



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>3168 of 2022</b>
<b>Date of filing:</b>	<b>06.12.2022</b>
<b>Date of first hearing:</b>	<b>15.02.2023</b>
<b>Date of decision:</b>	<b>02.09.2024</b>

- 1. Mrs. Purnima Sharma W/o Sh. Atul Sharma**  
R/o H.No. A-137, Meera Bagh,  
New Delhi-110087
- 2. Mrs. Sobha Sharma W/o Sh. Niranjana Deo**  
R/o RZ-J-25, Old Roshanpura Extension,  
Najafgarh, New Delhi-110043

....COMPLAINANTS

VERSUS

**TDI Infrastructure Limited**  
Mahindra Towers, 2A, 2<sup>nd</sup> floor,  
Bhikaji Cama Place,  
New Delhi- 110066

....RESPONDENT

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

**Present: -**                      Mr. Tarun Talwar, Counsel for the complainants through  
   VC.  
   Mr. Shubhmit Hans, Counsel for the respondent

**ORDER(NADIM AKHTAR – MEMBER)**

1. Present complaint has been filed on 06.12.2022 by the 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 and 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 City, Kundli , Sonipat
2.	Name of the promoter	TDI Infrastructure Ltd
3.	RERA registered/not registered	Not registered.
4.	DTCP License nos.	183-228 of 2004, 153-157 of 2004, 101-144 of 2005, 200-285 of 2002, 652-722 of 2006, 729-872 of 2006,



		42-60 of 2005, 51 of 2010 and 177 of 2007.
	Licensed Area	927 acres
5.	Unit no.(plot)	F-31
6.	Unit area	250 Sq. yds.
7.	Date of allotment	28.08.2009
8.	Date of Builder Buyer Agreement	No status available. BBA-04.11.2011 as per page 17 of copy of conveyance deed. However, neither a copy of agreement has been placed on record by any of the party, nor the complainants have mentioned any date in their pleadings.
10.	Due date of offer of possession	Not available.
11.	Possession clause in BBA	Not available.
12.	Total sale consideration of the plot	₹ 19,37,500/-
13.	Amount paid by the complainants	₹ 22,27,187 /-
14.	Offer of possession	Not specified. Actual possession not taken.
15.	Conveyance deed	31.07.2012



**B. FACTS OF THE CASE AS STATED IN THE COMPLAINT**

3. Facts of the present complaint are that original allottee Mrs. Manmohini Mittal had booked a unit in the project of respondent by paying the booking amount of Rs 5,87,500/- on 21.02.2006. Thereafter, complainants purchased allotment rights from the original allottee on 17.05.2008. Following which respondent allotted the plot bearing no. F-31, 250 sq.yds, corner plot situated in 'TDI City, Kundli, Sonipat' in favour of the complainants vide allotment letter dated 28.08.2009. Copy of same is annexed as Annexure C-1. In respect of builder buyer agreement, no averment is made in complaint by the complainants.
4. That till date an amount of Rs.22,27,187/- has already been paid by the complainants against the sale consideration of Rs. 19,37,500/-. Copy of statement of account is annexed as Annexure C-2. It is alleged that at the time of purchase of the plot in question there was a drainage system on the east side of the plot and the respondent assured that the drainage system would be removed and a 10 metre wide road would be constructed on the east side of the plot. The respondent also gave a map/layout plan confirming the construction of the road but the same is not constructed till date and as a result plot has sunk into the drainage system. As of now the respondent is neither able to



demarcate the plot nor gave the actual possession of the plot in question. A copy of map/layout plan is annexed as Annexure C-4.

5. That respondent kept giving false assurances to the complainants that a 10 mtr wide road would be constructed on the east side of the plot and believing the assurances of the Respondent, complainants executed the Conveyance Deed of the said Plot on 31.07.2012 but till date the respondent has failed to demarcate the plot and give the actual physical possession of the plot as the plot has sunk into the drainage system. The copy of Conveyance Deed is annexed as Annexure C-3.
6. That from the past few years complainants are visiting the office of the respondent for the purpose of demarcation of the plot as complainants wanted to start the construction on the plot but till date respondent has neither demarcated the plot nor handed over actual/physical possession of the plot.
7. That it is pertinent to mention here that the complainants are seriously affected by the illegal and fraudulent acts of the respondent as even after receiving whole of the amount, respondent has failed to construct a 10 metre wide road on the east side of the plot as per the layout plan/map and cover the drainage system as a consequence of which the plot has sunk into the drainage system. Said act of respondent has caused a great mental agony and monetary loss to the complainants. Therefore, as a matter of right (provided by the RERA



Act 2016) complainants are claiming refund of paid amount along with interest from the date of each payment given to the respondent, till the same is realized in view of the relevant provision of Section 18(1), 19(4) read with Rule 15.

### **C. RELIEFS SOUGHT**

8. Complainants in their complaint have sought following reliefs:
- (a) To direct the respondent to refund the amount of Rs.22,27,187/- along with interest from the date of each payment till the same is realized to the Complainant as per Section 18(1), 19(4) of the RERA Act r/w Rule 15
  - (b) To provide the cost of litigation to the tune of Rs. 1,50,000/-
  - (c) To provide Compensation to the tune of Rs.20,00,000/- on account of Mental Agony and Monetary Loss suffered by the Complainant
  - (d) That this Hon'ble Authority may kindly be pleased to pass any such order in favor of the Complainant and against the Respondent as it deems to be fit as per the rules of Real Estate Regulation and Development Act, 2016 and in the interest of justice.

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

Learned counsel for the respondent filed reply on 17.05.2023 pleading therein as under:

9. That due to the reputation of the respondent company, complainants had voluntarily invested in the project of the respondent company



namely-TDI City, Residential plots at Kundli, Sonipat, Haryana. Part completion certificates for the said project-927 acres approx. with respect to the township, have already been received on 23.01.2008, 18.11.2013 and 22.09.2017.

10. That when the respondent company commenced the construction of the said project, the RERA Act, 2016 was not in existence, therefore, the respondent company could not have contemplated any violations and penalties thereof, as per the provisions of the RERA Act, 2016. The Act penalizes the developers of the project much more severely than stipulated in the terms and conditions of the allotment of the said plot, signed and submitted by the complainant to the respondent company.
11. That the provisions of RERA Act are to be applied prospectively, therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act.
12. That complainants herein are investor and have accordingly invested in the project of the respondent company for the sole reason of investing, earning profits and speculative gains, therefore, the captioned complaint is liable to be dismissed.
13. That complainants had already got conveyance deed executed way back in year 2012 and said fact had been duly admitted by the complainants in their complaint. Therefore, at this belated stage, when



the complainants have already slept over their right for such a long period, complainants do not deserve any relief from the Authority.

14. Present complaint is barred by limitation and same is not maintainable before Authority.
15. It is denied that the at time of purchase of plot there was a drainage system on the east side of plot and respondent assured that drainage system would be removed and a 10 meter road would be constructed. No documentary proof has been placed on record proving such averment. In any case, complainants were offered possession way back. Since then complainants are not coming forward to perform part of their obligations and commence construction on plot. In this regard, respondent has sent various communications to the complainants but complainants did not pay any heed to the same. Copies of communication letters are annexed as Annexure R-6.

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

16. During oral arguments learned counsel for the complainants insisted upon refund of paid amount with interest stating that report of Local Commissioner clearly provides that possession of allotted plot as is duly mentioned in conveyance deed also is not possible because of sinkage of plot in the drainage system. Physical possession was not handed over since the year 2012 and is not possible even as on date so





he requested for passing order of refund in their favour. Learned counsel for the respondent reiterated arguments as were submitted in written statement. He further stated that conveyance deed got executed way back in year 2012 after completion of formality of handing over of plot so refund at this belated stage should not be awarded to complainants.

#### **F. ISSUE FOR ADJUDICATION**

17. Whether the complainants are entitled to refund of amount deposited by them alongwith interest in terms of Section 18 of Act of 2016?

#### **G. OBSERVATIONS AND DECISION OF THE AUTHORITY**

18. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:

- (i) With regard to plea raised by the respondent that provisions of RERA Act,2016 are applicable with prospective effect only and therefore same were not applicable as on 28.08.2009 when the complainants were allotted plot bearing No. F-31, TDI City, Kundli, it is observed that issue regarding operation of RERA Act,2016 whether retrospective or retroactive has already been decided by Hon'ble Supreme Court in its judgment dated 11.11.2021 passed in *Civil Appeal No. (s) 6745-6749 OF 2021 titled as Newtech*



***Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh  
and others.*** Relevant part is reproduced below for reference:-

*"51. Thus, it is clear that the statute is not retrospective merely because it affects existing rights or its retrospection because a part of the requisites for its action is drawn from a time antecedent to its passing, at the same time, retroactive statute means a statute which creates a new obligation on transactions or considerations already passed or destroys or impairs vested rights.*

*52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term "converting and existing building or a part thereof into apartments" including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.*

*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 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.”*

(ii) The respondent in its reply has contended that the complainants are “speculative buyers” who have invested their hard money in the project for monetary returns and taking undue advantage of RERA Act, 2016 as a weapon during the present down side conditions in the real estate market and therefore they are not entitled to the protection of the Act of 2016. In this regard, Authority observes that “any aggrieved person” can file a complaint against a promoter if the promoter contravenes the provisions of the RERA Act, 2016 or the rules or regulations. In the present case, the complainants are aggrieved persons who have filed a complaint under Section 31 of



the RERA Act, 2016 against the promoter for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here, it is important to emphasize upon the definition of term "Allottee" under the RERA Act of 2016, reproduced below: -

*Section 2(d) of the RERA Act:*

*(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;*

(iii) In view of the above-mentioned definition of "allottee" as well as upon careful perusal of allotment letter dated 28.08.2009, it is clear that complainants are an "allottees" of plot bearing no. F-31, situated in the real estate project "TDI, City, Kundli", Sonipat. The concept/definition of investor is not provided or referred to in the RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there will be "promoter" and "allottee" and there cannot be a party having a status of an investor. Further, the definition of "allottee" as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a



plot, apartment or building in a real estate project for self-consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as **M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. And Anr.** had also held that the concept of investors not defined or referred to in the Act. Thus, the contention of promoter that allottees being investor are not entitled to protection of this Act also stands rejected.

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



(v) Admittedly, complainants in this case had purchased the booking rights qua the plot in question from original allottee in the project of the respondent in the year 2008 for a total sale consideration of ₹ 19,37,500/- against which an amount of ₹ 22,27,187/- has been paid by the complainants. Out of said paid amount, last payment of Rs 8,24,062/- was made to respondent on 03.08.2009 by the complainants which implies that respondent is in receipt of total paid amount since year 2009. Thereafter, conveyance deed for plot in question was executed in favour of complainants on 31.07.2012 whereas fact remains that actual handing over of physical possession by respondent has not been made till date. No document proving otherwise has been placed on record by the respondent.

(vi) It is the stand of the complainants that respondent has not handed over physical possession of the plot till date even after execution of conveyance deed in year 2012 and possession as on date is not possible for the reason that plot specified in conveyance deed got sinked into the drainage system. In rebuttal, it is the stand of respondent that plot as specified in conveyance deed is available at site but complainants are not coming up for performing their duty by commencing construction at said plot. Further, it is also the argument of respondent that present complaint has been filed



after 10 years of conveyance deed is not maintainable for the relief of refund. At this stage, it is pertinent to mention here that in the previous hearings of this case, detailed order dated 17.10.2023 was passed while adjudicating the core issue of 'availability of plot on ground in terms of specifications provided in conveyance deed and maintainability of present complaint'. Said orders are reproduced below for reference:-

**Order dated 17.10.2023**

1. *On the last date of hearing, i.e., 31.08.2023 Authority has observed as follows:-*

*"In view of aforesaid submissions, Authority observes that complainant is seeking refund for the reason that physical possession is not available with him for constructing the plot. However said allegations are completely denied by the respondent in its reply. Refund at the stage when conveyance deed got executed way back in 2012 is not feasible. Demarcation of plot and actual possession after execution of conveyance deed is a minor issue and respondent can provide the same to its allottee without any detailed discussion. So, respondent is directed to get the demarcation of the plot done and to deliver actual possession to complainant on 15.09.2023. This direction is passed without going into the merits of the matter."*

2. *Today, ld. counsel for complainant has stated that no actual plot of the dimensions specified in conveyance deed is available at the site for the reason that plot has got sunked into drainage*



system. He requested that local commissioner be appointed to clarify the actual status of plot at ground before the Authority. In rebuttal, ld. counsel for respondent stated that some sinking has taken place at one side of plot but respondent is filling up said land by providing proper landscape for plot. For proceeding further on merits, he requested to decide the issue of maintainability first as there is no cause of action with complainant to seek relief of refund after execution of conveyance deed way back in year 2012. After execution of conveyance deed, respondent stand absolved of its contractual obligation pertaining to unit in question.

3. After hearing submissions of ld. counsel appearing on behalf of both parties and perusing relevant record, Authority observes that complainant has filed present complaint on 06.12.2022 seeking refund of paid amount of Rs 22,27,187/- paid against plot no. F-31, having area 250 sq yds in respondent's project-TDI City, Kundli, Sonipat. Said plot was allotted vide allotment letter dated 28.08.2009. His grievance is that conveyance deed of the said plot was executed on 31.07.2012 but actual physical possession has not been given till date and as of today possession is not even possible due to the fact that a 10 meter road was supposed to be constructed on east side of plot as per the approved plan for covering the drainage system but it did not happen till date and ultimately plot has sunk into the drainage system and respondent is not in a position to provide actual possession of plot. Arguments of respondent is that the complainants had executed a conveyance deed dated 31.07.2012 and therefore, the transaction between the complainant and the





*respondent has been concluded and no right or liability can be asserted by respondent or the complainant against the other. Therefore, the complainant is estopped from claiming any relief in the facts and circumstances of the case. The present complaint is nothing but a gross misuse of process of law.*

*4. Main issue to adjudicate before this Authority is whether the conveyance deed extinguishes the right of the allottee to claim any relief-refund or possession. In this regard it is important to look at the definition of the term, deed, itself in order to understand the extent of the relationship between an allottee and promoter. A deed is a written document or an instrument that is sealed, signed and delivered by all the parties to the contract (buyer and seller). It is a contractual document that includes legally valid terms and is enforceable in a court of law. It is mandatory that a deed should be in writing, and both the parties involved must sign the document. Thus, a conveyance deed is essentially one wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or movable. In this case, the asset under consideration is an immovable property-plot. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration (usually monetary). Therefore, a conveyance deed, or 'sale deed' implies that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer.*

*5. From the above, it is clear that on execution of a sale/ conveyance deed, only the title and interests in the said immovable property [herein the allotted plot) is transferred.*



However, the conveyance deed does not mark an end to the statutory liabilities of a promoter which have accrued before the signing of the conveyance deed since various sections of the Act provide for continuing liability and obligations of a promoter who may not under the garb of such contentions be able to avoid its responsibility. The relevant sections are reproduced hereunder:

"11. 'Functions and duties of promoter

(1) XXX

(2) XXX

(3) XXX

(4) The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

(b) XXX

(c) XXX



*(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees"*

*"14. Adherence to sanctioned plans and project specifications by the promoter—*

*(1) XXX*

*(2) XXX*

*(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act....."*

*This view is affirmed by the Hon'ble NCDRC in case titled as Vivek Maheshwari Vs. Emaar MGF Land Ltd. (Consumer case no. 1039 of 2016 dated 26.04.2019) wherein it was observed as under:*

*" 7. It would thus be seen that the complainants while taking possession in terms of the above referred printed hand over letter of the OP, can, at best, be said to have discharged the OP of its liabilities and obligations as enumerated in the agreement. However, this hand over letter, in my opinion, does not come in the way of the complainants seeking compensation from*



*this Commission under Section 14(1)(d) of the Consumer Protection Act for the delay in delivery of possession. The said delay amounting to a deficiency in the services offered by the OP to the complainants. The right to seek compensation for the deficiency in the service was never given up by the complainants. Moreover, the Consumer Complaint was also pending before this Commission at the time the unit was handed over to the complainants. Therefore, the complainants, in my view, cannot be said to have relinquished their legal right to claim compensation from the OP merely because the basis of the unit has been taken by them in terms of printed hand over letter and the Sale Deed has also been got executed by them in their favour.*

8. ....The relationship of consumer and service provider does not come to an end on execution of the Sale Deed in favour of the complainants.”

*From above, it can be said that execution of the conveyance deed can best be termed as respondent having discharged its liabilities as per the buyer's agreement, however upon executing conveyance deed, the complainants never gave up their right to raise their grievance pertaining to very basic dispute which in this is actual physical possession of plot in question.*

6. Authority observes that all the agreements/ documents signed by the allottee reveals stark incongruities between the remedies available to both the parties. In most of the cases, these documents and contracts are ex-facie one sided, unfair and unreasonable whether the plea has been taken by the complainant/allottee while filing its complaint that the documents were signed under duress or



*not. The complainant/allottee has invested his hard-earned money and there is no doubt that the promoter has been enjoying benefits and the next step is to get their title perfected by executing a conveyance deed which is the statutory right of the allottee. Also, the obligation of the developer - promoter does not end with the execution of a conveyance deed. The essence and purpose of the Act was to curb the menace created by the developer/promoter and safeguard the interests of the allottees by protecting them from being exploited by the dominant position of the developer which he thrusts on the innocent allottees. Therefore, in furtherance to the Hon'ble Apex Court judgement this Authority holds that even after execution of the conveyance deed, the complainant cannot be precluded from raising their grievances before this Authority and claiming relief of refund or possession from the respondent-promoter. Hence, the present complaint is maintainable*

*7. Looking at facts of this case from different perspective, the plea of dismissal by respondent is otherwise also not valid/hold ground for the reason that complainant-allottee in this case is denying the most relevant fact of possession of plot in question. As per his version, plot specified in conveyance deed is not available at site because of its sinking in drainage system. Herein the dispute is pertaining to subject-matter, i.e., availability of plot at site. Respondent's stands is that actual possession of plot alongwith conveyance deed has already been handed over to complainant in year 2012 but the subject -matter which is plot, availability/existence of said plot is itself denied by complainant. It is not the case wherein the complainant is peacefully enjoying possession of plot since 2012 and has now after around 10 years filed complaint for refund of paid amount. Actual status of plot at ground needs to*



*be verified in order to adjudicate the issue involved in this complaint. For said verification, Authority decides to appoint Ld. Chief Town Planner of this Authority as Local Commissioner who will visit the site on date to be fixed later on as per availability of parties. Meanwhile, respondent is directed to demarcate the plot of the complainant by putting flag poles at site and to file report of said demarcation with photographs upto 30.11.2023 in registry. So, on date of site visit, the respondent shall provide all approved layout/zoning plans and team of requisite officials to Ld. CTP in order to verify the size of demarcated plot. After said site visit, Ld. CTP shall prepare report for assistance of the Authority. Office is directed to supply a copy of report of Ld. CTP to both the parties.*

*8. Another issue which needs to be adjudicated herein is that as to when the complainant-allottees came to know the fact about sinking of plot in drainage system and what steps have been taken till date by complainant to communicate to respondent to resolve said problem. Complainant shall file documents, if any, sent to respondent communicating problem of sinking of plot in drainage system. Respondent is directed to place on record documents to prove that actual physical possession of plot was handed over to complainant and plot of size specified in conveyance deed actually exists at site.*

*9. Perusal of complaint reveals that allotment letter was issued in favor of 2 allottees i.e. Sobha Sharma and Purnima Sharma. Accordingly, conveyance deed was also executed between respondent and 2 allottees i.e. Sobha Sharma and Purnima Sharma. However, complaint has been filed by only one allottee i.e. Purnima Sharma and no authorization letter issued by Sobha*



*Sharma in favor of Purnima Sharma for filing present complaint has been placed on record. So, complainant is directed to remove this technical objection by filing authority letter of Sobha Sharma upto 24.11.2023. After removal of said objection only appointment of local commissioner will be initiated for further enquiry.*

*10. Case is adjourned to 16.01.2024."*

(vii) Thereafter, in compliance of the directions of the Authority, issued vide order dated 17.10.2023, Ld. CTP of this Authority had visited the site and submitted his report on 05.04.2024. Report is reproduced below for reference:-

*"Kindly refer to the orders of the Authority dated 17.10.2023 wherein the undersigned was appointed as a local commissioner to verify the actual status of the plot at ground. In the same orders, the respondent was directed to demarcate the plot of the complainant by putting flag poles at site and to file report of said demarcation with photographs upto 30.11.2023. The respondent did not submit the said report. The undersigned visited the site on 15th March at 12.00 noon by informing both the parties and the following is submitted for consideration of the Authority.*

- 1. The verification relates to plot no-F-31 having an area of 208.46 sq yards in TDI City, Kundli, Sonipat.*
- 2. The said plot was allotted to the applicant in the year 2009 and the conveyance deed executed on 31.07.2012.*
- 3. A large "Johad" (photographs Annexure "A") exists towards the east of the plot with the slope towards the johad and which is*



*filled with loose construction material and therefore the soil in the surroundings is not stable.*

*4. A 10 metre wide road shown by the promoter in the conveyance deed (Annexure "B") is neither a part of the approved layout plan (Annexure "C") nor is constructed at site.*

*In view of the above, though the plot specified in the conveyance deed exists at site (as demarcated by the promoter on ground) but the applicant will not be able to construct the same because of the poor soil stability/compactness and its slope towards the johad, which is about 4 to 5 metres from the plot boundary."*

(viii) Aforesaid report of the Local Commissioner clearly establishes the fact that complainants cannot enjoy peaceful possession of plot as construction on said land due to its poor soil compactness is not possible. Furthermore, the distance between boundary of plot and Johad (pond) is only 4-5 meters and there is no 10 meter wide road at site as indicated in the zoning/set back plan annexed as Annexure-4. Besides this, on perusal of plan, it is found that that ratio of front (11.37 meter) and rear portion(5.23 meter)/size of plot is in such a manner that it renders it as 'plot of irregular size' and as such construction on plot of said size is not appropriate/suitable for rendering it as residential. Due to aforesaid reasons, the sole purpose of purchasing the plot, i.e. to raise construction over it, is totally defeated.





(ix) In these circumstances, when the available plot at site cannot be considered as a suitable land for making use of it/carrying out construction, then complainants cannot be forced to accept physical possession of plot. Herein, the respondent had got executed conveyance deed in year 2012 but since then complainants was not able to acquire physical possession and as such physical possession is not possible even on date because of reasons discussed in aforesaid paragraphs of this order. Therefore, Authority deems it a fit case for awarding refund of paid amount with interest to complainants.

(x) 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;*

(xi) 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. 02.09.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%

(xii) 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".*

19. Thus, respondent will be liable to pay the complainants interest from the date amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainant the paid amount of Rs 22,27,187/- 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. Authority has got calculated the total amount along with interest calculated at the rate of 11.10% till the date of this order and total amount works out to Rs 40,72,677/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 02.09.2024
1.	5,87,500/-	21.02.2006	12,09,379/-
2.	6,00,000/-	18.04.2008	10,91,510/-
3.	1,80,250/-	17.05.2008	3,26,318/-
4.	8,59,437/-	03.08.2009	14,40,110/-
5.	Total=22,27,187/-		Total=40,67,317 /-
6..	Total amount Payable to complainant	22,27,187+ 40,67,317 =	62,94,504/-

20. The complainants are seeking cost of litigation and compensation on account of mental harassment and agony. 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 free to approach the Adjudicating Officer for seeking the relief of litigation expenses and compensation.

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

21. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to refund the entire paid amount of ₹22,27,187/- with interest of ₹40,67,31 /- to the complainants in equal share. It is further clarified that respondent will remain liable to pay interest to the complainant till the actual realization of the amount.

(ii) Respondent is directed to cancel the conveyance deed of plot at its own expense within 60 days of uploading of this order.


(iii) 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



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failing which legal consequences would follow.

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

  
CHANDER SHEKHAR  
[MEMBER]

  
NADIM AKHTAR  
[MEMBER]

