



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

<b>Complaint no.:</b>	<b>300 of 2020</b>
<b>Date of filing:</b>	<b>26.02.2020</b>
<b>Date of first hearing:</b>	<b>21.08.2020</b>
<b>Date of decision:</b>	<b>04.03.2024</b>

Sachin Dalal S/o Sh. K.S Dalal  
R/o House no. 1452P, Sector-15, Part-II  
Gurgaon( Haryana)

....COMPLAINANT

VERSUS

TDI Infrastructure Limited.  
10 Shaheed Bhagat Singh Marg  
New Delhi- 110001

....RESPONDENT(S)

**CORAM:**                      **Nadim Akhtar**                      **Member**  
   **Chander Shekhar**                      **Member**

**Present: -**                      Mr. Anuj Chauhan, Counsel for the complainant through VC.  
   Mr. Shubhnit Hans, Counsel for the respondent through VC.

## **ORDER (NADIM AKHTAR-MEMBER)**

1. Initially the present complaint was filed on 26.02.2020 before Hon'ble Adjudicating Officer under Section 31 of the Real Estate (Regulation and Development) Act,2016 read with Rule 28 of the Haryana Real Estate (Regulation and 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 allottees as per the terms agreed between them.

2. Vide order dated 21.10.2020, the Adjudicating Officer transferred the above said complaint to the Authority in view of observations of Hon'ble Apex Court in CWP no. 6745-6749 of 2021 titled as Newtech Promoters and Developers Pvt Ltd. versus State of U.P and others and observations of Punjab and Haryana High Court in CWP no. 6688 of 2021 titled as Ramprastha Promoters and Developers Pvt Ltd versus Union of India and others regarding jurisdiction of Authority with respect to matters concerning possession and refund.

#### **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:

<b>S.No.</b>	<b>Particulars</b>	<b>Details</b>
1.	Name of the project	TDI City- Oxford Street, Kundli Sonipat
2.	Name of the promoter	TDI Infrastructure Ltd



3.	RERA registered/not registered	Unregistered
4.	Unit no.	Commercial plot no. JC-3/6
5.	Unit area	204 sq. yds.
6.	Date of allotment	18.12.2008 As claimed by complainant in pleadings but actually it is letter with subject-Final Reminder for payment of outstanding payment of Rs 4,99,800/-
7.	Date of builder buyer agreement	Not executed.
8.	Due date of offer of possession	Not available.
9.	Possession clause in BBA	Not available.
10.	Total sale consideration	₹ 49,98,000/-
12.	Amount paid by complainant	₹ 54,93,629/- As per application filed on 08.12.2023 by complainant specifying therein details of paid amount with its proof.
13.	Offer of possession	19.04.2017
14.	Occupation certificate	22.09.2017

### B. FACTS OF THE COMPLAINT

4. That the complainant booked a unit in respondent's project-Oxford Street, TDI City, Kundli on 21.04.2006 by paying Rs 10,00,000/- as



booking amount. Against which receipt dated 27.03.2006 was issued by respondent being annexed as Annexure C-1 to complaint. In lieu of the said booking, a payment plan was issued by respondent vide letter dated 21.04.2006 prescribing therein schedule of payments to be made for total sale consideration of Rs 49,98,000/-.

5. That complainant was allotted a commercial plot no. JC-3/6 admeasuring 204 sq. yds. vide allotment letter dated 18.12.2008 (Not allotment letter but actually it is a final reminder letter where details of plot no. and size is mentioned by respondent) annexed as Annexure C-3. Against total sale of Rs 49,98,000/- an amount of Rs 54,93,629/- has already been made by the complainant.
6. That the respondent by way of letter dated 19.04.2017 offered physical possession of plot in question alongwith additional demand of Rs 9,49,150/-.
7. That the respondent could not have demanded more than 10% of the total sale consideration agreed on and after 01.05.2017 as earnest money as it stands in violation of Section 13 of the Act. As per the provisions of Section 13-more than 10% of money cannot be called for without execution of the builder buyer agreement which in itself is detailed document laying down rights and liabilities of both the parties. That such violation on behalf of respondent is grave and has caused undue injustice to the complainant. That section 18 (1) (a) of



RERA Act,2016 makes a promoter liable in case he fails to complete or give possession in accordance with the terms of the agreement for sale or as the case may be. Thus, the act of respondent of accepting and acknowledging the payments made by the complainant forms a deemed and enforceable contract between the parties. Therefore, complainant is left with no other option but to approach this Authority. Hence the present complaint has been filed.

### C. RELIEF SOUGHT

8. Complainant in his complaint has sought following relief:
  - i. Pass an order for refund of Rs 54,93,629/- alongwith pendente lite interest and future interest thereon @10.45% from due date of payment till the date of actual payment, in favour of the complainant and against the respondent, his legal heirs representatives, heirs and assigns being the amount due and payable to the complainant from the respondent on account of amount paid as per the customer ledger maintained with respondent company.
  - ii. Pass an order for the cost of the complaint to the tune of Rs 1,00,000/- in favor of the complainant and against the respondent.
  - iii. Pass an order for the cost of the complaint to the tune of Rs 1,00,000/- as legal cost.



iv. Pass an order for the compensation to the complainant to the tune of Rs 5,00,000/- for the mental agony caused to the complainant for the past ten years.

v. Pass such other orders, directions, reliefs as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case and in the interest of justice.

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

Learned counsel for the respondent filed detailed reply on 21.08.2020 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-Oxford Street-TDI City,Kundli, Sonipat, Haryana.

10. That the respondent company has already received part completion certificate with respect to 927 acres approx. with respect of the township.

The details of such certificates are provided as herein below:

- i. Part completion certificate issued vide Memo no. 5DP-2007/1772 dated 23.01.2008 for land measuring 109.5 acres annexed as Annexure R-2.
- ii. Part completion certificate issued vide Memo no. CC-70-JE(BR)-2013/57692 dated 18.11.2013 for land measuring 415 acres annexed as Annexure R-3.



- iii. Part completion certificate issued vide Memo no. CC-70-PA (SN)-2017/23751 dated 22.09.2017 for land measuring 573.394 acres annexed as Annexure R-4.
11. That application for registration of the project in question has been filed and the same is pending consideration before the Ld. Authority.
12. That when the respondent company commenced the construction of he said project, the RERA Act was not in existence, therefore, the respondent company could not have contemplated any violations and penalties thereof, as stated in the RERA Act. 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.
13. That the 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.
14. That there has been default on part of the complainant in making payment towards the booking made in the said project of the company. Various reminder letters with respect to the same have also been sent to the complainant requesting him to clear the due amount. Copy of reminder letters are annexed as Annexure R-5.



15. That it is to mention here that the complainant's cheque of Rs 5,00,000/- was dishonoured in the month of July,2008 pursuant to which the respondent had cancelled the allotment of the complainant vide letter dated 12.08.2008 and forfeited the entire amount paid by complainant. Later, the complainant had paid the said amount and allotment of complainant was revived. Due to such reasons also, the delay has occurred in completing the said project of respondent company.
16. That the present complaint is barred by limitation.

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

17. During oral arguments learned counsel for the complainant reiterated the submission as made in complaint and insisted upon refund of paid amount of Rs 54,93,628/- with interest stating that possession has been unreasonably delayed by the respondent and offer of possession dated 19.04.2017 was made without including therein any interest for the delay caused by it. Learned counsel for the respondent reiterated arguments as were submitted in written statement and further submitted that respondent had already received part completion certificate for the plot in question on 22.09.2017, though same was applied prior to offering of possession and offer of possession was made considering the fact that part completion certificate will be granted by competent authority in the meantime.





**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 the light of background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:

(i) With regard to plea raised by the respondent that provisions of RERA Act,2016 are applicable with prospective effect only and therefore same were not applicable as on booking dated 21.04.2006 or on 18.12.2008 when the complainant was allotted commercial plot no. JC-3/6, Oxford Street-TDI City, Kundli, Sonipat, it is observed that issue regarding operation of RERA Act,2016 whether retrospective or retroactive has already been decided by Hon'ble Supreme Court in its judgment dated 11.11.2021 passed in *Civil Appeal No. (s) 6745-6749 OF 2021 titled as Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others*. Relevant part is reproduced below for reference:-

*"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 on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."*

Further, in the said judgement, 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. Completion certificate for the project in which the allottee-complainant was allotted a plot has still not been received by the respondent-promoter, thus, the project is well within the ambit of definition of the on-going project.

(ii) With respect to the objection raised by the respondent 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, it is observed that the complainant herein is the allottee/homebuyer who has made a substantial investment from his hard earned savings under the belief that the



promoter/real estate developer will handover possession of the booked unit in terms of payment plan provided by way of letter dated 21.04.2006 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 commercial plot in the project of respondent by the respondent/promoter itself and said fact is duly revealed in offer of possession dated 19.04.2017. 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.

(iii) Respondent has also taken objection that complaint is grossly barred by limitation. In this regard Authority places reliance upon the judgement of Apex court Civil Appeal no. 4367 of 2004 titled as **M.P Steel Corporation v/s Commissioner of Central Excise** where it has been held that Indian Limitation Act deals with applicability to courts and not tribunals. Further, RERA Act is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act, 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not a Court. The promoter has till date failed to fulfil its obligations because of which the cause of action is re-occurring/continuing.

(iv) Factual matrix of the case is that complainant had booked a unit in respondent's project-Oxford Street-TDI City, Kundli, Sonipat on 21.04.2006 by paying Rs 10,00,000/-. For specifying the plot no. being allotted to him which is JC-3/6, complainant has referred to a letter dated 18.12.2008 as allotment letter, however the said letter is only a reminder letter for demanding payment of Rs 4,99,800/-. No allotment letter has been placed on record by both the parties. An



amount of Rs 54,93,629/- has been paid against total sale consideration of Rs 49,98,000/-. No objection to this paid amount has been raised by respondent.

(v) Complainant as well as respondent have not specified any deemed date of possession in their submissions. Builder buyer agreement has not been executed between the parties. Allotment letter has not been placed on record. In the absence of relevant documents like execution of builder buyer agreement and 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 the present complaint, the plot was booked by the complainant on 21.04.2006, accordingly, taking a period of 3 years from the date of allotment, i.e, 21.04.2009 as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 21.04.2009. In the present situation, respondent failed to honour its contractual obligations within the stipulated time without any



reasonable justification. Thereafter, vide letter dated 19.04.2017, the respondent offered possession of unit in question to the complainant alongwith additional demand of Rs 9,45,089/-. Complainant did not accept the said offer for the reasons that it was not supported with occupation certificate and was accompanied with unjustified demands and interest for the delay caused of around 8 years was not accounted for by the respondent. It is the argument of respondent that the complainant has neither accepted offer of possession of year 2017 nor challenged said offer till date. In pursuance of said offer, a reminder dated 01.08.2017 was issued by respondent with subject- Reminder regarding payment of outstanding dues of Rs 9,45,089/-. At the time of hearing, a specific query was raised to complainant as to whether any letter/email was written by him to respondent regarding objections to offer of possession dated 19.04.2017. To this, ld. counsel for complainant relied that no formal communication took place between the parties after impugned offer. Perusal of file reveals that the respondent has also not contacted/communicated with complainant in respect of offer of possession except issuing of one reminder dated 19.04.2017. No cancellation in respect of allotment of plot in pursuance of not acceptance of offer by complainant has been made by respondent till date which implies that allotment still stands in the name of complainant and money deposited by complainant still lies in



the account of respondent. Meaning thereby that both parties did not act upon any issue since year 2017 to till filing of this complaint.

(vi) Keeping in view the aforesaid submissions, Authority observes that the respondent was under obligation to deliver possession of booked plot latest by 21.04.2009, whereas impugned offer was made to complainant on 19.04.2017. Said offer is not valid in the eyes of law as it was not supported with completion certificate/part completion certificate; as same was received on 22.09.2017, i.e., around 5 months later than offer of possession. Complainant was not bound to accept the impugned offer of possession. Thereafter, valid offer of possession duly supported with part completion certificate/completion certificate has not been yet made by respondent to complainant. Be the case as may be, fact remains that respondent is holding the money of complainant since year 2010 as last payment of Rs 3,00,000/- was made on 10.02.2010 by the complainant which implies that respondent is in receipt of total paid amount since year 2010 whereas fact remains that no valid offer of possession of the booked plot has been made till date even after delay of 14 years from receipt of total paid amount. Now, 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.



(vii) 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.

(viii) The project/unit in question did not get completed within the time stipulated. In these circumstances the complainant cannot be forced to accept possession of the unit after 18 years from booking, therefore, Authority finds it to be fit case for allowing refund along with interest in favor of complainant.

(viii) 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;



(ix) 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. 04.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%.

(x) 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”.*

20. 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 54,93,629/- 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 10.85% (8.85% + 2.00%) from the date amounts were paid the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 10.85% till the date of



this order and said amount works out to Rs 92,84,025/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 04.03.2024
1.	10,00,000	27.03.2006	19,47,947/-
2	4,99,800	21.04.2006	9,69,869/-
3.	4,99,200	18.07.2008	8,47,172/-
4.	50,000	22.09.2008	83,872/-
5.	5,00,000	22.09.2008	8,38,720/-
6.	4,99,800	22.12.2008	8,24,864/-
7.	2,00,000	11.11.2009	3,10,815/-
8.	38,277	11.11.2009	59,485/-
9.	5,53,576	11.11.2009	8,60,300/-
10.	5,53,576	13.11.2009	8,59,970/-
11.	2,00,000	03.02.2010	3,05,821/-
12.	3,00,000	03.02.2010	4,58,732/-
13.	2,99,400	03.02.2010	4,57,815/-
14.	3,00,000	04.02.2010	4,58,643/-
15.	Total=54,93,629/-		Total= 92,84,025/-
16.	Total Payable to complainant	5493629+9284025=	1,47,77,654/-

21. The complainant is seeking statutory compensation on amount deposited with respondent with interest and mental agony and cost of litigations. However, no specific grounds/factors for claiming compensation has been mentioned in the pleadings nor argued at time of hearing. In this regard, 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 complainant is advised to approach the Adjudicating Officer for seeking the relief of compensation and litigation charges.

22. With respect to relief at serial no. (i) mentioned in paragraph 8 of this order, it is observed that refund of paid amount under provisions of Section 18 of RERA Act,2016 and Rule 15 of HRERA Rules,2017 is awarded with interest till the actual realization. So, there is no need to pass any specific directions w.r.t. pendent-lite interest and future interest as award of refund with interest itself from date of deposit till actual realization. Complainant



has prayed for interest @10.45%, however the legislature in RERA Act,2016 only provides for interest in terms of Rule 15 of HRERA Rules,2017 which is SBI MCLR+2%, as on date interest works out to 10.85%. As a matter of settled position of law, relief cannot be awarded more than the sought one in complaint. But for the fault of counsel, the complainant should not suffer. Further, it is to mention here that the complainant has sought relief of refund with interest in favor of complainant, his legal heirs and representatives. This Authority deals with the complaint cases in a summary manner wherein relation of allottee and promoter is the basis of transactions carried out between the parties. So, the relief, if any passed is only in particular/specific to the parties mentioned in the complaint. No heirs/representatives can claim any benefit out of it without being impleaded as proper party. So, relief of refund of paid amount with interest is awarded at the rate of 10.85% in favor of complainant only.

#### **H. DIRECTIONS OF THE AUTHORITY**

23. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the RERA Act,2016 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 ₹ 54,93,629/- with interest of Rs 92,84,025/- to the complainant.

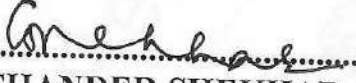
It is further clarified that respondent will remain liable to pay



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.

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

  
.....  
**CHANDER SHEKHAR**  
[MEMBER]

  
.....  
**NADIM AKHTAR**  
[MEMBER]