



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>35 of 2023</b>
<b>Date of filing:</b>	<b>19.01.2023</b>
<b>Date of first hearing:</b>	<b>29.03.2023</b>
<b>Date of decision:</b>	<b>20.05.2024</b>

Ravinder Kumar Shahabadi S/o Late Sh. Dr. Hira Lal Shahabadi  
R/o G-201, Arya Apartment, Sector-15,  
Rohini, Delhi-110089

....COMPLAINANT

VERSUS

TDI Infrastructure Limited.  
TDI House G-7, Outer circle  
Connaught Place,  
New Delhi- 110001

....RESPONDENT(S)

**CORAM:**

**Nadim Akhtar**  
**Chander Shekhar**

**Member**  
**Member**

**Present: -**

Mr. Vikas Singh, Counsel for the Complainant through  
VC.  
Mr. Shubhnit Hans, Counsel for the respondent through  
VC.

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

1. Present complaint has been filed on 19.01.2023 by the 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 Royale heights", NH-1, Sonipat
2.	Name of the promoter	TDI Infrastructure Ltd
3.	RERA registered/not registered	Un-Registered.
4.	DTCP License no.	70 of 2012
	Licensed Area	10.83 acres
5.	Unit no.	B-2/0402, 4 <sup>th</sup> floor
6.	Unit area	1075 sq. ft.
7.	Date of allotment	05.01.2013
8.	Date of builder buyer agreement	04.03.2013
9.	Due date of offer of possession	04.09.2015

10.	Possession clause in BBA -30 months	Clause 28 <i>".....However, if the possession of the apartment is delayed beyond a period of 30 months from the date of execution thereof and the reasons of delay are solely attributable to the wilful neglect or default of the company then for every month of delay, the purchaser 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 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 apartment."</i>
11.	Total sale consideration	₹ 23,49,090/-
12.	Amount paid by complainant	₹ 28,23,139/- Complainant in his pleadings claims to have paid an amount of Rs 28,19,787/-. But as per statement of account filed in registry on 19.04.2024 total paid amount is 28,23,139/-for passing of this order total paid amount of Rs 28,23,139/- is taken into consideration.
13.	Offer of possession (fit-out)	18.03.2020.

### B. FACTS OF THE COMPLAINT

3. Facts of complaint are that complainant had booked a residential built-up floor in the project of the respondent namely; Espania Royale Heights situated at NH-1, Sonipat by making payment of ₹2,50,000/-



on 21.05.2012. Copy of receipt dated 21.05.2012 is attached as Annexure-2. Following which Builder Buyer Agreement (BBA) was executed between complainant and respondent on 04.03.2013 and in terms of clause 28 of it, possession was supposed to be delivered within 30 months i.e. up to 04.09.2015. Copy of agreement is annexed as Annexure-4

4. Complainant has paid an amount of ₹28,23,139/- against total sale consideration of ₹23,49,090/- but respondent has failed to abide by the timeline of construction and the construction was delayed way behind the schedule.
5. That the project is still incomplete as the connection of water including drinking water had not been provided and a permanent electric connection had not yet been provided at site. The parking lot of the apartments gets flooded whenever there is heavy rainfall which is dangerous to the life and limbs of the residents. It is pertinent to mention here that the respondent had not yet obtained the completion/occupation certificate from the concerned department due to which complainant is restrained from selling the allotted flat.
6. That complainant had served a legal notice dated 27.02.2021 upon the respondent seeking refund of paid amount. But respondent did not bother to revert on it nor refunded the amount till date. Hence the



present complaint has been filed by the complainant before this Authority.

### C. RELIEFS SOUGHT

7. Complainant in his complaint has sought following reliefs:

a. Direct the Respondent to Pay to the Complainant Rs. 28,19,787/- (correct figure of paid amount is Rs 28,23,139/-) for B-2/0402. along with interest @ 18% p.a. from the date of booking till date towards refund of the money paid to the builder.

b. That the Respondent may kindly be directed to pay interest/charges towards delay in possession to the Complainant for the period of delay (i.e., from September 2015) calculated at the prescribed rate of interest on the total amount deposited with the Respondent till the delivery of possession of the said units in question.

c. That the Respondent may kindly be directed to pay pending Assured Investment Return in terms of the Buyer's Agreement dated 04 March 2013 with interest.

d. That the Respondent may kindly be directed to deliver copies of occupancy certificate, deed of declaration and copies of all approvals from the competent authorities to the Complainant at the time of offer of possession of the said units in question.



- e. That this Hon'ble Authority may kindly declare that the Buyer's Agreement dated 04 March 2013 is arbitrary, unjust, unilateral and unfair and consequently, not binding upon the Complainant.
- f. That the Respondent may kindly be directed to pay an amount of Rs. 1,10,000/- as litigation expenses incurred by the Complainant.
- g. That the respondent may kindly be penalized for contravention of the provisions of the Act as well as for cheating and defrauding the allottees, including the complainant.
- h. That the respondent may kindly be penalized for not registering the said project before the Hon'ble Authority.

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

Learned counsel for the respondent filed a detailed reply on 01.03.2024 pleading therein:

8. That due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely-Espania Royale Heights, Main NH-1, Sonipat, Haryana.
9. That the builder buyer agreement between the complainant and the respondent has been executed on 04.03.2013 which is much prior to 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.





10. 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.
11. That respondent had vide its letter dated 31.03.2017 applied for grant of occupation certificate before the Director, Town & Country Planning Department, Haryana. Vide letter dated 22.02.2021, respondent had also paid a substantial amount of ₹10,00,000/- requesting the Ld. DTCP to compound the offence of offering the possession with occupation certificate.
12. That complainant has concealed that vide letter dated 18.03.2020 respondent has already offered possession for fit out of the booked floor Copy of letter is annexed as Annexure R-4. Respondent had issued various reminder letters to the complainant to clear his outstanding dues but the complainant did not come forward to clear his outstanding dues.
13. 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 COMPLAINANT AND LEARNED COUNSEL FOR RESPONDENT**

14. During oral arguments, Id. Counsel for the complainant submitted that the possession of the unit was supposed to be delivered by the year



2015. However, respondent has offered fit-out possession to the complainant on 18.03.2020 that too without obtaining occupation certificate from the concerned department. 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 and insists upon refund of paid amount with interest alongwith litigation cost.

15. 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 possession of the floor after making payment of outstanding dues.

#### **F. ISSUES FOR ADJUDICATION**

16. Whether the complainant is entitled to refund of amount deposited by him along with interest in terms of Section 18 of RERA Act, 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 coming into force of the RERA Act of 2016, 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 and objection raised by the respondent regarding 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 earning profits and speculative gains.**

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 within 3-4 years of allotment but his bonafide belief stood shaken when the promoter failed to offer a valid possession of the booked unit till date without any reasonable cause. It is after an inordinate delay in handing over of possession that 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 under it and is entitled to file present complaint for seeking the relief claimed by him. Clause 2(d) of RERA Act,2016 is reproduced hereunder 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 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 05.01.2013 as well as in builder buyer agreement dated 04.03.2013. 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 the complainant herein is an investor does not hold any merit in favour of respondent, hence the 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, complainant had purchased the floor in the project of the respondent in May,2012 against which an amount of ₹28,23,139/- has been paid to the respondent. Out of said paid amount, last payment of ₹1,14,381/- was made to respondent on 12.03.2018 which implies that respondent is in receipt of total paid amount since year 2018 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 allotted by respondent on 05.01.2013. Builder buyer agreement was executed between the parties on 04.03.2013 and in terms of Clause 28 of BBA, respondent was under an obligation to deliver the possession to the complainant within 30 months, i.e., latest by 04.09.2015. In present situation, respondent failed to honour its contractual obligations without any reasonable justification.

(iii) Respondent vide letter dated 18.03.2020 had offered fit-out possession to the complainant along with demand of ₹ 1,05,826/- but said offer of possession was issued without obtaining occupation certificate. The complainant had filed the 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 buyer's agreement. Respondent in its reply has stated that possession got delayed due to force majeure conditions. However, no circumstances/events have been specified in reply which can be considered as force majeure for delay caused. Mere writing of term force majeure does not establish the fact that it is not due to the fault of respondent that construction of project got delayed.



(iv) Despite making full and final payment towards booking of floor, the 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 floor. Complainant had invested his hard earned money in the project with the hopes of timely delivery of possession of the floor. However, possession of floor 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.

(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 shrouded by a veil of uncertainty. Complainant had invested a huge amount of ₹23 Lakh with the respondent by the year 2018 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. 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 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 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."*



18. 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.

19. 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;*

20. 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. 20.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%.



21. 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”.*

22. From above discussion, it is amply proved on record that the respondent has not fulfilled his obligations cast upon him under RERA Act,2016 and the complainant is entitled for refund of deposited amount along with interest. Thus, respondent will be liable to pay the complainant interest from the dates when the amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainant the paid amount of ₹28,23,139/- 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 till 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 total amount works out to ₹29,12,437/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 20.05.2024
1.	2,50,000	21.05.2012	325723
2.	1,71,123	24.07.2012	219699
3.	2,13,914	19.11.2012	267134
4.	4,11,869	19.01.2013	506870
5.	1,05,281	30.07.2013	123556
6.	1,05,281	15.04.2014	115450
7.	1,05,281	02.08.2014	112039
8.	42,000	03.11.2014	43535
9.	63,281	09.12.2014	64917
10.	1,05,412	20.12.2014	107792
11.	1,05,699	13.07.2015	101644
12.	1,05,568	07.10.2015	98819
13.	1,05,826	19.12.2015	96764
14.	1,05,827	09.02.2016	95129
15.	1,05,600	24.11.2016	85854
16.	6,06,796	30.03.2017	470602
17.	1,14,381	12.03.2018	76910
18.	Total=28,23,139/-		Total=29,12,437/-
19.	Total Payable to complainant	28,23,139 +29,12,437=	57,35,576/-

23. The complainant is seeking cost of litigation. 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 litigation charges.

24. In respect of relief clause (c) as mentioned in para 7 of this order, the complainant had filed an application in registry on 19.04.2024 seeking deletion of said clause as same got mistakenly printed at time of filing of complainant. Respondent has not raised any objection to said application. Accordingly, said application is taken on record and stands allowed. Hence, relief clause (c) is deleted from the prayer clause. In respect of clause (b), (d), (e), (g) and (h) as mentioned in para 7 of this order, it is to mention here that ld. counsel for complainant has neither pressed upon nor argued these reliefs. Hence, no direction is passed against these reliefs.

#### **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:

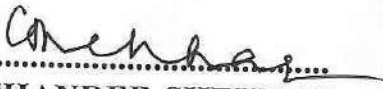
- (i) Respondent is directed to refund the entire paid amount of ₹28,23,139/- with interest of ₹29,12,437/- to the complainant. It is further clarified that respondent will



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.

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

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

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