



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1354 of 2023
Date of filing:	19.06.2023
Date of first hearing:	25.07.2023
Date of decision:	20.01.2025

Siddhant Rana,
S/o Lalit Kumar Rana,
R/o H.No.D-450, Palam Extension, Sector-7,
Dwarka, Delhi-110075.

....COMPLAINANT

VERSUS

1. TDI Infracorp (India) Limited
Regd. Office: Upper Ground Floor, Vandana Building
11, Tolstoy Marg, Connaught Place,
New Delhi- 110001

2. TDI Realcon Pvt. Ltd.
UGF, Vanadana Building,
11, Tolstoy Marg, Connaught Place,
New Delhi- 110001

....RESPONDENTS

CORAM: Nadim Akhtar
Chander Shekhar

Member
Member

Present: - Mr. Mayank Goel, Counsel for the complainant through VC.
Mr. Shivdeep , proxy counsel for Mr. Ajay Ghangas, Arguing
Counsel for the respondents, through VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint was filed by the complainant on 19.06.2023 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:

Sr.no.	Particulars	Details
1.	Name of the project	Lakeside Heights in TDI Lake Grove City, Kundli, Sonipat
2.	RERA registered/not registered	Registered with registration no. 43 of 2017 (lapsed project)
3.	Unit no	T-4/1002, 10 th floor
4.	Unit area	147.71 sq. mts (1590 sq.ft)
5.	Date of allotment	09.05.2019
6.	Date of execution of builder buyer agreement	08.05.2019
7.	Due date of offer of possession	08.05.2022 (after Covid-19 extension 08.02.2023)
8.	Possession clause in BBA (Clause 28) <i>However, if the possession of the apartment is delayed beyond</i>



		<i>the stipulated period of 36 months and a further period of 6 months granted as a grace period from the date of execution hereof and the reasons of delay are solely attributable to the wilful neglect or default of the Company then thereafter for every month of delay, the buyer shall be entitled to a fixed monthly compensation/damages/penalty quantified @ Rs.5 per square foot of the total super area of the apartment. The Buyer agrees that he shall neither claim nor be entitled for any further sums on account of such delay in handing over the possession of the apartment.</i>
9.	Basic sale price	₹56,90,000/-
10.	Amount paid by complainant	₹14,00,000/-
11.	Offer of possession	Valid offer of possession not given.

B. FACTS OF THE COMPLAINT

3. Facts of the present case is that complainant was looking for a flat in the year 2019. Officials of the respondents approached the complainant and assured him that construction of the project is going on in full swing and possession of the said project will be allotted to the complainant shortly. That before booking the flat in question, officials of the respondent had told the complainant that SBI on their pretext is providing loan facilities at low interest rates for customers to purchase the flat in above project.

4. That the officials of the respondent assured the complainant that if he purchase a flat with them and take a loan from the said financing institution for financing the loan for flat in question, then in that case, the respondent will make timely and regular payments of the EMI's of the flat to the said financial institution on behalf of the complainant till the possession is delivered to the complainant.
5. That at that time it was also assured by the officials of the respondent to the complainant that if the aforesaid flat complainant gets the loan sanctioned from SBI then respondents have made such arrangement with the said financial institution that in the event of non-completion of the project in time or/and non-allotment of flat in question, the respondents will be only and solely responsible for the default of loan amount and they will also be liable and responsible for closing the loan account with the bank after making the payment of entire loan amount along with interest either by arranging the said amount themselves or by selling a flat.
6. That on the basis of aforesaid representations, complainant purchased a residential flat and accordingly complainant was allotted Flat No. T4/1002, 10th Floor, in the project "Lake Side Heights" situated at Lake Groove, Kundli Sonapat, Haryana vide allotment letter dated 09.05.2019. Thereafter, apartment buyer agreement was executed between the parties on 08.05.2019 for a basic sale consideration of Rs.56,90,000/- . Copies of



allotment letter and builder buyer agreement are annexed as Annexure C-1 and C-2.

7. That till date complainant himself has paid an amount of ₹14,00,000/- to the respondents. Said payments were duly received and acknowledged by the respondent. Copies of payments receipts are annexed as Annexure C-3.
8. That thereafter the officials of the respondent introduced the complainant to officials of SBI for a housing loan of the property in question. That the said financing institution sanctioned a loan of Rs.58,68,000/- and disbursed an amount of Rs.52,99,379/- on 29.05.2019 vide loan application id no. 15895536. Copy of Sanction Letter is annexed as Annexure C-4. Copy of Quadripartite agreement is annexed as Annexure C-5. Copy of loan account statement is annexed as Annexure C-6.
9. That as per the Agreement between the parties, the builder was to pay the EMIs to the Bank. However, the same has not taken place as a result the bank has taken multiple legal actions against the complainant including sending a legal notice and has further threatened to file cases before DRT, Cheque Bounce etc.
10. That more than 48 months have elapsed and yet there is no sign of delivery/ possession of the unit in question. That the builder continues to remain evasive by giving false commitment and differing the completion and delivery of the unit in question for the past 48 months.



11. That despite repeated requests and reminders to the respondent, the respondent has failed to hand over the possession of the unit in question to the complainant. That due to personal and financial difficulties the complainant is constrained to seek cancellation of the booking of the unit in question.
12. That for the same, the complainant on 12.05.2023 sent a cancellation/surrender notice to the respondent and the bank. However, despite the receipt of the notice, the unit has not been cancelled and the refund has not been processed as a result the complaint is constrained to approach the Hon'ble Authority seeking refund and protection of it's rights. Copy of cancellation notice along with postal receipts is annexed as Annexure C-7 (Colly.).
13. That at the time of booking/allotment of flat in question, it was clearly told to the complainant that he can anytime withdraw from the project and money deposited will be refunded and only a small amount would be deducted towards the processing fee, but same has not taken place.
14. That despite repeated requests and reminders to the developer, the developer has failed to handover the possession and the bank continues to harass and humiliate the complainant for EMI and loan amount.



C. RELIEFS SOUGHT

15. Complainant in his complaint has sought following reliefs:

- i. Directing the developer/ promoter to cancel the booking of the complainant in Flat No. T4/ 1002, 10th Floor in the project "LAKE GROVE" situated at Lake Side Heights, Lake Groove, Kundli Sonapat, Haryana.
- ii. Directing the developer/ promoter to refund a sum of Rs.14,00,000/- paid by the complainant to the developer on account of the payment towards the flat in question with an interest @24% per annum from the date of cancellation.
- iii. Directing the builder/ developer to pay a sum of Rs.52,99,379/- to the SBI Bank on account of the home loan of the complainant along with all interest, penalties, charges etc.

OR

Directing the builder/ developer to pay a sum of Rs.52,99,379/- to the complainant on account of the home loan of the complainant along with all interest, penalties, charges etc so that the said amount can be paid by the complainant to the bank.

- iv Pay a sum of Rs.15,00,000/- for physical pain and mental agony, which the complainant suffered due to the respondent's negligent, criminal and malafide act.



v Any other order which the Hon'ble Authority deems fit and proper in the interest of justice.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

16. Notice was served to the respondents on 20.06.2023 which got successfully delivered on 22.06.2023. Despite giving six opportunities respondents failed to file their replies. Therefore, Authority deems it fit to struck off the defence of the respondents and decide the complaint ex-parte, as per record available on the file.

E. ARGUMENTS OF LEARNED COUNSELS FOR COMPLAINANT AND RESPONDENT

17. During oral arguments learned counsel for the complainant reiterated the pleadings as mentioned in complaint file. Therefore, by referring to the reliefs clause, counsel for complainant requested the Authority to allow the refund of paid amount of ₹14,00,000/- alongwith with interest and direct the respondent to either pay the loan amount of ₹52,99,379/- directly to the Bank or to the complainant who will pay to the bank. As complainant has apprehension that Bank may take legal action against the complainant. No arguments were put forth by the respondent counsel.

F. ISSUES FOR ADJUDICATION

18. 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

- 19.The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order, Authority observes that complainant applied for the unit in the project of the respondent namely; "Lake Side Heights" at TDI Lake Grove at Kundli, Sonipat, Haryana and respondent allotted unit no.T-4/1002 to the complainant for a basic sale consideration of ₹56,90,000/- against which an amount of ₹14,00,000/- has been paid by the complainant and respondents issued the receipts with regard to said amount. Apartment Buyer agreement was executed between the complainant and respondents on 08.05.2019 for the said unit. Further, loan of amount ₹52,99,379/- was sanctioned with respect to the unit by the State Bank Of India on 29.05.2019 for which Quadripartite Agreement dated 30.03.2019 was executed between complainant, respondents and SBI.
- 20.As per clause 28 of the Apartment buyer agreement , respondent was under obligation to hand over the possession of the unit within 36 months from the date of execution of builder buyer agreement. That means, as per possession clause, a period of 36 months is to be taken from 08.05.2019 and therefore, date of handing over of possession comes to 08.05.2022.

The said timeline is subject to Orders, Rule or Notifications of Government, Government Policy/Guidelines, Decisions affecting the



project, Act of God. In this regard, Authority observes that Covid-19 Pandemic, nation-wide lockdown imposed by the Central Government caused reverse migration of labourers, break in supply chain of construction material etc. and thus, all the construction activities across the country came at a halt. Further, the Ministry of Housing and Urban Affairs issued an advisory for extension of registration of all real estate projects due to the force majeure event of Covid-19 pandemic for a period of six months w.e.f. March, 2020. In furtherance of the said advisory, all the RERA Authorities including the Haryana Real Estate Regulatory Authority granted general extension to all the real estate projects. The said extension was further extended in the year 2021 for a period of three months due to the second wave of Covid-19 pandemic. Therefore, Authority observes that as per reasoning mentioned above deemed date to handover possession was 08.05.2022. 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 08.05.2022, 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 08.02.2023. Till that date respondent did not hand over the possession of the unit to the complainant.

21. 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 to deliver a valid possession of the unit. Complainant had invested his hard earned money in the project with hopes of timely delivery of possession. Furthermore, the act of respondent in not completing the construction and not giving the latest update regarding construction 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.

22. 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. 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 his rights to withdraw from the project on account of



default on the part of respondents to deliver possession and seek refund of the paid amount.

23. 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.

24. The definition of term 'interest' is defined under Section 2(z) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 20.01.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

25. Complainant is claiming interest of 24% on the paid amount. In this regard Authority observes that the legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has



determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public".

26. 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 amount 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.14,00,000/- 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 ₹22,83,438/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 20.01.2025 in ₹
1.	2,50,000/-	09.05.2019	158441/-
2.	5,00,000/-	16.05.2019	315818/-
3.	6,50,000/-	23.05.2019	409179/-
	Total= 14,00,000/-		Total= 8,83,438/-
Total amount payable to the complainant = 14,00,000/- + 8,83,438/- = ₹22,83,438/-			

27. As per clause (1) of reliefs, complainant requested to direct the respondents/developer to cancel the booking of the complainant with respect to unit no. T4/1002, 10th floor in the project of the respondent. In this regard, Authority observes that as complainant wants to withdraw from the project and as per the reasoning mentioned above in the order, refund of ₹14,00,000/- along with interest is allowed by the Authority, therefore, respondents are directed to cancel the booking of the complainant unit.

28. With the regard to relief under clause (3), reference is made to following clauses of the Quadripartite agreement dated 26.05.2019 executed between the parties.

Clause 4: That in the event of the Builder/owner(s) cancelling the said booking for any default committed by the Borrower(s) or the project is shelved or for any other reason whatsoever, the Builder/owner(s) shall pay the entire amount received from Borrower(s) to SBI.

Clause 5: That in the vent of failure of the Builder to complete the project, the Builder/owner(s) shall pay the entire money received by it from the Borrower(s) to the SBI.

Clause 16: That the Builder assures SBI that the construction shall be completed as per schedule and as per the sanctioned plan and on completion of construction and receipt of the entire consideration from the Borrowers, the title of the flat with proportionate undivided share in the land shall be conveyed in the name of the Borrower(s).

Clause 22: The responsibilities of the Builder/Owners under this agreement will be extinguished only after delivering the duly registered Conveyance Deed/Sale Deed directly to the Bank and handing over the possession of the residential unit to the borrower(s) and thereafter the validity of the Quadripartite agreement will come to an end.

Perusal of these clauses reveals that Builder is under an obligation to complete the project as per the schedule and sanctioned plan. On completion of construction, possession of flat was to be handed over



to the Borrower and registration of conveyance deed in name of Borrower was to be got done. It is settled law, that once the parties enters into contractual relations they are bound by the terms and conditions of the said agreement/contract. In present case, Builder has failed to hand over the possession of flat on time forcing complainant to withdraw from the project and sought refund of paid amount. Meaning thereby, the liability of the builder ends only after registration of conveyance deed in favour of borrower/allottee. Here, builder has failed to honour its liabilities/responsibilities as per the flat buyer agreement and Quadripartite agreement. Therefore, relying upon the clauses refereed above and agreements executed between the parties, builder shall be liable to pay the entire amount received from the Borrower to SBI. Therefore, Builder is directed to pay the loan amount of ₹52,99,379/- to the SBI and parties are directed to discharge their respective obligations in terms of the agreements executed between the parties.

29. Further, the complainant is seeking compensation of ₹15,00,000/- on account of physical pain, mental agony due to respondent negligence and malafide act. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under



Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

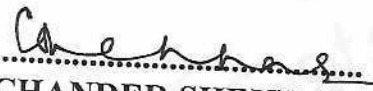
30. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the RERA, Act of 2016 to ensure compliance of obligation cast upon the promoters as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to refund the entire paid amount of ₹14,00,000/- with interest of ₹8,83,438/-. It is further clarified that respondent will remain liable to pay interest to the complainant till the actual realization of the amount.
- (ii) Further, respondents are directed to pay total cost of 80,000/- payable to the Authority which were imposed vide order dated 08.11.2023, 18.03.2024 and 29.04.2024. Also cost of ₹2000/- payable to the complainant imposed vide order dated 08.11.2023.



(iii) 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]

