
Tolstoy Marg,11, Connaught Place,
New Delhi- 110001

....RESPONDENT

**CORAM: Nadim Akhtar
Chander Shekhar**

**Member
Member**

Present: - Mr. Vikasdeep, Counsel for the complainant (in both complaints).
Mr. Ajay Ghangas, Counsel for the respondent (in both complaints)

ORDER (NADIM AKHTAR - MEMBER)

1. This order shall dispose off above two captioned complaints filed by the complainants before this Authority under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short RERA 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.
2. The core issues emanating from above captioned complaints are similar in nature and complaint no.2598 of 2023 is taken as lead complaint as in both the complaints complainants are allottees of the project namely; "Lake Side Heights in TDI Lake Grove City", Kundli, Sonipat ; being developed by the same respondent/ promoter, i.e., TDI Infracorp Ltd. The fulcrum of the issue involved in above captioned cases pertains to failure on the part of the respondent/promoter to deliver timely



possession of the unit in question and both the complainants are now seeking refund of their paid amount along with the interest, as per the provisions of RERA Act of 2016.

A. UNIT AND PROJECT RELATED DETAILS

3. 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:

Sr.n o.	Particulars	Details of complaint no.2598 of 2023	Details of complaint no.2599 of 2023
1.	Name of the project	Lake Side Heights in TDI Lake Grove City, Kundli, Sonipat	Lake Side Heights in TDI Lake Grove City, Kundli, Sonipat
2.	RERA registered/not registered	Registered with registration no. 43 of 2017 (lapsed project)	Registered with registration no. 43 of 2017 (lapsed project)
3.	Unit no	T-2/1301	T-2/1302
4.	Unit area	1560 sq. ft.	1560 sq. ft.
5.	Date of booking	03.08.2018(as per pleadings of the complainant)	08.08.2018(as per pleadings of the complainant)
6.	Date of execution of builder buyer agreement	30.08.2018	30.08.2018
7.	Due date of offer of possession	30.05.2022	30.05.2022
8.	Possession clause in BBA (Clause 10.02)	<i>The promoter assures to hand over possession of the Apartment on or before..... unless there is delay or failure due to 'force majeure', court orders, Government policy/guidelines, decisions affecting the regular</i>	<i>The promoter assures to hand over possession of the Apartment on or before..... unless there is delay or failure due to 'force majeure', court orders, Government policy/guidelines, decisions affecting the</i>

		<i>development of the Project. If, the completion of the Project is delayed due to the above mentioned conditions then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Apartment."</i>	<i>regular development of the Project. If, the completion of the Project is delayed due to the above mentioned conditions then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Apartment."</i>
9.	Total sale price	₹1,04,96,571/-	₹ 1,04,96,571/-
10.	Amount paid by complainant	₹50,15,507/- Complainant claims refund of an amount of Rs 57,97,319/- along with interest. However, as per order dated 01.07.2024, complainant was directed to clarify the paid amount as amount claimed did not match with the statement of account. In compliance of said order, complainant filed an application dated 16.07.2024 and clarified that complainant claims refund of an amount of ₹50,15,507/- alongwith interest and receipts are also attached with the application.	₹70,77,089/- Complainant claims refund of an amount of Rs 74,16,029/- along with interest. However, as per order dated 01.07.2024, complainant was directed to clarify the paid amount as amount claimed did not match with the statement of account. In compliance of said order, complainant filed an application dated 16.07.2024 and clarified that complainant claims refund of an amount of ₹70,77,089/- alongwith interest and receipts are also attached with the application.
11.	Offer of possession	Valid offer of possession not given.	Valid offer of possession not given.
12.	Occupation Certificate	Received as per the statement of ld. counsel for respondent, however, not placed on record.	Received as per the statement of ld. counsel for respondent, however, not placed on record.



B. BRIEF FACTS OF COMPLAINT NO.2598 OF 2022

4. Facts of the present complaint are that respondent invited applications for bookings of flats/unit of various sizes in the project namely; "Lake Side Heights" in TDI Lake Grove City, part of TDI City, Kundli, Sonipat with specific representation that project will be completed within 30 months from the date of booking. Accordingly, complainant booked unit no.T-2/1301, 3BHK admeasuring 2350 sq.ft by paying an amount of ₹11,00,000/- on 03.08.2018 against which receipt was issued on 18.08.2018. Thereafter, agreement for sale was executed between the parties on 30.08.2018 which is annexed as Annexure C/1 and complainant paid total amount of ₹50,15,507/- against the total sale consideration of ₹1,04,96,571/-. Copy of final statement of account dated 07.08.2023 is annexed as Annexure C/3.
5. That vide letter dated 07.08.2023, respondent on pretext of offer of possession, without obtaining occupation certificate, stipulated that area of the unit is increased from 2350 sq.ft to 2567.38 sq.ft and demanded payments on account of such alleged increased area and towards other various heads which were neither statutory nor agreed. Copy of letter is annexed as Annexure C/4.
6. That respondent failed to hand over the possession of the unit till date, also is not in position to offer possession of unit in future. Therefore,



complainant came before this Authority by filing the present complaint for seeking refund of the paid amount.

C. RELIEF SOUGHT

7. Complainant in his complaint has sought following relief:
- (a) The respondent may kindly be directed to refund the amount deposited, alongwith statutory interest, with cost of present complaint, in the interest of justice.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed reply on 27.03.2024 pleading therein:

8. That the complainant herein is an investor and not a consumer.
9. That the provisions of the RERA Act,2016 are prospective in nature and not retrospective.
10. That the complainant has merely alleged in the complaint about delay on part of the respondent in handing over of possession of the unit booked by the complainant. Whereas, respondent has been acting in consonance with the buyer's agreement duly executed between the complainant and the respondent and no contravention of the same can be projected on the respondent.
11. That the respondent had made huge investments in obtaining approvals and carrying on the construction and development of the project. Despite several adversities respondent has completed the construction of the



project and has offered fit out possession of the unit to the complainant on 07.04.2023.

12. That the complainant was not punctual in making timely payment of instalments and interest is chargeable on account of delay. The outstanding amount of unit is Rs 61,00,239/- but complainant has neither come forward to make payment of due amount and to accept possession of unit.

13. That delay in handing over the possession , if any have been caused due to reasons beyond the control of the respondent. Many factors including Covid pandemic, restriction of constructions activity in NCR region due to pollution and farmer agitation impacted the development of project as it resulted in stoppage of construction work for more than 2 years. Also, non-payment from customers like complainant as per agreed schedule despite repeated reminders has resulted on slowdown in progress f the project.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

14. During oral arguments learned counsel for the complainant reiterated the facts of complaint and insisted upon refund of ₹50,15,507/- with interest as mentioned in the application dated 16.07.2024, stating, that respondent has not yet obtained occupation certificate from the competent authority for the tower in which complainant's unit is located.



Learned counsel for the respondent reiterated arguments as were submitted in the written statement and further stated that respondent has received occupation certificate on 19.09.2024 but he needs time to file the same before the Authority.

F. ISSUES FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

16. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:

(i) With 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 her hard earned savings under the belief that the promoter/real estate developer will handover possession of the booked unit in terms of buyer's agreement dated 30.08.2018 but his bonafide belief stood shaken when the promoter failed to handover possession of the booked unit till date without any reasonable cause. At that stage, 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 builder buyer agreement dated 30.08.2018. 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, the unit in question was booked by the complainant on 03.08.2018. Thereafter, builder buyer agreement was executed between the complainant and respondent on 30.08.2018 for a total sale consideration of ₹1,04,96,571/- against which an amount of ₹50,15,507/- has been paid by the complainant. Out of said paid amount, last payment of ₹39,15,507/- was made to respondent on 31.08.2018 by the complainant which implies that respondent is in receipt of total paid amount since year 2018 whereas fact remains that no offer of possession of the booked unit has been made till date.

(iv) Authority observes that the unit in question was allotted to complainant by way of executing builder buyer agreement dated 30.08.2018 and in terms of clause 10.2 of builder buyer agreement, respondent has not made any specific time line to handover the possession of the unit to the complainant. In absence of specific timeline for deemed date of possession, 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, the unit was booked by the complainant in the year 2018 and builder buyer agreement was executed between complainant and respondent on 30.08.2018. Accordingly, taking a period of 3 years



from the date of agreement, i.e, 30.08.2018, the deemed date of possession comes to 30.08.2021. Respondent has pleaded that construction of the project was delayed due to force majeure conditions such as lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter referred as NGT). In this regard Authority observes that as per reasoning mentioned above deemed date to handover possession was 30.08.2021. Further, as per HRERA notification dated 26.05.2020 and 02.08.2021, an extension of 9 months is granted for the projects having completion/due date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 30.08.2021, i.e, after 25.03.2020, therefore an extension of 9 months is to be given over and above the due date of handing over possession in view of above said notifications, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date of handing over of possession comes out to 30.05.2022. However, the fact remains that till today respondent failed to honour its contractual liability to hand over the possession of unit.

(v) Respondent vide letter/email dated 07.08.2023 as per the pleadings of the complainant, had offered possession for fit-out to the complainant along with demand of ₹61,00,239/- but said offer of



possession was issued without obtaining occupation certificate. Complainant filed present complaint seeking refund of paid amount along with interest, as the respondent failed in its obligation to deliver possession as per the terms of buyer's agreement. Perusal of email/letter available at page no. 37 of the complaint file reveals that said offer was issued with a subject-'Intimation of completion and offer of possession for fit outs'. Relevant part is reproduced below for reference:-

"We are glad to inform you that your Unit No. T-2/1301 is ready for possession having final super area 2567.38 Sq ft.

It gives us immense pleasure to inform you that the construction of your Floor in the Project Lake Side Heights- KLH, at The Lake Grove, Sector-63, Kundli, Sonapat, Haryana (hereinafter referred to as the "Unit") is complete and your Unit is now ready for possession. We have duly applied for grant of part Occupation Certificate from the concerned department and the same is expected to be received in due course. To save the precious time, we are, therefore, pleased to offer you the possession of the aforesaid Unit for fit-out to enable you to carry interior works of the unit."

Aforesaid content of offer of possession provides a clear picture that respondent itself admits that occupation certificate was applied for at the time of offering possession. Authority vide order dated 22.04.2024 directed the respondent to place on record status of occupation certificate. As per office record, no document in compliance of said



order has been filed in registry by respondent. There is no documentary evidence on record which establishes the fact that construction work has been completed and unit is fit for occupying possession.

(vii) Despite making full and final payment towards booking of unit complainant has sought relief of refund of paid amount for the reason that respondent is not in a position deliver a valid possession of the unit. Complainant had invested his hard earned money in the project with hopes of timely delivery of possession. However, possession of floor was offered to the complainant after a delay of more than five years. Fact remains that respondent during the course of arguments made statement that respondent received the occupation certificate on 19.09.2024. However, same is not placed on record as directed by the Authority vide order dated 22.04.2024, meaning thereby that a valid possession is yet to be offered to the complainant. Furthermore, the act of respondent in not completing the construction and receiving of occupation certificate till date, i.e., year 2024 strengthens the belief of complainant as well as the Authority that 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.



(viii) When an allottee becomes a part of the project it is with hopes that she 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 shroud by a veil of uncertainty. Complainant had invested a huge amount of ₹50 Lakh with the respondent by the year 2018 to gain possession of a residential unit. However, respondent is not in a position to offer a valid offer to the complainant since the project is yet to receive occupation certificate. 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 five years does not wish to wait for a further uncertain amount of time for a valid possession. Complainant is at liberty to exercise her rights to withdraw from the project on account of default on the part of respondent no. 1 to deliver possession and seek refund of the paid amount.

(ix) 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.

(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;

17. 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. 21.10.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.
18. 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".



19. The project in question did not get completed within the time stipulated as per agreement and no specific date for handing over of possession has been committed by the respondent. 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 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 respondent to refund to the complainant the paid amount of Rs 50,15,507/- 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 at the rate of 11.10% till the date of this order and total amount of interest works out to ₹84,42,548/- as per detail given in the table below:

In compliant no.2598 of 2023

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 21.10.2024
1.	11,00,000/-	18.08.2018	755013/-
2.	39,15,507/-	31.08.2018	2672028/-
	Total=₹50,15,507/-		Total=₹34,27,041/-

Total amount payable to the complainant = ₹50,15,507/- + ₹34,27,041/- = ₹84,42,548/-

In complaint no.2599 of 2023

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 21.10.2024
1.	11,00,000/-	08.08.2018	758358/-
2.	59,77,089/-	16.04.2019	3664463/-
	Total=70,77,089/-		Total= 44,22,821/-
Total amount payable to the complainant = ₹70,77,089/- + ₹44,22,821/- = ₹1,14,99,910/-			

H. DIRECTIONS OF THE AUTHORITY

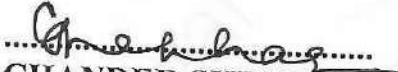
20. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoters as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to refund the entire paid amount of ₹50,15,507/- with interest of ₹34,27,041/- in complaint no.2598 of 2023 and ₹70,77,089/- with interest of ₹44,22,821/- in complaint no.2599 of 2023. It is further clarified that respondent will remain liable to pay interest to the complainant till the actual realization of the amount.



(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow against the respondent.

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


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]