



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

1. Present complaint was filed on 22.11.2022 by complainants 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	Tuscan floors, TDI Tuscan City, Kundli , Sonipat
2.	Name of the Promoter	TDI Infrastructure Ltd
3.	RERA registered/not registered	Not registered.
4.	DTCP License no.	177 of 2007.
	Licensed Area	22.684 acres
5.	Unit no.(residential floor)	T-57/SF
6.	Unit area	1164 sq. ft.



7.	Date of allotment	09.08.2010
8.	Date of builder buyer agreement	17.03.2011
9.	Due date of offer of possession	17.09.2013
10.	Possession clause in BBA clause-30	.....However, if the possession of the independent floor/apartment is delayed beyond a period of 30 months from the date of execution hereof and the reasons of delay are solely attributable to the wilful neglect or default of the Company then 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 independent floor/apartment. The purchaser 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 independent floor/apartment.
11.	Total sale consideration	₹ 27,61,723.60/-
12.	Amount paid by complainants	₹ 25,13,440.84/-
13.	Offer of possession	No offer.

## B. FACTS OF THE COMPLAINT

3. Facts of complaint are that complainants had booked a floor in the project- Tuscan floors, TDI City, Kundli, Sonipat of the respondent by making payment of Rs 3,00,000/- on 29.06.2010, following which





allotment letter dated 09.08.2010 was issued in favor of complainants and unit no. T-57/SF having area 1164 sq ft was allotted.

4. Complainants entered into builder buyer agreement with the respondent on 17.03.2011. As per clause 30 of the FBA, possession of the floor was to be made within 30 months from the date of agreement including a grace period of six months, thus deemed date of delivery was on 17.09.2013. An amount of Rs 25,13,440.84/- has been paid against basic sale price of Rs 27,61,723.60/-.
5. It is submitted by the complainants that despite a lapse of more than nine years respondent has failed to offer possession of the allotted floor. That till date, respondent has not completed the construction of the project in question including the floor booked. In year 2022, complainants again approached the respondent to know the status of completion of the project. The respondent expressed its inability and informed the complainants that they had failed to take necessary permission from various authorities to complete construction of the project.
6. That delay in development of project by the respondent has shattered the faith of complainants and such inordinate delay has frustrated the purpose of purchasing the unit. There is no basic development carried out at site by the respondent and there is no scope of completion of project even in near future. Therefore, complainants are left with no

other option but to approach this Authority. Hence the present complaint has been filed.

### C. RELIEF SOUGHT

7. Complainants in their complaint has originally sought following relief:
- i. To handover possession to the complainants in respect of unit/floor no. T-57/SF measuring 1164 sq ft, second floor, phase-I, in KTF, Tuscan floor, TDI City, Kundli, Sonipat. Haryana.
  - ii. To pay interest for the default period i.e. from 19.06.2010 till the respondent handed over the possession of the plot to the complainant alongwith interest @18% per annum.
  - iii. To pay Rs 10 lakhs as compensation to the complainants because of escalation in the rates of internal renovation/furnishings.
  - iv. To pay compensation to the tune of Rs 5,00,000/- for mental agony and harassment suffered by the complainants.
  - v. To pay punitive damages to the extent of Rs 5,00,000/-
  - vi. To pay the litigation expenses to the tune of Rs 55,000/-.
  - vii. Any other relief.
8. Complainants in pursuance of order dated 27.04.2023 passed in captioned complaint filed application for amendment of relief sought clause (i) on 17.05.2023. Said application is taken on record. Now, the amended relief clause (i) is as follows:-

i. To handover possession to the complainants in respect of unit/floor no. T-57/SF measuring 1164 sq ft, second floor, phase-I, in KTF, Tuscan floor, TDI City, Kundli, Sonipat. Haryana or in alternate refund of total amount of Rs 25,13,440.84/- paid by the complainants alongwith interest @18% p.a. from date of payment till its realization in case the respondent is not in position to handover the possession on account of non-completion of the project.

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

Learned counsel for the respondent filed detailed reply on 07.02.2023 pleading therein:

9. That due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely- Tuscan floors, TDI Tuscan City at Kundli, Sonipat, Haryana.
10. That when the respondent Company commenced the construction of the said project, the RERA Act was not in existence, therefore, the respondent Company could not have contemplated any violations and penalties thereof, as per the provisions of the RERA Act, 2016. That the provisions of RERA Act are to be applied prospectively. Therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act.
11. That the agreement was executed on 17.03.2011, which is much prior from the date when the RERA Act came into existence. Accordingly,

  
Rathee



the agreement executed between the parties is binding on the buyer/allottee. Complainants are bound by the terms of the agreement and as such cannot withdraw its consent. The complainants are educated persons and have signed on each and every page of the agreement and hence, each terms is binding on the complainants.

12. That complainants herein as investor have 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 handing over of possession has always been tentative and subject to force majeure conditions and the complainants have been well aware about the same. With regard to status of project, it is submitted that the construction of the tower is already in full swing.

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

14. During oral arguments learned counsel for the complainants insisted upon refund of paid amount with interest stating, that, possession has been delayed by the respondent for around 9 years and as of today respondent is not in a position to deliver possession even in near future as no construction activity is going in process.
15. Learned counsel for the respondent reiterated arguments as were submitted in written statement and further submitted that application

  
K. Attree

for amendment of relief sought has been received by him but he does want to file amended reply.

**F. ISSUES FOR ADJUDICATION**

16. Whether the complainants are 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, and the rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaint.

Execution of builder buyer agreement is admitted by the respondent. Said builder buyer agreement is binding upon both the parties. As such, the respondent is under an obligation to hand over possession on the deemed date of possession as per agreement and in case, the respondent failed to offer possession on the deemed date of possession, the complainants are entitled to delay interest at prescribed rate u/s 18(1) of RERA Act or for refund of paid amount till actual realization. Therefore, obligation raised by the respondent with regard to maintainability of the present complaint is rejected.

**G.II Objections raised by the respondent stating that complainant herein is an investor and have invested in the project of the Respondent Company for the sole reason of investing, earning profits and speculative gains.**

The complainants herein are the allottees/homebuyers who have made a substantial investment from their 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 but their bonafide belief stood shaken when the promoter failed to handover possession of the booked unit till date without any reasonable cause. At that stage, complainants have approached this Authority for seeking refund of paid amount with interest in terms of provisions of RERA Act,2016 being allottees of respondent-promoter. As per definition of allottee provided in clause 2(d) of RERA Act,2016, present complainants are 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”.*

Complainants have been allotted plot in the project of respondent by the respondent/promoter itself and said fact is duly admitted by the respondent in the allotment letter dated 09.08.2010 and builder buyer agreement dated 17.03.2011. 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 complainants herein are investor does not hold merit and same is rejected.

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

17. 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, vide allotment letter dated 09.08.2010 complainants in this case had been allotted the floor in question in the project of the respondent for a total sale consideration of ₹ 27,61,723/- against which an amount of ₹25,13,440.84/- has been paid by the complainants. Out of said paid amount, last payment of Rs 2,63,199/- was made to respondent on 24.08.2017 by the complainants which implies that respondent is in receipt of total paid amount since year 2017 whereas fact remains that no offer of possession of the booked floor has been made till date.

(ii) In its written statement the respondent has admitted that possession of the booked floor has not offered till date to the complainant, however the construction of the floor is going on



in full swing. No latest photographs of the site or any documentary evidence has been placed on record to show that there are chances of completion of construction in next few months. In regard to delay caused, it is submitted that deemed date of possession was tentative and was subject to force majeure. Nevertheless no reason/factor attributed for causing delay in offer of possession has been specified in the written statement. Mere making a statement that force majeure conditions attributed to delay in offering the possession is not sufficient to justify the delay caused.

(iii) Authority observes that the builder buyer agreement got executed between the complainant and respondent on 17.03.2011 and in terms of clause 30 of it, the respondent was supposed to handover possession upto 17.09.2013. In present case, respondent failed to honour its contractual obligations of offering possession of the allotted unit within stipulated time without any reasonable justification. Further, respondent has not committed any specific timeline even in its reply regarding delivery of possession. Complainants have unequivocally stated that they are interested in seeking refund of the paid amount along with interest on account of inordinate delay caused in delivery of possession.

  
G. Rathee

(iv) 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





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.

21. 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. 12.07.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.70%.

22. 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".*

23. Thus, respondent will be liable to pay the complainants 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 25,13,440.84/- 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 26,56,554/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 12.07.2023
1.	3,00,000	29.06.2010	418795
2.	4,05,000	01.09.2010	557775
3.	9,077	01.09.2010	12501
4.	2,35,000	10.03.2011	310558
5.	6,051	10.03.2011	7997
6.	2,86,926	13.04.2011	376320
7.	2,42,261.96	15.01.2015	220231
8.	3,392	09.07.2015	2910
9.	2,43,225	30.07.2015	207131
10.	2,43,224.96	09.10.2015	202069
11.	12,883	06.04.2017	8645
12.	5,26,399.92	24.08.2017	331622
13.	Total=25,13,440.84/-		Total=26,56,554/-
14.	Total Payable to complainant	25,13,440.84+ 26,56,554=	51,69,994.84/-

24. The complainant is seeking compensation on account of mental agony, torture, harassment caused for delay in possession and cost escalation. 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

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 ₹ 51,69,994.84/- to the complainants.
  - (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]