HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**136 of 2022**
Date of filing:	**09.02.2022**
First date of hearing:	**05.04.2022**
Date of pronouncement:	**02.07.2024**

COMPLAINT NO. 136 OF 2022

1. Sh. Harit Pant S/o Sh. Dinesh Chandra Pant,

2. Smt. Bela Joshi W/O Sh. Harit Pant

Both R/o Tower-07, Flat No. 0803, TDI Tuscan City, Behind TDI Mall, Kundli Sonipat, Haryana–131028

...COMPLAINANT(S)

VERSUS

Taneja Developers Infrastructure Ltd. (TDI)

Office At: Vandana Building, Upper Ground Floor, 11 Tolstoy Marg, Connaught Place, New Delhi–110001

.....RESPONDENT

CORAM: **Dr. Geeta Rathee Singh** **Member**
Chander Shekhar **Member**

Date of pronouncement: 02.07.2024

Rathee

Present: - Mr.Sushil Kumar, counsel for the complainants through VC.
Mr. Shubhnit Hans counsel for the respondent through VC.

ORDER

1. Present complaint has been filed 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 allottees as per the terms agreed between them.

2. It is pertinent to mention that captioned complaint was heard as a bunch along with case no. 613/2022 and 133/2022 with 133/2022 as lead case as identical issues were involved and the units in all complaints are situated in the same project of same respondent. However for effective execution, separate orders on similar lines have been prepared.

A. UNIT AND PROJECT RELATED DETAILS

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

Sr. No.	Particulars	Details
1.	Name of the project	"Tuscan Heights" near TDI mall in TDI City, Kundali, Sonipat.
2.	Name of the promoter	TDI Infrastructure Ltd.
3.	RERA registered/not registered	Un-Registered
4.	Unit No. allotted	T-7/0803, 8th floor
5.	Original Unit area	1520 Sq. feet (revised unit area 1808.800 sq.ft.)
6.	Date of allotment	02.08.2011, allotment to original allottes, Mr. Harish Chada and Nitin Chada
7.	Date of Apartment Buyers Agreement	02.08.2011 with original allottees
8.	Due date of offer of possession	02.02.2014 (30 months from the date of execution of B.B.A as per Clause 30 of Agreement at page no. 37 of complaint.)
9.	Endorsement of transfer to complainants	05.10.2018
9.	Total sale consideration	Rs.33,76,680/-(as per BBA at page no. 31 of complaint)
10.	Amount paid by complainants	Rs. 50,01,459/-
12.	Offer for fit out possession	14.02.2018
14.	Possession certificate	15.06.2019
11.	Whether Occupation Certificate received or not	Occupation Certificate not received till date

B. FACTS OF THE COMPLAINT AS STATED BY THE COMPLAINANTS

4. That initially a flat/unit bearing no. T-7/ 0803 situated at TDI Tuscan City behind TDI Mall, Kundli Sonipat Haryana was booked by original allottees namely, Mr. Harish Chada and Nitin Chada , which was allotted to them vide allotment letter dated 02.08.2011. Thereafter, an apartment buyer's agreement was executed between the parties on 02.08.2011 and construction linked plan was opted vide said agreement. Copies of allotment letter and apartment buyer's agreement are annexed as Annexure C-1 and C-2.

5. That the said unit/flat was subsequently purchased by complainants and was transferred in the name of complainants jointly vide KTH No. 10692. The said transfer was endorsed by respondent in favour of complainants on 05.10.2018 annexed as C3.

6. That the respondent issued an offer for fit-out possession of said unit on 14.02.2018 with following instructions 'you are requested to clear all your payments and take possession by 01.03.2018 in order to avoid further accrual of interest' after issuing final statement of account', which was apparently a kind of threat by respondent for accrual of further interest prior

to completion of project. Copy of offer of fit out possession and final statement of account are annexed as Annexure C-4 & C-5 respectively.

7. Thereafter an entire amount shown in final statement of account issued by the respondent company was deposited by allottees and accordingly NOC was issued in favour of original allottees on 09.03.2018. A copy of NOC dated 09.03.2018 is annexed as Annexure C-6.

8. That after issuance of NOC by the respondent company, complainants became interested to purchase the flat in question and accordingly they enquired about the status of project number of times and almost all the time they were convinced and assured that the Tuscan project is one of the lucrative offer in the area. It was also further assured that the project is likely to be completed in near future and thereafter the price of the unit will be increased up to unexpected extent.

9. That complainants being influenced by assurances of officials of respondent company procured housing loan from a private bank 'India bulls Bank' in order to purchase the flat and entered into the record of respondent company with respect of the flat bearing No. T-07/0803, TDI Tuscan Project.

10. That the complainants accordingly paid entire amount to the original allottees after transfer of their name in the record of respondent company

and thus, all the rights and liabilities were transferred from original allottees to the complainants with respect to flat in question.

11. That the complainants invested their amount in ready to move flat externally but the flat along with whole project is internally defective in nature which was intentionally not disclosed by the officials of respondent. Initially it was assured that the club is existing in the project and occupation certificate and completion will be obtained just after 3 to 4 months from purchase of the flat prior to execution of conveyance deed, however all these were false and fictitious assurances. Infact, complainants were cheated by the respondent after obtaining fictitious and frivolous amount under many heads without providing the facilities thereof.

12. That the complainants got possession certificate from the respondent on 15.06.2019 after paying entire amount as sought under different heads by the respondent company and thereafter in July 2019, complainants shifted in the flat in question. Copy of possession certificate and payment schedule made by the respondent company are annexed as Annexure C-7 & C-8 respectively.

13. That after shifting in the flat, the complainants became shocked and surprised as the total agreed area of the flat in question was increased from 1520 Sq. feet to 1808.800 Sq. feet, wherein 288.800 sq. feet was increased

unilaterally without furnishing any revised plan of project, prior consent and knowledge of the complainants or even original allottees in an unauthorized and illegal manner. Such amount for increment of super measurement area acts as a heavy financial burden upon complainants which is liable to be quashed by Authority.

14. That after shifting, an amount of Rs. 4,66,556/- has been obtained from the complainants which is also unrealistic, illegal and unauthorized as the developer has already signed an agreement with Department of Town And Country Planning to provide electricity and to install fire fighting equipment at the time of issuance of license and thus, it is mandatory obligation of promoter to provide the same to the complainants within the licensed area. The cost of such mandatory obligation of the developer/ promoter have already been included in the basic sale price of the units, therefore promoter cannot charge amount for EFFC exclusively beyond basic sale price of the unit as per numerous judgment passed by this Hon'ble Authority and in view of the said fact the amount obtained by developer on the ground of EFFC to the extent of Rs. 4,66,556/- is liable to be withdrawn as the complainants are not liable to pay the same on ground of fabricated head.

15. That the Tuscan project wherein unit of complainants is located, has no any functioning club, only one club is existing near the Kingsbury Apartment

which is used as a hotel and restaurant and same is far away from the Tuscan project. Thus, an amount of Rs.50,000/- obtained on this head is also illegal and liable to be quashed. Moreover, the club membership charge is not mandatory and same cannot be obtained on fictitious grounds. On the other hand, complainants are not interested to avail the club facilities even in future hence the said amount is liable to be withdrawn.

16. That the respondent has also obtained Rs. 11,800/- as a miscellaneous expense to arrange advocates at the time of registration of flat but again said amount is liable to be withdrawn as complainants are capable to arrange advocates in case conveyance deed is executed in future after getting occupation certificate and completion certificate by the developer.

17. That it is highly surprising that the complainants were charged by respondent company Rs. 60,940/- as a charges of preferential location with respect to unit in question at 8th Floor of Tower-07 without any greenery area or club facilities as mentioned in the final account of statement. The said amount is again fictitious and liable to be returned by the respondent company to the complainants being ultimate sufferer.

18. That the complainants have paid entire amount with respect of the unit to the respondent and now it is incumbent duty of developer/ promoter to obtain occupation certificate and completion certificate and execute

conveyance deed. The complainants being an innocent buyers cannot wait for an indefinite period to execute the conveyance deed in their favor to become an absolute and legal owner after handing over legal possession. The fit-out possession is, indeed not a possession in the eye of law and thus the complainants are entitled to get compensation of Rs.10,00,000/- for the fault committed by respondent in terms of section 18 of The Real Estate (Regulation & Development) Act, 2016 as requisite compensation for delay in handing over of legal possession.

19. That after obtaining fit-out possession complainants realized that the flat is not in residual condition and moreover the project is yet incomplete. The basic amenities and infrastructure has not been developed and even society is not being properly maintained. The whole project of TDI Tuscan Phase-I is without boundary wall and ungated society. The vagabond people have been using the society without any interference of security staff. Even neither STP nor WTP is functioning as per actual norms. The electricity connection has been obtained for Phase II and still no permanent connection for Phase-I of TDI Tuscan project has been obtained. Although extension of load sanction is being sought by the developer but still there is uncertainty to get it. All the lifts installed in the society are unmaintained and sometimes it becomes non-operational for a long time say for a week or

forth-night. The complainants are unable to reside or visit on their own residence during the non-operation of lifts. The unauthorized tower under the name and style of 'Signature Tower' is being carried out in mid of society and entire building materials are still lying in very obstructing condition. The whole society seems slum due to non- maintenance which is mandatory for the developer as per rule of HRERA rules but the same is not being considered even after regular efforts, approach and demands by complainants and other residents of the society. The colour photographs of ungated society, unauthorized tower and other portion of deteriorating condition of project are annexed as Annexure C-9 (colly).

20. That due to worst condition of the project, various complaints were made to Town and Country Planning Department and other authorities but no fruitful purposes came out. However in February 2021 society was inspected by team of Town and Country Planning Department after comprising three higher officials as members and they found serious deficiency due to non-maintenance of society. That other than many deficiencies, one major observation with respect of Tuscan Phase-I, it was advised by the committee in their report that the structural stability test be carried out by expert agency namely IIT Delhi, IIT Roorkee, NIT Kurukshetra, PEC Chandigarh etc. The report submitted by Town and

Country Planning Department is enough to derive the weakened and damaged condition of the society due to non-maintenance. The copy of report of Town and Country Planning Department is annexed as Annexure C-10.

21. That as per the Haryana Real Estate (Regulation and Development) Rules, 2017 Rule 8 Annexure 'A' standard agreement for sale, Clause 11(maintenance of the said building / apartment / project) "*The promoter shall be responsible to provide and maintain essential services in the Project till the taking over of the maintenance of the project by the association of allottees or competent authority, as the case may be, upon the issuance of the occupation certificate/ part thereof, part completion certificate/ completion certificate of the project, as the case may be. The cost of such maintenance has been included in the total price of the plot/ unit/ apartment for residential/ commercial/ industrial/ IT colony/ any other usage.*" Surprisingly the respondent/ developer has still neither handed over the project to any maintenance agency nor any tripartite agreement has been executed in accordance with law prior to handing over of project and morcover complainants has not got any notice till date for charges of maintenance due to non-completion of project and other deficiencies and in

these circumstances the complainants are not liable to not liable to pay the maintenance charges prior to carry out legal formalities.

22. That after considering the deteriorating condition of project, non-maintenance of society and damaged condition of tower due to huge extent of deviation of the license granted to the respondent, it is apparent that developer is unable to obtain completion and occupation certificate in near future and complainants will have to wait till their entire life to execute conveyance deed in their favor even after paying the huge amount of sale consideration to the extent of **Rs.50,01,459/-** as full and final payment and thus they are entitled to get compensation on this account.

23. That the respondent is not entitled to raise any maintenance charges in view of rule mentioned herein above of HRERA Rules alongwith judgement passed by ***Hon'ble NCDRC in complaint case No. 763 of 2020 titled as 'Madhusudhan Reddy R. & Ors. Versus VDB Whitefield Development Pvt. Ltd. & Ors.***' Even the direction of NGT has also been issued not to issue occupation certificate and completion certificate in Kundli from sector 58 to 64 due to violation of norms of environment and other deviations in the different project committed by respondent company in the whole city of TDI. The downloaded copy of report of Hon'ble NGT dated 28.09.2021 in

case titled ***'Kisan Udey Samiti vs. State of Haryana & Ors'*** is annexed as Annexure C-11.

24. That after facing lot of deficiencies caused by respondent-developer, the complainants frequently approached to execute the conveyance deed in favor of complainants after paying entire amount but neither actual status of obtaining occupation certificate and completion certificate nor registration of flat was ever conveyed and thus still the complainants are in dilemma to get legal ownership of their flat due to fault committed by developer.

25. Ultimately being frustrated from attitude of respondent company. complainants sent legal notice to respondent on 12.10.2021 which was duly served, however the same was never replied. Copy of legal notice along with postal receipt is annexed as Annexure C-12 (Colly).

26. That the complainants have been cheated by respondent- developer in many folds after collecting huge extra amount on ground of increased super area, charges of fire fighting equipment's, club membership charges, PLC, miscellaneous expenses, etc. due to gross negligence and deficiency in service towards the complainants. Hence, this complaint.

C. RELIEFS SOUGHT

27. In view of the facts mentioned above, the complainants pray for the following directions to respondent/ developer/ builder:-

i. to withdraw and pay Rs.5,21,400/- as claim obtained by respondent on the ground of fictitious super measurement area to the extent of 264.100 sq. ft. along with requisite rate of interest thereon after fictitious increment thereof from 1520 sq. ft. to 1808.800 sq. ft.;

ii. to withdraw and pay the amount of Rs. 4,66,556/- as claim obtained by respondent on the ground of EFFC obtained illegally and unauthorizedly despite of fact that same is included in actual cost of the sale consideration along with requisite rate of interest thereof;

iii. to withdraw and pay the amount of Rs. 50,000/- as claim obtained by respondent on a charge of non-existence Club in TDI Tuscan City along with requisite rate of interest thereof;

iv. to withdraw and pay the amount of Rs. 11,800/- as claim obtained by respondent on a charge of miscellaneous expenses such as advocates fees in advance alongwith requisite rate of interest thereof;

v. to withdraw and pay the amount of Rs. 60,940/- as claim obtained by respondent on a charge of PLC in advance alongwith requisite rate of interest thereof;

vi. to direct to pay the compensation to the extent of Rs. 10,00,000/- for indefinite and inordinate delay to get occupation certificate and completion certificate and execution of conveyance deed alongwith requisite rate of interest thereof;

vii. to defer to raise maintenance charges, if any in terms of Rule 8 Annexure-A of standard agreement for sale clause 11 of HRERA alongwith judgement passed by the Hon'ble NCDRC in complaint No.763/ 2020 prior obtaining occupation and completion certificate;

viii. to provide basic amenities of services immediately such as permanent electricity connection, two fully operational lifts in Tower-07, water treatment plant, proper sewage disposal system/ sewage treatment plant, cleanliness and security prior obtaining occupation and completion certificate as agreed;

ix. To direct immediate registration of allotted flat after completion of the tower to the satisfaction of district town planner concerned after full and final payment in favor of complainants;

x. To provide simple interest @ 9% p.a. on the final awarded/ decreed amount in favor of complainants as per prescribed rate of rule 15 of HRERA;

xi. Pass any other or further order/relief which this Hon'ble forum deems fit and proper in the aforesaid facts and circumstances, in favour of complainants, in the interest of justice.

D. REPLY ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed reply on 26.06.2022 pleading therein:

28. That the complainants had voluntarily invested in the project of the respondent namely Tuscan Heights, near TDI mall in Tuscan City, Kundli, Sonepat, Haryana.

29. That the said project of respondent is covered under license No. 177 of 2007 dated 13.04.2017 annexed as Annexure R-2 and the respondent company had already applied to the Director General of Town and Country Planning, Haryana, for grant of Occupation Certificate for said project vide letter dated 09.05.2014 annexed as Annexure R-3 with reply.

30. That The Real Estate (Regulation & Development) Act, 2016 was not in existence at the time of commencement of construction of the said project. Also, an occupation certificate was applied by the respondent company way back in 2014, therefore, the present complaint is not maintainable and falls outside the purview of the The Real Estate (Regulation & Development) Act, 2016. The RERA Act came into effect in 2016 and cannot be held to be

retrospective in nature. In a recent judgment, the Hon'ble Supreme Court in the matter titled as "***Newtech Promoters and Developers Pvt. Ltd. vs. State of UP and others", in Civil Appeal Nos. 6745-6749 of 2021*** has held that application of The Real Estate (Regulation & Development) Act, 2016 is retroactive in character. Thus, if the Act is given a retrospective application, the same would be unjust and would gravely prejudice the respondent company.

31. That the complainants have already given away their rights to make the respondent company liable for any claims as the complainants have signed the NOC dated 09.03.2018 (Annexure 6) and have given an undertaking after his full satisfaction with regard to unit in question.

32. Further, the possession certificate has also been issued on 15.06.2019 and the complainants have been residing in the said flat ever since. It is evident from the perusal of the said NOC and possession certificate that the complainants after duly inspecting their unit cleared all the dues, signed the NOC and accepted the physical possession of the unit way back in 2019. Therefore, now after a delay of about 3 years from the date of accepting the possession, complainants cannot approach the Authority and seek relief as claimed for.

33. That the complainants have been sleeping over its obligation to pay the outstanding amounts despite repeated reminder letters sent by the respondent. Copy of said reminder letters sent by respondent company is annexed as Annexure R-4 (Colly) and a copy of statement of account stating payments by complainants is annexed as Annexure R-5.

34. That no cause of action has occurred in favour of the complainants and the present complaint is barred by limitation as the complainants have been sleeping over its rights for more than 3 years from the date of possession.

35. That after issuance of NOC by respondent company, complainants became interested to purchase the flat in question after been enquired about the status of project number of times. Also, the handing over of the possession has always been tentative and subject to force majeure conditions as duly mentioned under clause 30 of the agreement and the complainant have been aware about the same at all times. Thus, the complainants cannot be allowed to raise wrong, false and frivolous claims especially when complainants have already accepted the possession and are residing in the said unit.

36. That all the demands made and area increased is consistent with the terms and conditions of the agreement executed between the parties and the complainants cannot run away from their obligations. Further, the super

area has always been tentative and the same is finally calculated after the construction of the building is complete. The Complainants were aware about the said fact that the area is tentative as the same has been incorporated in Clause 7 of the agreement as well as reproduced below:-

> *"In the event of any increase or decrease to the extent of 10% to the agreed area of the Independent Floor/Apartment, due to alteration as aforesaid, the adjustment in the payments shall be made as per the basic rate as mentioned in Clause 2 above. However, if the increase or decrease is more than the extent of 10%, then it shall be the Company which shall have the sole discretion to fix the rate for such an increase or decrease. Further, if due to change in the layout plan of the colony or on account of any other alterations, the Independent Floor/apartment gets dislocated/omitted, then it shall be open for the purchaser to opt for a substituted independent floor/apartment as may be offered by the Company. In case the purchaser is not willing to opt for any substituted allocation of independent floor/apartment or in case of independent floor / apartment is omitted or the company is unable to hand over the same, the company will be liable to refund only the amount received from the purchaser towards the TSC for the independent Floor / apartment along with the simple interest @9% p.a. which shall be calculated from the respective dates when the company has actually received the money in its account. No further compensation of any sort shall be payable by the Company."*

37. That the consent was given by the complainants in the agreement as to the change in the area and whatever amount has been charged by the respondent from complainants has been charged as per the terms and conditions of the buyer's agreement. It is submitted that the complainants are bound by the terms of the contract and as such cannot withdraw their consent. Further,

even at the time of handing over the possession, complainants were aware about the same, but they did not raise any objection about the same, in fact signed the NOC dated 09.03.2018 stating that they are fully satisfied with the unit. Therefore, at this belated stage the complainants cannot be allowed to approach the Authority for any relief.

All the demands have been made in accordance with the terms and conditions of the agreement executed between the parties. Therefore, complainants cannot run away from fulfilling their obligations and are liable to pay the same. Therefore, the said demand/amount cannot be withdrawn.

38. That the club is developed and fully operational and the complainants are already aware about the same.

39. That the project of respondent is fully developed and many allottees are already residing in the said project since 2014. Complainants have taken over the possession of the said unit after full satisfaction in 2018. Complainants were handed over the possession in 2019, now the complainants cannot be allowed to raise claims pertaining to the development of the project at such a belated stage when they did not have any objection at the time of taking over the possession of the unit and no protest was made back then. Therefore, all the allegations levelled by the complainant are denied in toto.

40. It is denied that respondent has still neither handed over the project to any maintenance agency nor any tripartite agreement has been executed in accordance with law prior to handing over of project. It is submitted that the said project is being maintained by the maintenance agency "M/s Cannes Property Management Services Pvt. Ltd. of which complainants are well aware.

41. It is denied that complainants have been cheated by respondent in many folds after collecting huge extra amount on ground of increased super area, charges of fire fighting equipment's, club membership charges, PLC, ME charges, etc. All the issues framed by the complainants are denied as being wrong, false and phoney.

42. That the respondent has not made any violation of the Act or the Rules made thereunder. The reliefs claimed by complainants are denied and claims made therein are not maintainable and are hence, liable to be dismissed.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT

43. During oral arguments learned counsel for the complainants and respondent have reiterated arguments as mentioned in their written submissions.

F. OBSERVATIONS AND DECISION OF AUTHORITY

44. Authority has gone through the rival contentions. In light of background of the matter as raptured in this order and also arguments submitted by both parties, Authority observes that there is no dispute with respect to the facts that initially a unit was booked by original allottees in the respondent's project namely Tuscan City (Heights), Kundli, Sonepat in the year 2011; Unit No. 0803, in Tower 7, measuring 1520 sq. feet was allotted to original allottees namely Mr. Harish Chada and Nitin Chada vide allotment letter dated 02.08.2011; Apartment buyer's agreement dated 02.08.2011 was executed between the parties. The said unit was subsequently purchased and transferred to complainants and endorsement letter in respect of same was issued by respondent on 05.10.2018. Thereafter, no new apartment buyer's agreement was executed between complainants and respondent. Complainants have paid Rs.50,01,459/- as total sale consideration.

45. On perusal of complaint, it is observed that complainants have three main grouses against the respondent promoter, as illustrated below:

    i. That after a delay of approximately 4 years respondent promoter had offered "fit out possession cum demand letter" dated 14.02.2018 and that too without obtaining occupation certificate from the competent authority.

ii. That vide "offer for fit out possession cum demand letter" dated 14.02.2018 respondent raised illegal and arbitrary demands under different heads.

iii. That there still exists deficiency in services on part of respondent promoter.

Aggrieved by alleged violations and contravention of the provisions of The Real Estate (Regulation & Development) Act, 2016 committed by respondent promoter, complainants are praying for relief.

46. In response to complaint, respondent promoter had filed its reply dated 26.06.2022 wherein it had raised preliminary objections regarding maintainability of complaint. Observations of the Authority on these preliminary objections are herein below:

i. Respondent has raised an objection that provisions of The Real Estate (Regulation & Development) Act, 2016 are not applicable to the present case as the agreement to sell was executed and construction was commenced prior to coming into force of RERA Act, 2016. Respondent in its reply has averred that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and same cannot be examined under the provisions of The Real Estate (Regulation & Development) Act, 2016. 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 the RERA Act, 2016 coming into force the terms of agreement are not re-written, the Real Estate (Regulation & Development) Act, 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 Real Estate (Regulation & Development) 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, reference can be made to the case titled ***M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP &Ors. Etc. 2022(1) R.C.R. (Civil) 357,*** wherein the Hon'ble Apex Court has held as under:-

> *"41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for al safeguarding the pecuniary interest of consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case."*

As per the aforesaid ratio of law, the provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the rules applicable to the acts or transactions, which were in the process of the completion though the agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and Rules made thereunder will only be

prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

ii. Respondent has further raised an objection that complainants are in peaceful possession of their unit since issuance of possession certificate on 15.06.2019 and have approached this Authority after a delay of 3 years, hence, complaint is barred by limitation.

In this regard, it is observed that as per clause 30 of apartment buyer's agreement, respondent was to handover the possession of the unit to allottees within 30 months from the date of execution of agreement. Apartment buyer's agreement was executed inter-se the original allottees and respondent on 02.08.2011, as per which possession was to be handed over to allottees by 02.02.2014. Said unit in question was subsequently purchased and transferred to complainants and endorsement letter in respect of same was issued by respondent on 05.10.2018. Thereafter, no new apartment buyer's agreement was executed between complainants and respondent, meaning thereby that complainants had stepped into the shoes of original allottee for all intent and purposes on 05.10.2018. As per original apartment buyer's agreement dated 02.08.2011, delivery of the unit was to be made within 30 months from the date of agreement, thus deemed date of delivery was 02.02.2014. However, admittedly possession certificate has been issued

to the complainants on 15.06.2019, i.e., after a delay of more than 4 years from deemed date of possession. Hence, respondent has failed to fulfil its obligations to hand over the possession of the booked unit in its project within time stipulated in agreement for sale. Respondent has neither paid delay possession interest till date nor executed conveyance deed in favour of complainants, thus, the cause of action is re-occurring, Authority has also made reference to the judgement of the **Hon'ble Apex Court in *Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise*** wherein it was held that 'The Indian Limitation Act' applies only to courts and not to the tribunals. Relevant para is reproduced herein:

> *19. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963."*

The Real Estate (Regulation & Development) Act, 2016 is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act 1963, thus, would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority established under the Act is a quasi-judicial body and not Court. Therefore, objection of

respondent with respect to the fact that complaint is barred by limitation is rejected.

47. Now while proceeding to observe and decide complaint on merits there are three major issues to be decided:

i. Whether complainants are entitled to relief of delayed possession interest as per Section 18 (1) of The Real Estate (Regulation and Development) Act, 2016 read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 for any delay in offer of possession.

ii. Whether any amount has been charged from the allottees in contravention to terms of apartment buyer's agreement or provisions of Real Estate (Regulation and Development) Act, 2016 or Rules or Regulations made thereunder.

iii. Whether there exists any deficiency in services

Issue1- Whether complainants are entitled to relief of delayed possession interest as per Section 18 (1) of The Real Estate (Regulation and Development) Act, 2016.

48. Complainants in their complaint have alleged that original allottes were allotted unit no. T-7/0803 situated at TDI Tuscan Heights, Sonipat, Haryana on 02.08.2011. Apartment Buyer's Agreement dated 02.08.2011 was

executed between the original allottes and respondent. The said unit in question was subsequently purchased and transferred to complainants and endorsement letter in respect of same was issued by respondent on 05.10.2018, whereby complainants who are subsequent allottees stepped into the shoes of original allottees. It is pertinent to mention here that no new agreement for sale was signed by respondent with the complainants, meaning thereby complainants and respondent shall remain bound by terms of agreement dated 02.08.2011, which was endorsed in favour of complainants. As per terms of apartment buyer's agreement dated 02.08.2011, possession was to be handed over in a period of 30 months from date of execution of apartment buyer's agreement, thus, respondent-promoter was obligated to handover possession of the unit by 02.02.2014, however respondent has not handed over possession as per time stipulated in agreement for sale, also respondent has not received occupation certificate till date. Therefore, complainants are seeking relief of delay possession interest till the date of receiving occupation certificate.

49. Per contra, the respondent in its reply has denied that possession of the unit was to be handed over in a period of 30 months from date of execution of apartment buyer's agreement as per reply. Respondent has averred that no fixed timeline for handing over possession was ever committed to

complainants and the same was always tentative and subject to any force majeure event. Respondent has further averred that complainants were issued possession certificate for said unit on 15.06.2019 and since then complainants have been enjoying possession of their unit. Therefore, complainants are not entitled to any interest on account of delay in delivery of possession.

50. In the present case, the complainants/subsequent allottees have been acknowledged as allottees by the respondent vide endorsement letter dated 05.10.2018. Authority has observed that the promoter has confirmed the transfer of allotment in favour of subsequent allottees (complainants) and the instalments paid by the original allottee were adjusted in the name of the subsequent allottees. Further, it is observed that the buyer's agreement dated 02.08.2011 which was originally entered into between the original allottees and the promoter, the same buyer's agreement has been endorsed in favour of the subsequent allottees/complainants. All the terms of buyer's agreement remain the same, so it is quite clear that the subsequent allottees have stepped into the shoes of the original allottees for all intent and purposes and shall takeover all rights and liabilities of original allottees as provided in the agreement for sale dated 02.08.2011.

51. On perusal of clause-30 of apartment buyer's agreement dated 02.08.2011, Authority observes that respondent had committed that if possession of the 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 purchaser shall be entitled to a fixed monthly compensation/damages/penalty @ Rs.5/- per square foot of the total super area of the apartment. Meaning thereby that the respondent promoter had undertaken/committed to hand over the possession of the unit in question within a period of 30 months from the date of execution of the agreement to sell, i.e. by 02.02.2014. Not only this, the respondent had also undertaken to compensate the complainant allottees in case of delay in handing over possession beyond a period of 30 months.

52. It is observed that respondent had taken a plea that handing over of unit was subject to force majeure condition. However, there is no document on record to show or to prove that any force majeure condition occurred or existed during the 30 months' period from execution of agreement for sale that could have contributed to any delay in completion of construction and handing over of possession. Hence, it was an obligation on the respondent to hand over the possession of the unit by 02.02.2014 and for any delay

beyond that the respondent after coming into force of Real Estate (Regulation & Development) Act, 2016 is liable to pay delay interest in terms of Section 18 read with Rule 15 of Haryana Real Estate (Regulation & Development) Rules, 2017.

53. It is a matter of fact that the possession certificate was issued in favour of the complainants vide letter dated 15.06.2019 i.e., after a delay of more than four years. It is observed that the complainants in their complaint have pleaded that the offer of possession was made without obtaining a valid occupation certificate from Department of Town & Country Planning. Respondent in its reply has also admitted that it had applied for occupation certificate vide letter dated 09.05.2014, however, same has yet not been granted by the competent authority. There is no dispute regarding the fact that possession was offered and possession certificate dated 15.06.2019 was issued without obtaining an occupation certificate. Nevertheless, it is also a matter of fact and admitted by the complainants that they are in peaceful possession of unit since 15.06.2019. Further, after endorsement of unit in their favour on 05.10.2018 to taking possession on 15.06.2019, complainants never raised any objection with respect to the fact that the unit is not habitable or they shall not accept it till occupation certificate is issued. Admittedly, complainants bought the unit in October, 2018, they were

aware that all the payments have been made by original allottees, there was no pressure of imposition of interest. Still knowingly and being aware of actual situation, complainants accepted possession on 15.06.2019. From these circumstances, it can be concluded that complainants had willingly accepted the possession of the unit in 2019. Hence, they are entitled to delay possession interest from the period from 02.02.2014 i.e., deemed date of possession to 15.06.2019, i.e., date of issuance of possession certificate.

54. As per statement of accounts annexed at Annexure C-8 and Appendix DD of complaint, which is also admitted by the respondent in its reply vide its statement of accounts at Annexure-R-5, complainants had paid an amount of Rs. 50,01,459/- as total sale consideration. Therefore, Rs. 50,01,459/-, is taken into account for calculation of interest as prescribed under Rule 15 of Haryana Real Estate (Regulation & Development) Rules, 2017 i.e. @ SBI highest marginal cost of lending rate (MCLR) + 2% i.e., 10.85% (8.85%+2%), as on date which is to be calculated from the deemed date of possession till actual handing over of possession (i.e. from 02.02.2014 to 15.06.2019).

55. As per calculations made by accounts branch, amount payable by respondent to the complainants on account of interest for delay in handover of possession of the unit has been worked out to Rs.21,18,676/-. Thus, the

respondent is directed to pay the complainants amount of **Rs.21,18,676/-** as delay interest for the period from 02.02.2014 to 15.06.2019 within 90 days of uploading of this order on the website of the Authority.

Issue- II. Whether any amount has been charged from the allottee in contravention to terms of apartment buyer's agreement or provisions of Real Estate (Regulation and Development) Act, 2016 or Rules or Regulations made thereunder.

Complainants in their complaint have referred to statement of account dated 02.12.2019 at page no. 48 of complaint file and alleged that respondent has illegally charged from them against following heads :-

(a) Electrical & Fire Fighting Charges (EFFC) Rs.4,66,556/-

(b) Preferential Location Charges (PLC) Rs. 60,940/-

(c) Miscellaneous Charges (ME) Rs. 11,800/-

(d) Charges demanded on the pretext of increase in apartment area from 1520 Sq. feet to 1808.8000 Sq. feet, and

(e) Club Membership Charges (CMC) Rs. 50,000/-, whereas, there is no club in existence.

It is the case of the complainants that since all these charges/amounts were illegally and arbitrarily collected/levied upon the complainants, respondent is liable to refund the same.

On perusal of statement of account at page no's 52 to 57 of complaint (Annexure 8), it is observed that last payment of Rs.4,07,000/- was made by original allottees on 27.03.2018, meaning thereby all the payments in respect of unit in question were paid by original allottees and thereafter the unit was endorsed in the favour of complainants on 05.10.2018. Since the complainants/ subsequent allottees have stepped into the shoes of original allottees from the date of endorsement, therefore, now complainants are entitled to raise grievance with respect to said payments made by original allottees. Thus, with regard to the aforementioned charges/amounts collected from allottees, Authority observes and directs as below:

a) Electrical and Fire Fighting Charges (EFFC)

Another grievance of the complainants is that the charges to the extent of Rs.4,66,556/- levied for EFFC are unreasonable, therefore same may be refunded. It is alleged that as per terms of licence, it is the sole responsibility of the promoter to develop both basic infrastructure of the project like roads, sewage system, storm water disposal, electricity connection, water supply etc. Per contra, stand of the respondent is that EFFC has been levied as per terms of the Apartment Buyers' Agreement.

Authority observes that respondent promoter had signed an agreement with Department of Town and Country Planning to provide electricity and to

install the fire-fighting equipment at the time of issuance of license, therefore, it is mandatory obligation of promoter to provide the same to the allottees within the licensed area. Cost of such mandatory obligations of the promoter are included in the basic sale price of the units. Respondent is liable to provide for electric fire- fighting equipment, levy of EEFC over and above basic price is illegal and hence EEFC charges are quashed. Respondent is directed to refund charged from complainants on account of said charges.

b) Preferential Location Charges

Another grievance of the complainants is that preferential location charges have been levied on the unit despite the fact that the unit allotted is situated on the 8th floor of the tower. Complainants have alleged that there is no greenery or club facilities near unit of complainants, meaning thereby that the unit is no more a preferential location and therefore, charges for preferential location be refunded.

With regard to this allegation of complainant that due to allotment of unit without greenery and club facilities the unit in question no more remains a preferentially located unit, it is observed that no document has been placed on record by complainant to show/prove the allegation that there is no greenery in front of the complainant's unit. Also, complainants themselves

alleged that they are no more interested in availing club facilities even in near future.

Further, on perusal of apartment buyer's agreement, it is observed that as per clause 4 complainant allottees had agreed to pay an amount of Rs.45,000 /- as preferential location charges for allotment of unit no. T-7/0803 at 8th floor. Nevertheless, apparently, (apparent from the perusal of final statement of account dated 02.12.2019, respondent had demanded Rs.60,940/- towards preferential location charges which have already been paid by the complainants. Here, Authority observes that since, at the time of allotment, allottees had agreed to pay Rs.45,000/- and ever since then, there has been no further change in location of the unit, complainants shall remain obligated only to pay to the extent of the agreed amount i.e. Rs.45,000/- as preferential location charges. Respondent shall refund the excess amount collected from complainants on account of preferential location charges.

c) Miscellaneous charges (ME):

Complainants in their complaint have alleged that an amount of Rs.11,800/-has been charged from them on account of the fee payable to the advocate for discharging registration formalities etc. Complainants stated that in case conveyance deed is to be executed, they are capable of arranging advocates for facilitating all formalities of registration. Thus,

demand made by respondent towards "Miscellaneous charges" be withdrawn. In this regard, Authority observes that in present case, the stage of execution of conveyance deed has yet not been arrived, as occupation certificate has not been issued by the competent authority, therefore, respondent is not entitled to charge any amount of registration fees in name of miscellaneous charges years prior to the stage of execution of conveyance deed. Hence, Authority finds this component as unreasonable and directs the respondent to refund the same.

d) Increase in Super Area

Complainants have alleged that respondent had unilaterally increased area of their apartment from initial booked area of 1520 sq. fts to 1808.8000 sq. fts i.e., increase of about 288.800 sq. fts. and has charged Rs.5,21,400/- for the same. Complainants have further alleged that there is no change in location of the plot, plot number or the dimensions of the apartment, thus, the entire amount collected for the increased area over and above 1520 sq. fts is liable to be returned.

Whereas, respondent has averred that the increase in area has been in accordance with law and as per approved layout plans and complainants after satisfying themselves fully accepted the possession and signed the

documents, therefore, now at such belated stage, complainants cannot be allowed to make such bald assertions against the respondent company.

In order to ascertain whether the increase in area from 1520 sq. fts to 1808.8000 sq. fts is actual or fictional Authority vide its interim order dated 16.11.2023 had directed the respondent to file component-wise detail of the increase in super area. In compliance of the same, respondent filed component-wise detail and final statement of account on 05.04.2024. On perusal of component-wise 3 BHK area detail as submitted by the respondent, it is observed that the respondent has also loaded the shaft area of the flat, mumty area, machine room area, overhead tank area, UG tank and pump room area, stilt floor and basement common area, elevated feature area, STP, ESS, guard room, panel room, B.W. etc. proportionately on the flat and has charged for the same. Authority observes that all these areas components as mentioned are generally not part of the FAR and as per the policy of the Department of Town and Country Planning, only the area which is part of FAR is saleable. Area which is not part of FAR is not saleable, therefore, the same cannot be loaded and charged on the units allotted. Even for a moment, it is presumed that respondent would endeavour to get condonation of increased area as per policy of the department, then also such condonation shall not be over and above 10%,

whereas complainants have been charged for almost 19% increased area which is over and above what has been agreed in the agreement for sell and beyond the condonation limit.

Further, perusal of clause-2 or apartment buyer's agreement reveals that it was agreed between the parties that "*the final super area of the said apartment shall be confirmed by the Company only after the construction of the said building is complete and occupation certificate granted by the competent authority.*"Clause-2 further provides that "*if there shall be any increase in super area, the purchaser agrees and undertake to pay for the increase in super area immediately on demand by the company and if there shall be any reduction in the super area, then the refundable amount due to the purchaser shall be adjusted by the company from the final instalment as set forth in the schedule of the payment.*" It furthermore provides that any amount payable or refundable, as the case may be, shall be without any interest at the same rate per square meter as agreed in the apartment buyer's agreement.

Admittedly, as on date occupation certificate has yet not been obtained for the tower in question i.e. tower-7, therefore, the stage at which it could be ascertained whether there is any increase or decrease in the super area has not arrived. Therefore, at this juncture complainant cannot be charged for

an area beyond the area mentioned in the apartment buyer's agreement i.e. 1520 sq.ft. Accordingly, respondent is directed to refund any amount charged for an area over and above 1520 sq.ft. Nevertheless, in case the super area of the apartment is enhanced/increased in the occupation certificate, whenever issued by the Department of Town & Country Planning, the complainants shall be liable to pay for the increased area without interest as agreed in clause-2 of the agreement for sale.

e) Club Membership Charges (CMC)

Complainants in their complaint have alleged that the respondent has collected Rs.50,000/- from them on account of club membership whereas there is no club in existence in the real estate project 'Tuscan Heights' where the unit of the complainants is located. Therefore, the amount charged from complainants on account of club membership be refunded to them.

However, during hearing proceedings, learned counsel for respondent stated that 'Tuscan Heights' project is a 22.864 acres group housing colony which was a part of larger residential plotted colony covered under license no.177 of 2007 falling in the revenue estate of Kundli, Sonepat, Haryana and there already exists an operational club which is enjoyed by all residents. This statement of ld. counsel for respondent was rebutted by

ld. counsel for complainants who stated that the club which is being mentioned by ld. counsel for respondent is for 'Kingsbury Apartment' which is a different phase of the larger licensed area.

On perusal of record and hearing averments of the parties on this point, Authority observes that the respondent has failed to place on record any layout plan from its possession which could prove that there is only one club approved on the entire licensed area of 'TDI City' being developed vide licence no.177 of 2007. There is no possibility of such layout plan to be in the possession of a common allottee. In absence of such documents, it could not be ascertained that there is any operational club in existence for the allottees of 'Tuscan Heights', therefore, the demand on account of club membership charges is not justified and stand quashed. Respondent is directed to refund the amount of Rs50,000/- charged on account of club membership. However, if in future, a club comes up in the project and the complainants wish to avail its membership, she shall pay the membership fee as charged by the respondent promoter.

f) Maintenance charges

Complainants have prayed to defer respondent to raise maintenance charges, if any, prior obtaining occupation and completion certificate. However, ld. Counsel for respondent stated that in present case,

respondent has not raised any maintenance charges from complainants as the said project of the respondent company is maintained by the maintenance agency "M/s Cannes Property Management Services Pvt. Ltd." of which complainants are well aware. Authority observes that as per clause 14 (b) of the apartment buyer agreement, the use of common areas and facility shall always be subject to the timely payment of maintenance charges. Admittedly, complainants have taken actual possession of the unit on 15.06.2019 therefore complainants are liable to pay maintenance charges with effect from 15.06.2019. However, since, in the present case, complainants have not impleaded the maintenance agency "M/s Cannes Property Management Services Pvt. Ltd." as a party, therefore, on account of non-impleadment of maintenance agency, the issues with regard to maintenance charges cannot be decided by Authority.

Issue III-Whether there exist any deficiency in services

In addition to aforesaid grievances, complainants also stated that respondent has miserably failed in providing infrastructural facilities like permanent electricity connection, sewage treatment plant, water treatment plant, lifts, maintenance of green area etc. There is acute lack/deficiency of infrastructural facilities/services.

Authority observes that these grievances are similar to grievances being already under adjudication before Authority in Complaint No. 2676 of 2019. Since issues regarding lack of infrastructural facilities have already been raised by Resident Welfare Association of Tuscan City' in Complaint no. **2676 of 2019** and the same are being under adjudication before the Authority, therefore, all issues regarding lack of infrastructural facilities will be decided in Complaint No. 2676 of 2019 and complainants may join aforesaid Association for redressal of issues relating to infrastructural facilities.

56. With regard to the issue of execution of conveyance deed, Authority observes that u/s 17 of the Real Estate (Regulation & Development) Act, 2016, respondent-promoter is obligated to execute a registered conveyance deed within 3 months from date of receiving occupation certificate. However, in the captioned complaint as admitted by respondent, occupation certificate has still not been issued by the competent authority, though the application for occupation certificate was made on 09.05.2014. Therefore, Authority directs respondent to execute the conveyance deed within 3 months of grant of occupation certificate.

57. Further, complainants are seeking compensation for indefinite and inordinate delay to get occupation certificate and completion certificate and

execution of conveyance deed along with requisite rate of interest. With regard to claims of compensation, Adjudicating Officer has exclusive jurisdiction to deal complaints in respect of compensation. Therefore, complainants are at liberty to approach the Adjudicating Officer for the relief of compensation.

G. DIRECTIONS OF THE AUTHORITY

58. 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 pay an amount of Rs.21,18,676/- as delay interest for the period from 02.02.2014 till 15.06.2019.

ii) Respondent is further directed to refund the following amounts:-

a. Refund of Rs.4,66,556/- obtained from complainants on account of electrical and fire-fighting charges.

b. Refund the excess amount of Rs.15,940/- collected from complainants on account of preferential location charges.

c. Refund of Rs.11,800/- collected from the complainants on account of miscellaneous charges.

d. Refund of amount charged for area over and above 1520 sq. fts.

e. Refund of Rs.50,000/- charged on account of club membership.

Since the date of payment of charges/amounts mentioned in clause ii) (a) to (e) of directions of Authority is not provided, therefore, respondent is directed to refund the same to complainants along with interest from the date of payment till the date of realization within 90 days of uploading of this order.

iii. Respondent is directed to get the conveyance deed executed in favour of complainants in terms of section-17 i.e., within 3 months of grant of occupation certificate.

59. **Disposed of**. File be consigned to record room and order be uploaded on the website of the Authority.

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CHANDER SHEKHAR
[MEMBER]

.....
Dr. GEETA RATHEE SINGH
[MEMBER]