



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	3009 of 2022
Date of filing:	14.11.2022
First date of hearing:	01.02.2023
Date of pronouncement:	02.07.2024

COMPLAINT NO. 3009 of 2022

Sanjeev Gupta

Flat No. 501, Maitri Apartments,
Sector-9, Rohini, Delhi- 110085

...COMPLAINANT

Versus

TDI Infrastructure Ltd.

Registered Office At-
Upper Ground Floor, Vandana Building 11,
Tolstoy Marg, Connaught Place
New Delhi - 11000

.....RESPONDENT

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

Member
Member

Date of pronouncement: 02.07.2024

Present: - Mr. Chaitanya Singhal, counsel for the complainant through VC.
Mr. Shubhnit Hans counsel for the respondent.

Geeta Rathee

ORDER

1. Present complaint has been filed by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of section 11(4) (a) 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	"TDI Tuscan floors" located in Tuscan City Sonipat
2.	Name of the promoter	TDI Infrastructure Ltd.
3.	RERA registered or not	Un-Registered
4.	Unit No. allotted	T-39, 2 nd floor
5.	Unit area	1164 sq. ft. Super Area



6.	Date of allotment	03.12.2010
7.	Date of Builder Buyer Agreement	30.04.2011
8.	Due date of offer of possession	30.10.2013 (30 months from the date of execution of B.B.A as per Clause 30 Agreement)
9.	Total sale consideration	Rs.26,36,926/-
10.	Amount paid by complainant	Rs.25,61,860/- as stated in complaint at page no. 41)
11.	Whether O.C received or not	O.C not received till date
12.	Offer of possession	Not made
13.	Delay in handing over of possession	11 years and still continuing

B. FACTS OF THE COMPLAINT AS STATED BY THE COMPLAINANT

3. That the respondent had launched its project namely "TDI Tuscan Floors" located in Sonipat" in the year 2011 under a false and misleading campaign that respondent would complete the said project in 30 months from launch. However, respondent breached the initial commitments and also failed to deliver the said project as per commitments made to the complainant.
4. That a 3BHK flat was booked by complainant on 30.04.2010 and vide allotment letter dated 03.12.2010 complainant was allotted apartment no. T-39, second floor, measuring 1164 sq. ft., in project "Tuscan



Floors located in "Tuscan City" Sonipat. Copy of the allotment letter dated 03.12.2010 is annexed as Annexure P-2.

5. That a builder buyer agreement dated 30.04.2011 was executed between both the parties. The said unit was allotted to complainant for a basic sale price of Rs.23,50,000/-. However, the total sale consideration of the unit including E.D.C and I.D.C was Rs.26,36,926/-. Copy of the builder buyer agreement dated 30.04.2011 is annexed as Annexure P-3.
6. That as per clause 30 of the agreement, respondent had committed to deliver the possession of the booked unit within period of 30 months from the date of builder buyer agreement which comes to 30.10.2013.
7. That respondent has not received the occupation certificate and completion certificate of the project till date and no offer of possession is made by the respondent despite the expiry of 9 years from the deemed date of handing over of possession. Since the respondent failed to construct and offer the possession of the booked unit from the 2013 till date, therefore the complainant has lost trust in respondent's project and prayed for the relief of refund of entire amount paid to the respondent along with interest.
8. That the complainant had made a payment of Rs. 25, 61,860/- for the unit in question. Copy of the Customer Ledger Statement is annexed as Annexure P-4.



9. Therefore, in view of the present complaint, complainant is seeking the refund of the paid consideration along with interest.

C. RELIEFS SOUGHT

10. In view of the facts mentioned above, the complainant prays for the following relief (s):-

- (i) Direct the Respondent to refund the entire amount of Rs. 25, 61,860/- paid by the complainant along with interest as per HRERA RULE 15
- (ii) Direct the respondent to grant litigation cost of Rs.1,50,000/- to the Complainant.
- (iii) Pass any other/further order or relief which this Hon'ble Court may deem fit and proper in the interest of justice in the light of the abovementioned circumstances.

D. REPLY ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed reply on 28.04.2023 pleading therein:

11. That the builder buyer agreement was executed between the parties in respect of apartment no. T-39, measuring 1164 sq. ft. in project "Tuscan Floors situated in "Tuscan City" Sonipat on 30.04.2011, which is prior to the commencement of RERA Act and provisions of the present complaint cannot be applied retrospectively.



12. That the complainant slept over his rights for more than 10 years from due date of possession and also has been a regular defaulter in making payments despite of various reminder letters sent to him annexed as Annexure R-4(colly). Thus, no cause of action arose against the respondent as the present complaint is time barred and non-maintainable before this forum and is liable to be dismissed.
13. That the respondent company had already applied for grant of occupation certificate on 09.05.2014 but the same has yet not been granted to them by the Department of Town and Country Planning.
14. That construction of the project is going on at full swing and flat of complainant will be delivered to the complainant after completion along with occupation certificate.
15. That the complainant is an investor and has accordingly invested in the project of the respondent company for the sole reason of investing and earning profits and speculative gains whereas the Act of 2016 is enacted to protect the interest of consumers of the real estate sector, thereby complainant is not entitled to file the complaint under section 31 of the Act and the complaint is liable to be dismissed.

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



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

F. ISSUE FOR ADJUDICATION

17. 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 AUTHORITY

18. The Authority has gone through the rival contentions. In light of the background of the matter as raptured in this order and also the arguments submitted by both parties, Authority observes that there is no dispute with respect to the facts that a 3BHK unit was booked by complainant on 30.04.2010. Unit no. T-39, at 2nd floor, measuring 1164 sq. ft. was allotted to complainant in project "Tuscan Floors situated in "Tuscan City" Sonipat vide allotment letter dated 03.12.2010. Builder buyer's agreement was executed between complainant and respondent on 30.04.2011. As per clause 30 of the agreement, the respondent was liable to complete the construction of the project and handover the possession of unit within 30 months from the date of execution of agreement i.e., by 30.10.2013.

19. Per contra respondent in its reply has raised an objection that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act, 2016 and



application of the Act is prospective, not retrospective. Respondent has argued 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 RERA Act of 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 RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in *complaint no. 113 of 2018 titled as Madhu Sareen v/s BPTP Ltd* decided on 16.07.2018. Relevant part of the order is being reproduced below:

“The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance

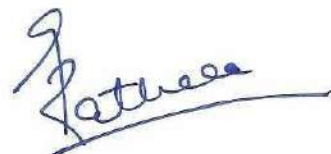


with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller.

Further, 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.

20. Secondly, respondent had raised objection regarding maintainability of the complaint on ground of that complaint is barred by limitation. In this regard, it is observed that as per clause 30 of builder buyer agreement, respondent was to handover the possession of the unit to allottee within 30 months from the date of execution of builder buyer agreement. The builder buyer agreement was executed inter-se the complainant and respondent on 30.04.2011, as per which possession was to be handed over to complainant by 30.10.2013. However, admittedly possession has not been handed over to the complainant till date. Hence, respondent has failed to fulfil its obligations to hand over the possession of the booked unit in its project as per agreement for sale, thus, cause of action is re-occurring, Further, in this regard the Hon'ble Apex Court in Civil Appeal no. 4367 of 2004 *titled as M.P Steel Corporation v/s Commissioner of Central Excise* has held that the Limitation Act applies only to courts and not to the tribunals. Relevant para is reproduced herein:

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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."

Authority observes that the Real Estate Regulation and 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, in view of above objection of respondent with respect to the fact that complaint is barred by limitation is rejected.

21. Respondent has also averred that complainant is an investor and not a consumer and the Act is enacted to protect the interest of consumers of the real estate sector, thereby complainant is not entitled to file the complaint under section 31 of the Act and the complaint is liable to be dismissed. In this regard, Authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of



the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainants are buyers and paid total price of Rs.25,61,860/- to the promoter towards purchase of an unit in the project of the promoter, At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2[d) "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:

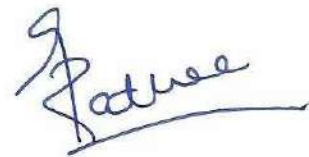
In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the unit application for allotment, it is crystal clear that the complainant is allottee as the subject unit was allotted to him by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no.



000600000010557 titled as M/s Srushti Sangam Developers PvtL Ltd, Vs. Sarvapriya Leasing (P) Lts. And Anr. has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

22. Complainant has alleged that he has already paid an amount of Rs.25,61,860/- against total sale consideration of Rs.26, 36,926/-. And even after delay of 9 years from due date of delivery of possession, there is no intimation from respondent with respect to completion or offer of possession. Considering above facts, complainant allegedly has lost faith in respondent project and filed the present complaint for refund of paid up amount of Rs.25,61,860/- along with interest. Further, respondent counsel has contended that construction is going on at full swing and respondent had already applied for grant of occupation certificate on 09.05.2014, however the same has not been granted yet by the Department of Town and Country Planning. As soon as the occupation certificate is issued by the competent authority, valid offer of possession shall be made by the complainant.

23. In view of the above, Authority observes that admittedly even as on date respondent has not obtained occupation certificate for the unit allotted to the complainant and respondent is not in a position to offer



a lawful possession to complainant. Already an extraordinary delay has been caused by respondent to complete and deliver the flat to the complainant which amounts to the breach of terms of the builder buyer agreement. Further the delivery of possession of flat along with occupation certificate does not seem possible in foreseeable future as even during hearing proceedings respondent could not commit any date by which it will be in a position to make valid offer of possession. Thus, failure of respondent to deliver possession of flat even after a huge delay of about of 14 years from the date of booking in the year 2010 has frustrated the very purpose of booking of flat. After an inordinate delay complainant cannot be compelled to continue with the booking of flat and wait for an indefinite period of time to get its possession. Moreover, respondent has been using the amount deposited by complainant for the last 13 years without any reasonable justification.

24. 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:

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“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. The complainant wishes to withdraw from the project of the respondent, therefore, Authority finds it to be fit case for allowing refund along with interest under section 18 of The Real Estate (Regulation & Development) Act, 2016 read with Rule 15 of The Haryana Real Estate (Regulation & Development) Rules, 2017 in favour of complainant.

25. 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;

26. 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".

27. 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 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%.
28. On the basis of above considerations, it is amply proved on record that the respondent has not fulfilled its obligations cast upon him under RERD Act, 2016 and the complainant are entitled for refund of



deposited amount along with interest. Therefore, Authority finds it to be a fit case for refund of the amount paid by the complainant and directs the respondent to refund Rs.25,61,860/- paid by the complainant along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017. For the purpose of calculation, interest has been calculated from the date of making payments till the date of passing of this order.

29. Respondent vide its statement of accounts attached as Annexure R-5 has admitted the payment of Rs.25,61,860/- by the complainant. Therefore, interest has been calculated on the amount admitted by the respondent as to be paid by complainant.
30. As per calculations made by the Accounts Branch, 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 ₹52,04,035/- as per detail given in the table below:

Sr.no	Principal amount (Rs.)	Date of payment	Interest accrued till 02.07.2024 (Rs.)
1.	7,04,999/-	30.04.2010	10,85,144/-
2.	2,35,000/-	08.03.2011	3,39,920/-
3.	6,051/-	08.03.2011	8,753/-
4.	2,86,926/-	07.04.2011	4,12,471/-

S. Rathore

5.	2,76,084/-	27.12.2017	1,95,324/-
6.	10,52,801/-	02.04.2019	6,00,562/-
	Total Principle amount = Rs.25,61,861/-		Interest=Rs.26,42,174/-
Total amount to be refunded by respondent to complainant= Rs. 25,61,861/- + Rs. 26,42,174/- = Rs.52,04,035/-			

31. Further, complainant is seeking compensation on account of litigation cost. 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.*" 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 litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

32. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of




obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to refund the entire amount of ₹52,04,035/- to the complainant.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

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


.....
CHANDER SHEKHAR
[MEMBER]


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