



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2777 of 2022
Date of filing:	19.10.2022
First date of hearing:	21.12.2022
Date of decision:	20.08.2024

Ashwini Kumar Billa HUF
Through its Karta
Ashwani Kumar Billa S/o Babu Ram Billa
R/o A-3/69, First Floor, Paschim Vihar,
New Delhi-110063

...COMPLAINANT

VERSUS

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

...RESPONDENT

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

Chander Shekhar **Member**

Present: - Mr. Ojas Singh Savhdeva and Mr. Gaurav Mehta, Id. Counsel
 for complainant HUF.

 Adv. Shubhmit Hans, Id. Counsel for respondent.

ORDER

1. Present complaint has been filed by complainant on 19.10.2022 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 have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project.	Rodeo Drive, TDI City, Kundli, Sonapat
2.	Nature of the project.	Commercial Plaza
3.	Details of unit.	Shop No. SF-56, measuring 400 sq. ft.
4.	Date of Builder buyer agreement	Not executed
5.	Due date of possession	The possession of the unit was to be delivered within a period of 30 months including a six months grace period, from date of sanctioning of the building plans (there is no proof of the date of approval



		of building plans.)
6.	Total sale consideration	₹ 16,00,000/-
7.	Amount paid by complainant	₹ 12,80,000/-
8.	Offer of possession.	25.03.2019

B. FACTS OF THE COMPLAINT AS STATED BY COMPLAINANT

3. Case of the complainant is that he had purchased unit bearing no. SF-56 measuring 400 sq. ft in the project of the respondent namely 'Rodeo Drive Mall' situated at TDI City, Kundli, Sonapat in the year 2006. Complainant has paid amount of ₹12,80,000/- against total sale consideration to the respondent by June 2010 itself. A builder buyer agreement was not executed between the parties. As per article 4 (1), the possession of the unit was to be delivered within a period of 30 months including a six months grace period, from date of sanctioning of the building plans. Date of sanctioning of building plans is not available with the complainant. A copy of draft of builder buyer agreement is annexed as Annexure-3.
4. That the complainant when visited the site in year 2010 of respondent after having made a substantial 80% payment of the complete amount, found that respondent had not even commenced the work of the project and there was no progress at the site. Thereafter considering the

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inordinate delay in starting of the project, complainant visited the office in year 2012 and sought cancellation and refund of his paid amount. However, his requests were ignored by respondent.

5. That respondent on 25.03.2019 offered possession to complainant after 13 years from the date of booking. However the same was not accepted by complainant. Thereafter vide letter dated 06.06.2019, respondent informed the complainant that respondent had already mortgaged the said project with CIFL by way of equitable mortgage executed on 25.10.2018 and thereby raised illegal demand to get NOC from CIFL.
6. That a legal notice was sent by respondent on 02.01.2020 through its counsel to complainant stating that the project is complete and respondent is offering possession of the same. However the complainant did not accept the same as there was delay of about 14 years from the date of booking.
7. That cause of action for complainant arose when the plot was booked on 18.12.2006, and thereafter complainant made payments to the respondent. It further arose when the complainant raised objections towards pre drafted & one sided / biased agreement to sell and the respondent thereafter did not pay heed towards executing a fair agreement to sell & infact imposed such unfair conditions of that agreement. It further arose in favor of complainant when the Respondent failed to deliver timely possession. The cause of action also arose on all

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the occasions when due to inordinate delay in possession, complainant sought cancellation of booking and refund along-with interest and the complainant made oral requests to respondent for refund. It further arose when the respondent sent letter for offering possession of the said unit dated 25.03.2019 and same was not accepted by the complainant due to inordinate delay. Furthermore it arose on 06.06.2021 when respondent issued a letter dated 06.06.2019 stating that respondent has already mortgaged the said project with CIFL by way of Equitable Mortgage executed on 25.10.2018 and thereby raised illegal demand to get a NOC from CIFL. Complainant had no knowledge that respondent instead of refunding the amount is creating mortgage over the said project without his any prior intimation / consent. The cause of action lastly arose when the legal notice dated 02.01.2020 was sent by the respondent to the complainant by raising an illegal demand for handing over the possession.

C. RELIEF SOUGHT

8. The complainant in present complaint seeks following relief:
 - i. For refund of sum of Rs. 12,80,000/- (Rupees Twelve Lacs Eighty Thousand Only) paid against shop no. 56 Second Floor Rodeo Drive, TDI City, Kundli by the complainant (in installments) to



the Respondent along with interest @ 18% from the date of payment of each respective amount/ installment till date.

- ii. Payment of a sum of Rs. 10,00,000/- (Rupees Ten Lacs Only) as a consolidated amount conservatively quantified on account for damages for mental torture and agony suffered by the complainant.
- iii. To penalize the respondent / developer with sum equivalent to 10% of the estimated cost of the project for non registration of the said project.
- iv. For cost of legal expenses along with future interest from the Respondent on the amount claimed along with interest till the realization of the same.
- v. Pass any other relief which this Hon'ble court deems fit may also be granted in favor of the complainants and against the Respondent.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

9. Respondent in its reply has submitted that complainant had voluntarily invested in the project of the respondent namely 'Rodeo Drive' situated at 'TDI City', Sonapat. Respondent has already received part completion certificate dated 23.01.2008, 18.11.2013 and 22.09.2017. They have also received occupation certificate in respect of said commercial site vide



letter dated 12.06.2019. Further, the complainant has already been offered possession of the booked unit in the year 2018 vide letter dated 27.04.2018 and thereafter on 25.03.2019. However, the complainant failed to come forward and accept possession upon payment of balance amount. Therefore, he has not come with clean hands before the Authority as he was already offered possession of this unit twice in past.

10. Further respondent has taken the plea that it had commenced construction of the said project when RERA Act was not in existence, therefore it could not have contemplated any violations or penalties thereof as stated in RERA Act. That the Act penalises developers of the project more severely than stipulated in the terms and conditions of the allotment of said flat, signed and submitted by complainant to respondent company. That further law is settled that unless statute expressly provides for retrospective application of provisions of statute, they cannot be enforced retrospectively. In recent judgement by Hon'ble Supreme Court in matter titled: "*Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others* " in civil appeal no(s). 6745 - 6749 OF 2021 has held that application of RERA Act is retroactive in nature. The provisions of act if given retrospective effect will be onerous, cause undue hardship and ruin the finances of



respondent company. Therefore in lieu of the same, present complaint is not maintainable and falls outside the purview of provisions of this Act.

11. That no cause of action has occurred in favour of complainant to file the present complaint as he was already offered possession twice in year 2018 and 2019. That complainant is only an investor and he invested in said project only for the purpose of investing and earning profits and speculative gains. That complainant is not entitled to any relief as the complaint is also barred by limitation due to delay and laches on part of complainant. Therefore, the complaint must be dismissed.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT.

12. During course of oral hearing, learned counsel for the complainant reiterated the submissions as mentioned in the complaint file. Besides that ld. counsel for complainant submitted that occupation certificate that is annexed with the reply is with respect to ground floor and first floor of commercial units of the project, however the shop in question is on 2nd floor, thus respondent has not received occupation certificate with respect to the unit of complainant.
13. Ld. counsel for complainant stated that complainant was later apprised that the respondent has created a charge on the entire project in favour of



“Capital India Finance Limited” vide loan sanction letter 25.10.2018 without his knowledge or consent. Ld. counsel for complainant further argued that complainant is under grave apprehension that the respondent will not be able to deliver a legally valid possession of the booked unit in near future and that he has already waited for more than 16 years and is not willing to wait any further. Therefore, he requested that direction be issued to respondent to refund the paid amount along with interest on account of default in delivery of possession.

14. On the other hand, Mr. Shubhnit Hans, learned counsel for the respondent reiterated the facts as stated in his reply. He also submitted that possession was offered in the year 2019 and for the past five years complainant has never approached the respondent barring present complaint. Thus, complainant is not entitled to any relief.

F. OBSERVATIONS OF THE AUTHORITY

15. In view of the submissions of both parties, Authority observes that complainant in this case had purchased the booking rights qua the unit in question in the project of the respondent in the year 2006 and paid a total amount of ₹ 12,80,000/-. Said amount has been retained by the respondent since 2006. Grouse of the complainant is that even after a lapse of more than 18 years from purchase, respondent did not issue a valid offer of possession qua the booked unit. On the other hand,

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respondent has submitted that the respondent company has already received occupation certificate in respect of the commercial site on 12.06.2019.

16. Upon perusal of the complaint file it is revealed that as per the buyers agreement, the possession of the unit was to be delivered within a period of 30 months including a six months grace period, from date of sanctioning of the building plans. Date of sanctioning of building plans is not available with the complainant. However, upon perusing statement of account dated 18.06.2010, annexed at page 39 of the complaint book, it is revealed that respondent had raised a demand under "At the time of excavation" from the complainant on 05.03.2007 meaning thereby that at the time of excavation, the builder/respondent had got approved the building plans qua the project. Thus, it can be ascertained that possession of the unit should have been delivered within a period of 30 months from the time respondent had begun excavation i.e. by 05.09.2009. However, respondent issued an offer of possession to the complainant in the year 2019 after a delay of nearly 10 years.
17. It is argued by the respondent that possession was issued to the complainant on 14.03.2019 and occupation certificate was received within three months i.e. by 12.06.2019. However upon perusal of said occupation certificate it can be ascertained that it is issued only in respect of ground floor and first floor and the unit that was allotted to



complainant is on second floor. No occupation certificate for second floor shops have been placed on record by respondent. Therefore offer of possession made by respondent on 25.03.2019 was not a legally valid offer of possession. And in such situation it cannot be held that complainant was at default when he did not accept that invalid offer.

18. Further it is observed that it was unfair that respondent mortgaged the said project with CIFL by way of equitable mortgage without informing complainant and thereafter raised an illegal demand to get NOC from CIFL.

19. Respondent in its reply has averred that provisions of RERA Act, 2016 cannot be applied retrospectively. Authority has referred to the case titled *M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. (supra)*, wherein the Hon 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 safeguarding the pecuniary interest of the 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.” “45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the pr-eexisting contract and rights executed between the parties in the larger public interest.” “53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding

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contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection. 54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."

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 contract / 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 the 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. Respondent has also taken objection that complaint is grossly barred by limitation. Reference in this regard is made to the judgement of Apex

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court Civil Appeal no. 4367 of 2004 titled as *M.P Steel Corporation v/s Commissioner of Central Excise* wherein Apex court observed :

"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 respondent has till date failed to fulfil his obligations because of which the cause of action is re-occurring. RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the limitation Act 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not Courts.

21. Further, it is an admitted fact that development of real estate projects gets delayed sometimes due to reasons beyond the control of the builder, however a delay of nearly 18 years is a huge time which takes a toll on the allottees who have invested their hard earned money in the project and are then stuck without the money or possession in hand. Complainant in this case had paid the sale consideration to the tune of ₹ 12,80,000/- by the year 2010 itself in hopes of receiving a unit. However, the complainant was not only bereft of his hard earned money but was also not able to enjoy possession since the delivery of possession had been extraordinarily delayed by the respondent. Now after more than



18 years complainant is devoid of his hard earned money and left with a unit which is of no use. It is observed that the respondent has severely defaulted in delivering possession as per the agreed terms and conditions. It is to mention here the judgement dated 02.04.2019 passed by Hon'ble Supreme Court in Civil Appel no. 12238 of 2018 titled as *Pioneer Urban Land & Infrastructure Ltd vs Govindan Raghavan* whereby it is held that the flat purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the agreement expired. Relevant part of said judgement is reproduced below for reference:-

"9. We see no illegality in the Impugned Order dated 23.10.2018 passed by the National Commission. The Appellant – Builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the Respondent – Purchaser within the time stipulated in the Agreement, or within a reasonable time thereafter. The Respondent – Flat Purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the Agreement expired. During this period, the Respondent – Flat Purchaser had to service a loan that he had obtained for purchasing the flat, by paying Interest @10% to the Bank. In the meanwhile, the Respondent – Flat Purchaser also located an alternate property in Gurugram. In these circumstances, the Respondent – Flat Purchaser was entitled to be granted the relief prayed for i.e. refund of the entire amount deposited by him with Interest."



22. Furthermore, possession in this case has been delayed beyond a reasonable period of time. Respondent builder has failed to fulfil its contractual obligation of obtaining occupation certificate and offering possession of the booked unit within stipulated time as per the builder buyer agreement.
23. Furthermore, 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(S). 6745 - 6749 OF 2021 has observed that in case of delay in granting possession as per agreement for sale, allottee has an unqualified right to seek refund of amounts paid to the promoter along with interest. 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."

24. In view of the observations made above, Authority observes that on account of failure on part of respondent in delivery of possession of booked unit within stipulated period and further deficiency in the area of the unit, complainant has acquired an unqualified right to seek refund of the paid amount along with interest. Therefore, Authority finds it to be a fit case for allowing refund in favour of complainants along with interest on paid amount as per Rule 15 of HIRERA Rules 2017 on account of failure on part of the respondent. 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;

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As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15: *“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 (NCLR) 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”, ”

25. 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. 20.08.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%. Accordingly, respondent will be liable to pay the complainant interest from the date the amounts were paid by him till the actual realization of the amount.
26. Hence, Authority directs respondent to refund to the complainant the paid amount 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 11.10% (9.10% + 2.00%) from the date amounts were paid till the actual realization of the amount.

27. Authority has got calculated the interest payable to the complainant from date of payments till date of order (i.e. 20.08.2024) and same is depicted in the table below:

S.no	Paid amount (in ₹)	Date of Payment	Interest accrued till 20.08.2024 (in ₹)	Total amount to be refunded by the respondent (in ₹)
1.	3,20,000/-	18.12.2006	3,06,786/-	4,66,786/-
2.	1,60,000/-	05.03.2007	6,28,266/-	9,48,266/-
3.	1,60,000/-	18.05.2007	3,10,386/-	4,70,386/-
4.	1,60,000/-	04.03.2008	2,92,626/-	4,52,626/-
5.	1,60,000/-	23.01.2010	2,59,053/-	4,19,053/-
6.	3,20,000/-	08.06.2010	5,04,871/-	8,24,871/-
Total	12,80,000/-		23,01,988/-	35,81,988/-

28. The complainant is seeking compensation on account of harassment and mental agony under Section 12 of RERA Act, 2016. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of*



U.P. & ors." (supra) has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of compensation.

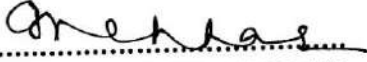
G. DIRECTIONS OF THE AUTHORITY

29. 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 **Rs.35,81,988/-** as reflected in para 27 of this order 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.



30. Complaint is accordingly **disposed of**. File be consigned to the record room after uploading the order on the website of the Authority.


.....
CHANDER SHEKHAR
[MEMBER]


.....
DR. GEETA RATHEE SINGH
[MEMBER]