

**HARYANA REAL ESTATE REGULATORY AUTHORITY,  
PANCHKULA.**

1. Complaint No. RERA-PKL-1397 of 2018

Raj Kumar Aggarwal

...Complainant.

Versus

M/s TDI Infrastructure Limited.

...Respondent.

2. Complaint No. RERA-PKL-1398 of 2018

Meenu Aggarwal

...Complainant.

Versus

M/s TDI Infrastructure Limited.

...Respondent.

**Date of hearing:- 31.01.2019**

**No. of Hearing: 1<sup>st</sup>**

**Coram:-** Shri Anil Kumar Panwar, Member.  
Shri Dilbag Singh Sihag, Member.

**Appearance:-** Smt. Vandana Counsel for Complainants  
Shri Shobit Phutela, Counsel for respondent.

**ORDER:-**

1. Both cases captioned above have been taken up together as the grievances involved therein are similar and against the same project of the respondent. The facts of the lead case in **Complaint No. 1397 of 2018 Raj Kumar Aggarwal vs. M/s. TDI Infrastructure Pvt. Ltd.** are being taken into consideration for disposal of the matters.



2. This matter is taken up today, service is complete and reply has been received by the complainant. Both the parties are ready to present their arguments. Therefore, the matter is being heard and decided after going through oral as well as written pleadings of both the parties.

The case of the complainant is that he booked a two bedroom flat measuring 1224 sq. fts. in the project named "Espania Royale Floors" of the respondent in district Sonapat. He paid Rs.3,00,000/- as booking amount on 21.02.2012. He was issued an allotment letter dated 04.01.2013. Payments were to be made under Construction linked payment plan.

The following payments were made by the complainant to the respondent/promoter:

S. No	Head	Amount
1.	Booking Amount	Rs. 3,00,000/-
2.	Basic Sale Price	Rs. 24,00,000/-
3.	Amount Paid till 28.05.2016	Rs.25,90,898/- ( more than 90%)
4.	Total Consideration	Rs.28,21,391/-including EDC/IDC etc.

The complainant is aggrieved on the following grounds:

- The respondent had taken Rs.13,36,895/-from the complainant even before execution of the Floor Buyers Agreement ( hereinafter referred to as FBA).
- The FBA was executed between parties on 11.04.2014. The complainant states that the terms and conditions of the FBA were not acceptable to him being pro-builder and one sided but since he had already deposited more than 50% of the sale consideration with respondent he had to sign it. As per clause 28 of the

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FBA delivery of the flat was to be made within 30 months from the date of execution of FBA. Thus the deemed date of delivery was 11.10.2016.

- The main grievance of the complainant is that despite payment of more than 90% of the total sale consideration, the respondent has failed to deliver the possession of the floor by the due date of delivery as per FBA.
- The complainant sent a Legal Notice dated 10.07.2017 to respondent requesting him to refund Rs.25,90,898/- deposited by him along with 21% interest as delay compensation but no reply has been received from the respondent till date.
  - The complainant submitted that as per clause 28 of FBA, the delivery of the Flat was to be offered within 30 months of date of execution of agreement. Thus, the deemed date of delivery of the Flat was in Oct, 2016. Thus there is a delay of more than 2 years in delivery of the Flat by the respondent and he has seriously failed in its contractual obligation to deliver the possession of Flat within the stipulated time.
  - Now, the complainant has filed the present complaint before this Authority seeking refund of Rs.25,90,898/- along with interest @ 21 % interest p.a.

3. The respondent has denied all the allegations and raised several preliminary objections as follows:

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- i) The provisions of Real Estate (Regulation and Development) Act, 2016 are not applicable to the present case because the agreement was executed between the parties prior to the coming into force of the Act, hence the agreements entered into between the parties shall be binding on the parties and cannot be reopened.
- ii) This Authority does not have jurisdiction to entertain this complaint because this project, covered under license Nos. 70 of 2012, has not been registered with the Authority, since it is neither registered nor registerable, the Authority has no jurisdiction to entertain any complaint in this regard.
- iii) Further, in terms of the provisions of Rule 2(o) of the HRERA Rules, 2017, this project cannot be categorized as On-going Project for which also this Authority does not have jurisdiction to entertain this complaint.
- iv) The respondent states that delivery could not be made due to pendency of the application for Occupation certificate with the Director, Town & Country Planning department since 31.03.2017. The respondent has further denied any wilful default in delivery of the Flat and stated in his reply that the construction is complete and once OC is granted by the Town & Country Planning Department, the possession of the Flat will be immediately offered to the complainant.



- v) Respondent denied the jurisdiction of this Authority on the ground that the nature of the allegations of the complainant is such that the same could be filed only before the Adjudicating Officer u/s 71 of the Act.
  - vi) Other than challenging the jurisdiction, respondent has not submitted any substantial fact to deny the allegations made by the complainant.
  - vii) The respondent has admitted the payments deposited by the complainant.
  - viii) The respondent also submitted that the Agreement was not one sided; moreover and complainant had executed the buyer's agreement without any objection, thus both the parties have to abide by the terms and conditions of the agreement. The respondent has in a very general term, labelled the complaint as false, frivolous and misleading.
4. The Authority has considered the written and oral pleadings of both the parties in detail. It observes and orders as follows:-

- i. First of all the respondent has challenged the jurisdiction of this Authority for the reasons that the agreement between the parties was executed prior to coming into force of RERA Act. This objection is not sustainable in view of the detailed orders passed by this Authority in **Complaint Case No.144- Sanju Jain Vs. TDI**

**Infrastructure Ltd.** The logic and reasoning in that complaint are fully applicable on the facts of this case as well.

- ii. Admittedly, the floor-buyer agreement between the parties was executed on 11.04.2014. As per clause 28 of the Agreement the delivery was to be made within 30 months from the date of execution of FBA. So there is no controversy in that regard that as per floor buyer agreement the deemed date of possession of the unit was 11.10.2016. The payments made by the complainant to the respondent are also admitted. The respondent further states that he had applied for OC on 31.03.2017 and is hopeful that the same will be granted soon. He further states that the unit is ready for delivery and possession will be delivered by July, 2019.
- iii. If the respondent delivers the apartment by July, 2019, it will be with delay of less than three years from the deemed date of handing over the possession. In these circumstances when the project is almost complete and the possession is likely to be offered, even though with delay, it does not justify refund of the money paid by the complainant. Complainant has chosen to be a part of this under construction project and some delay in such projects is not unexpected, for which the complainant can be compensated. This Authority has disposed of a bunch of petitions with the lead case

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**Complaint No.113 of 2018 titled Madhu Sareen V/S BPTP Ltd.**

There was consensus on all the issues except on the issue of compensation for delayed delivery of possession. Further logic and arguments in this regard were given by the dissenting member in **Complaint case No.49 of 2018- Parkash Chand Arohi V/s Pivotal Infrastructures Pvt. Ltd.** It is hereby ordered that the ratio of the said judgements will be fully applicable in this case for determining the quantum of compensation for delayed delivery of possession.

Hence, in these circumstances, the Authority directs the respondent to handover the possession of the flat to the complainant till July, 2019 failing which he shall be entitled to refund of Rs. 25,90,898/- along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017 i.e. State Bank of India highest marginal cost of lending rate plus two percent.

5. Accordingly the respondent is directed to issue a fresh statement of accounts to the complainant after recalculating the amounts payable by the complainant. Further, the compensation payable to the complainant on account of delayed delivery of possession shall also be shown in the statement of accounts and the net payable /receivable shall be clearly written after accounting for the same. The statement shall be issued by the respondent within a period of 45 days and he shall also periodically apprise the complainant of the stage of construction of the project.


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6. Since the project in question with respect to the present complaint has not been registered as required under section 3 of the RERA Act,2016. Therefore, the Authority directs the office to issue a show cause notice to the respondent under section 59(1) of the RERA Act, 2016 for non-registration of the project under section 3 of the Act above.

Disposed of accordingly. The file be consigned to the record room and the orders be uploaded on the website of the Authority.



**Dilbag Singh Sihag**  
Member



**Anil Kumar Panwar**  
Member