



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>2953 of 2022</b>
<b>Date of filing:</b>	<b>10.11.2022</b>
<b>Date of first hearing:</b>	<b>18.01.2023</b>
<b>Date of decision:</b>	<b>05.07.2023</b>

Nisheet Bansal S/o Sh. Naresh Kumar Bansal  
R/o E-29, Satyawati Colony,  
Ashok Vihar, Delhi-110052

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Limited.  
Vandana Building, Upper Ground Floor  
11, Tolstoy Marg, Connaught Place,  
New Delhi- 110001

....RESPONDENT(S)

**CORAM:**

**Dr. Geeta Rathee Singh**  
**Nadim Akhtar**

**Member**  
**Member**

**Present: -**

Mr. Gaurav Gupta, Counsel for the complainant

Mr. Shubhnit Hans, Counsel for the respondent through  
VC.

*Geeta Rathee*

**ORDER (DR. GEETA RATHEE SINGH - MEMBER)**

1. Initially present complaint has been filed on 10.11.2022 by 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 thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

**A. UNIT AND PROJECT RELATED DETAILS**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	Espania Floor-KEF, NH-1, Kamaspur, Sonipat
2.	Name of the promoter	TDI Infrastructure Ltd
3.	RERA registered/not registered	Unregistered.
4.	DTCP License no.	1065-1068 of 2006,
	Licensed Area	12.64 acres
5.	Unit no.	EF-20-GF
6.	Unit area	1224 sq. ft.



7.	Date of allotment	20.10.2011
8.	Date of builder buyer agreement	Not executed. Respondent alleged in its reply as 19.02.2013.
9.	Due date of offer of possession	Not available
10.	Possession clause in BBA	Not available.
11.	Total sale consideration	Not available.
12.	Amount paid by complainants	₹ 35,96,779/-
13.	Offer of possession (fit-out)	27.09.2018.

### B. FACTS OF THE COMPLAINT

3. Facts of complaint are that complainant had booked a floor in a future project of the respondent i.e. TDI Infrastructure Ltd by making payment of Rs 3,00,000/- in year 2011, following which allotment letter dated 20.10.2011 was issued in favor of complainant and floor no. EF-20-GF having area 1224 sq ft in project "Espania Floor-KEF", NH-1, Kamaspur, Sonipat was allotted. At the time of allotment, it was assured that floor buyer agreement will be executed soon and physical possession of the floor will be handed over within a period of 3 years from the date of execution thereof.
4. Complainant has paid an amount of Rs 35,96,779/- but there was no actual development at the project. No builder buyer agreement was executed and certainty of offer of actual physical possession of the floor was in air but due to the consistent threat of cancellation of the

allotment and forfeiture of the paid amount the complainant was left with no other option than to continue with the booking.

5. That after a lapse of more than 7 years from the date of booking, the respondent issued offer of possession for fit-out on 27.09.2018 alongwith demand of Rs 8,57,597/-. Complainant did not accept said possession and raised objections to the club membership charges, unilateral increase in area by 174 sq ft, delayed possession charges vide letter dated 04.10.2018, following which several reminders were sent to respondent dated 31.10.2018, 18.01.2019, 09.02.2019, 09.03.2019, 05.06.2019 and 31.07.2019 but the respondent did not pay any heed to his requests. Copies of said letters are annexed as Annexure C-4.
6. That due to consistent threat of cancellation of allotment and forfeiture of paid amount, the complainant had deposited an amount of Rs 8,57,597/- in September, 2019. The offer of possession for fit-out was not accepted by complainant as said offer possession was not supported with occupation certificate meaning thereby that it was not a valid offer and complainant was not bound to accept it.
7. That respondent again demanded an amount of Rs 3,92,477/- vide letter dated 09.10.2019 towards outstanding dues whereas fact remains that complainant had already paid the entire total payable amount. It has been alleged that no floor buyer agreement was executed by the

  
G. Rathee



respondent and no occupancy certificate has been received till date for the unit booked by complainant. Unit in question was booked by the complainant for personal need in 2011 with a vision that the actual physical possession will be handed over in year 2013-2014 but after witnessing delay of more than 11 years on the part of respondent, the requirement of the complainant has been extinguished and as such the unit is not required and therefore complainant wants to withdraw from the project.

8. It is further submitted by the complainant that Indian Bank has issued a "Notice for Indented Sale" dated 28.06.2022 to the respondent for the project "Espania" i.e the project in concern, as the respondent has failed to repay an amount of ₹ 48,22,00,000/- of the Indian Bank and the bank is intending to sell off the entire project land of 12.64 acres including all the units build by way of auction. It is the apprehension of the complainant that the offer of possession issued to complainant is a fraudulent offer as respondent promoter is not in a position to offer possession of booked flat. Moreover, due to the fact that project which was to developed having been declared Non- performing asset by the Indian bank so the complainant is never going to get the possession of the unit even in near future. Therefore, complainant is left with no other option but to approach this Authority. Hence the present complaint has been filed.

  
Rathne

**C. RELIEF SOUGHT**

9. Complainant in his complaint has sought following relief:
- i. The respondent may kindly be directed to refund an amount of Rs 35,96,779/- alongwith interest at the rate prescribed in Rule 15 of RERA RAules,2017 to be calculated from the date of deposit till the date of actual realization, to the complainant.

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

Learned counsel for the respondent filed detailed reply on 18.04.2023 pleading therein:

10. That due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely-Espania floors, NH-1, Kamaspur, Sonipat, Haryana.
11. That the builder buyer agreement between the complainant and respondent has been executed on 19.02.2013 which is much prior from the date when the RERA Act, 2016 came into existence. Therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act.
12. That complainant herein as an investor has accordingly invested in the project of the Respondent Company for the sole reason of investing, earning profits and speculative gains, therefore, the captioned complaint is liable to be dismissed in limine.

13. That respondent had vide letter dated 12.09.2016 applied for grant of occupation certificate before the Director, Town & Country Planning Department, Haryana.
14. That vide letter dated 27.09.2018 respondent has already offered possession of the booked floor and complainant has already taken the possession of the unit way back in year 2019 vide NOC/letter dated 22.10.2019. Copy of NOC is annexed as Annexure R-4.
15. That handing over of possession has always been tentative and subject to force majeure conditions and the complainant has been well aware about the same.

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

16. During oral arguments learned counsel for the complainant submitted that the possession of the unit was supposed to be delivered by the year 2013-2014. However, respondent has offered possession to the complainant on 27.09.2018 that too without obtaining occupation certificate. A valid offer of possession is yet to be made to the complainant. Even in its reply respondent has failed to provide surety in regard to the grant of occupation certificate. Complainant who has already waited for so many years does not wish to wait endlessly for delivery of possession of flat. With regard to NOC, it has been stated that said document was signed by the complainant under threat of forfeiture



of paid amount and said NOC cannot be relied upon as the actual possession has not been yet delivered by the respondent to the complainant after receipt of occupation certificate. In view of the constraining circumstances, complainant is willing to surrender the possession of the floor and seek original relief which is refund of the paid amount along with interest.

17. Learned counsel for the respondent reiterated arguments as were submitted in written statement and further stated that application for grant of occupation certificate is still pending with the DTCP. It is the complainant who is at fault by not coming forward to accept actual possession of the floor even after signing of NOC dated 22.10.2019. With regard to the "Notice for Intended Sale" of project in question by Indian Bank, the matter is pending adjudication before Hon'ble High Court and the proposed auction has already been stayed. There is nothing at site and the interest of the complainant is not hampered in any manner. Respondent has already filed a fresh application for grant of occupation certificate on 17.02.2022 and it is expected to be received soon.

#### **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. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT.**

**G.I Objection regarding execution of BBA prior to the coming into force of RERA Act,2016.**

One of the averments of respondent is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act,2016. Accordingly, respondent has argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the same cannot be examined under the provisions of RERA Act. In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in *complaint no.*

*113 of 2018 titled as Madhu Sareen v/s BPTP Ltd* decided on 16.07.2018. Relevant part of the order is being reproduced below:

*“The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller.”*

Further, as per recent judgement of Hon'ble Supreme court in **Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021** it has already been held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act,2016 shall be applicable to such real estate projects, furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act,

  
J. Kothari





*“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 floor in the project of respondent by the respondent/promoter itself and said fact is duly admitted by the respondent in the allotment letter dated 20.10.2011. 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.

#### **H. 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 and also the arguments submitted by both parties, Authority observes as follows:

- (i) Admittedly, complainant in this case had purchased the floor in the project of the respondent in the year 2011 against which an amount of Rs 35,96,779/- has been paid by the complainant. Out of said paid amount, last payment of Rs



6,00,000/- was made to respondent on 25.09.2019 which implies that respondent is in receipt of total paid amount since year 2019 whereas fact remains that no valid offer of possession duly supported with occupation certificate of the booked floor has been made till date.

(ii) Authority observes that the floor in question was booked in the September, 2011 by the complainant. Allotment letter dated 20.10.2011 was issued in his favour. No builder buyer agreement got executed between the complainant and respondent as per version of complainant, however respondent in its written statement claims the builder buyer agreement having been executed between the parties on 19.02.2013. In this regard, it is pertinent to mention here that claim of respondent towards execution of BBA on 19.02.2013 is not supported with any documentary evidence. No copy of BBA has been annexed with the written statement. Therefore, plea of respondent cannot be relied upon and is devoid of merit. In absence of execution of builder buyer agreement and no specific clause of deemed date of possession in allotment letter, it cannot rightly be ascertained as to when the possession of said floor was due to be given to the complainant. In **Appeal no 273 of 2019 titled as TDI Infrastructure Ltd Vs Manju Arya**, Hon'ble Tribunal



has referred to observation of Hon'ble Apex Court in **2018 STPL 4215 SC** titled as **M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr.** in which it has been observed that period of 3 years is reasonable time of completion of construction work and delivery of possession. In present complaint, the floor was booked by the complainant in the year 2011 and allotment letter was issued on 20.10.2011 by the respondent, accordingly, taking a period of 3 years from the date of allotment i.e 20.10.2011 as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 20.10.2014. In present situation, respondent failed to honour its contractual obligations without any reasonable justification.

(iii) Respondent vide letter dated 27.09.2018 had offered possession for fit-out to the complainant alongwith demand of Rs 8,57,597/- 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 buyers agreement. Complainant under the apprehension of losing his hard earned money accepted the offer of possession issued by the respondent and deposited a



further payment of ₹ 8.57 Lakh on 25.09.2019 to the respondent as full and final payment for taking possession of flat. An NOC for handing over of possession was issued to the complainant on 22.10.2019. However on 28.06.2022 Indian Bank issued a "Notice for Indented Sale" to the respondent for the project "Espania" i.e the project in concern, as the respondent has failed to repay an amount of ₹ 48,22,00,000/- of the Indian Bank and the bank is intending to sell off the entire project land of 12.64 acres including all the units build by way of auction. The case regarding the supposed auction is pending adjudication before Hon'ble High Court in CWP No. 15082-2022 titled TDI ESPANIA RESIDENTS WELFARE ASSOCIATION vs INDIAN BANK (ALLAHABAD) AND ORS.

(iv) Despite making a full and final payment towards booking of floor 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 flat. Though respondent in its reply has submitted that possession of the unit has been handed over to the complainant on 22.10.2019, however respondent has only attached a copy of NOC for handing over of possession. No possession certificate, issued by promoter after handing over of actual physical possession has been attached by the respondent.



The complainant has denied accepting the actual possession or signing any possession certificate, which shows that the complainant has not taken the actual physical possession). Complainant had invested his hard earned money in the project with hopes of timely delivery of possession. However, possession of flat was offered to the complainant after a delay of more than four years. Fact remains that respondent is yet to receive occupation certificate meaning thereby that a valid possession is yet to be offered to the complainant. Further, the project in question is in limbo due to the "Notice for Indented Sale" issued by the Indian Bank to the respondent for the project "Espania" on account of non payment of dues and subsequent court proceedings in CWP No. 15082-2022 titled TDI ESPANIA RESIDENTS WELFARE ASSOCIATION vs INDIAN BANK (ALLAHABAD) AND ORS. pending adjudication before Hon'ble High Court.

(v) When an allottee becomes a part of the project it is with hopes that he will be able to enjoy the fruits of his hard earned money in terms of a safety and security of his own home. However, in this case due to peculiar circumstances complainant has not been able to enjoy the fruits of his investment capital as the possession of the flat in question is



shroud by a veil of uncertainty. Complainant had invested a huge amount of ₹ 26 Lakh with the respondent by the year 2015 and a further amount of ₹ 8.57 lakh in 2019 to gain possession of a residential floor. However, respondent is not in a position to offer a valid offer to the complainant since the project is yet to receive occupation certificate and that the entire project "Espania" is under legal dispute before Hon'ble High Court. Complainant is justifiably under apprehension with regard to the security of his investment in the project. 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 eight years does not wish to wait for a further uncertain amount of time or a valid possession. Complainant is at liberty to exercise his rights to withdraw from the project on account of default on the part of respondent to deliver possession and seek refund of the paid amount.

(vi) Further, Hon'ble Supreme Court in the matter of "*Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others* " in Civil Appeal no. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is



not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

*“25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”*

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.

20. 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.

21. 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:

22. 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. 05.07.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.70%.

23. 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".*

24. From above discussion, it is amply proved on record that the respondent has not fulfilled its obligations cast upon him under RERA Act, 2016 and the complainant is entitled for refund of deposited amount alongwith interest. Thus, respondent will be liable to pay the complainant interest 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 35,96,779/- 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 10.70% (8.70% + 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 calculated at the rate of 10.70% till the date of this order and total amount works out to Rs 70,46,296.35/- as per detail given in the table below:

*J. Kataria*



Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 05.07.2023
1.	3,00,000	24.09.2011	378428
2.	5,00,085	20.10.2011	627009
3.	3,20,024	29.02.2012	388864
4.	2,69,325	29.03.2012	324970
5.	2,68,034	15.04.2013	293397
6.	2,70,428.35	25.05.2013	292846
7.	2,68,034	06.11.2013	277289
8.	2,73,568	27.12.2013	278924
9.	1,650	01.07.2014	1592
10.	2,68,034	05.03.2015	239259
11.	1,24,000	25.09.2019	50164
12.	83,597	25.09.2019	33819
13.	50,000	25.09.2019	20227
14.	6,00,000	25.09.2019	242729
15.	Total=35,96,779.35/-		Total=34,49,517/-
16.	Total Payable to complainant	35,96,779.35 +34,49,517=	70,46,296.35/-

#### H. DIRECTIONS OF THE AUTHORITY

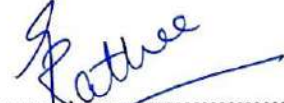
25. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to refund the entire amount of ₹ 70,46,296.35/- to the complainant.
- (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.

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



.....  
NADIM AKHTAR  
MEMBER]



.....  
DR. GEETA RATHEE SINGH  
[MEMBER]