



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Date of Decision

02.09.2024

Name of the Builder		TDI INFRASTRUCTURE LTD		
Project Name		TDI CITY, KUNDLI, SONIPAT		
Sr. no.	Complaint no.	Title of the case	Appearance on behalf of complainant	Appearance on behalf of respondent
1.	2319 /2023	Farmania Buildcon Pvt Ltd through its Director Sh. Amit, having office at CP-231, Maurya Enclave, Pitampura, Delhi-110034 Vs. M/s TDI Infrastructure Ltd Having office at Upper ground floor, Vandana Building, 11 , Tolstoy Marg, Connaught Place, New Delhi-110001	Mr. Chaitanya Singhal, Counsel for complainant, through VC.	Mr. Shubhnit Hans, Counsel for respondent.
2.	1280 /2023	Arun Kumar Arya S/o Sh. Om Parkash Arya, R/o HD-49, Blecok-HD, Pitampura, Saraswati Vihar, New Delhi Vs. M/s TDI Infrastructure Ltd Having office at Upper ground floor, Vandana Building, 11 , Tolstoy Marg, Connaught Place, New Delhi-110001	Mr. Madhur Panwar, Counsel for complainant, through VC.	Mr. Shubhnit Hans, Counsel for respondent.

3.	2058 /2023	<p>Pitamber Lal Naharia S/o Sh. Ratan Lal, R/o SU-195, Vishaka Enclave, SU Market, Pitampura, Delhi-110088</p> <p>Vs.</p> <p>M/s TDI Infrastructure Ltd Having office at Upper ground floor, Vandana Building, 11 , Tolstoy Marg, Connaught Place, New Delhi-110001</p>	Mr. Chaitanya Singhal, Counsel for complainant, through VC	Mr. Shubhnit Hans, Counsel for respondent.
4.	2059 /2023	<p>Pitamber Lal Naharia S/o Sh. Ratan Lal, R/o SU-195, Vishaka Enclave, SU Market, Pitampura, Delhi-110088</p> <p>Vs.</p> <p>M/s TDI Infrastructure Ltd Having office at Upper ground floor, Vandana Building, 11 , Tolstoy Marg, Connaught Place, New Delhi-110001</p>	Mr. Chaitanya Singhal, Counsel for complainant, through VC	Mr. Shubhnit Hans, Counsel for respondent.
5.	2370 /2023	<p>Aditya Kiran Garg S/o Sh. Kunj Bihari, R/o B-15, Bhagwan Dass Nagar, East Punjabi Bagh, Delhi-110026</p> <p>Vs.</p> <p>M/s TDI Infrastructure Ltd Having office at Upper ground floor, Vandana Building, 11 , Tolstoy Marg, Connaught Place, New Delhi-110001</p>	Mr. Chaitanya Singhal, Counsel for complainant, through VC	Mr. Shubhnit Hans, Counsel for respondent.
6.	2425 /2023	<p>Punam Bindal W/o Sh. Shyam Mohan, R/o A-7/9 Sector-16, Rohini-110089</p> <p>Vs.</p> <p>M/s TDI Infrastructure Ltd Having office at Upper ground floor, Vandana Building, 11 , Tolstoy Marg,</p>	Mr. Chaitanya Singhal, Counsel for complainant, through VC	Mr. Shubhnit Hans, Counsel for respondent.



	Connaught Place, New Delhi- 110001		
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**CORAM: Nadim Akhtar
Chander Shekhar**

**Member
Member**

ORDER (NADIM AKHTAR-MEMBER)

1. This order shall dispose off all the above captioned six complaints filed by the complainants before this Authority under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, 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.
2. The core issues emanating from the above captioned complaints are similar in nature. The complainant in the above referred Complaint No. 2319 of 2023 and all other captioned complaints are allottees of the project namely; "TDI City, Kundli, Sonipat" being developed by the same respondent/ promoter, i.e., TDI Infrastructure Ltd. As such the issue involved in all the above captioned cases pertains to failure on the part of the respondent/promoter to deliver timely possession of



the unit in question despite receipt of part completion certificate for the plots in question and all complainant(s) are now seeking mainly possession with delay interest. This order is passed taking complaint no. 2319/2023 titled as Farmania Buildcon Pvt Ltd vs TDI Infrastructure Ltd as a lead case.

3. The details of the complaints, unit no., date of allotment letter, date of builder buyer agreement, total sale consideration and amount paid by the complainant, offer of possession and relief sought are given in the table below:

Project- TDI City, Kundli RERA Registered/not registered-Not registered DTCP License no.- 183-228 of 2004, 153-157 of 2004, 101-144 of 2005,200-285 of 2005, 652-722 of 2006, 729-872 of 2006,42-60 of 2005, 51 of 2010 and 177 of 2007. Area for which part completion certificate granted-927 acres. Builder Buyer Agreement has not been executed in all the cases.							
Sr no	Complaint no. /Date of filing	Reply Status	Unit no.	Date of Allotment (BBA not executed)/DDOP	Total sale consideration (TSC) and Paid amount	Offer of possession given or not given	Relief sought
1.	2319-2023 16.10.2023	Filed on 19.07.2024	Plot no. B-B-51/2 having an area of 700 sq. yds.	01.08.2008 Taking 3 years as DDOP- 01.08.2011	TSC: ₹15.75.000/- Paid amount: ₹27,38.750/-	Not given	-Possession with delay interest -Respondent be directed to pay stamp duty cost to the complainant since the price and circle rate of plot have



							increased more than 20 times from the date of booking of plot till date.
2.	1280-2023 05.06.2023	Filed on 16.10.2024	Plot no. L-602 having an area of 250 sq. yds.	07.01.2006 Taking 3 years as DDOP-07.01.2009 Allotment issued in favour of original allottee was endorsed in favour of complainant on 23.10.2008	TSC: ₹21,87,500/- Paid amount: ₹21,76,250/- as per page 17 of complaint. Not mentioned in pleadings.	Not given	-Possession with delay interest -Direct forensic audit -Direct respondent to desist from making illegal demands in nature of maintenance and holding charges
3.	2058-2023 13.09.2023	Filed on 19.07.2024	Plot no. L-431 having an area of 250 sq. yds.	10.04.2006 Taking 3 years as DDOP-10.04.2009	TSC: ₹15,37,500/- Paid amount: ₹17,99,375/-	Not given	-Possession with delay interest
4.	2059-2023 13.09.2023	Filed on 19.07.2024	Plot no. L-369 having an area of 250 sq. yds.	10.04.2006 Taking 3 years as DDOP-10.04.2009	TSC: ₹15,37,500/- Paid amount: ₹18,78,125/-	Not given	-Possession with delay interest
5.	2370-2023 30.10.2023	Filed on 19.07.2024	Plot no. J-645 having an area of 350 sq. yds.	27.01.2006 Taking 3 years as DDOP-27.01.2009	TSC: ₹29,89,000/- Paid amount: ₹30,23,275/-	Not given	-Possession with delay interest -Respondent be directed to pay stamp duty cost to the complainant since the price and circle rate of plot have increased more than 20 times from the date of booking of plot till date.



6.	2425-2023 14.11.2023	Filed on 19.07.2024	Plot no. I- 144 having an area of 350 sq. yds.	06.01.2006 Taking 3 years as DDOP- 06.01.2009	TSC: ₹32,65,62/- Paid amount: ₹34,38,437/-	Not given	-Possession with delay interest -Respondent be directed to pay stamp duty cost to the complainant since the price and circle rate of plot have increased more than 20 times from the date of booking of plot till date.
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A. FACTS OF THE LEAD COMPLAINT

4. Facts of the present complaint are that original allottee Mr. Sudhir Khosla had booked a plot in in the project- TDI City, Kundli, Sonipat of the respondent in year 2004 by paying Rs 6.65.000/- on 18.12.2004, receipt of which was issued on 20.01.2005 (Annexure-I). Thereafter, second allottee M/s Bhatia Associates had purchased allotment rights of the plot in the year 2006. Subsequently, allotment rights were purchased by complainant on 10.03.2006. Allotment of plot no. B-B51/2 having an area of 700 sq. yds. in respondent's project was issued in favour of complainant on 01.08.2008. A copy of allotment letter is annexed as Annexure P-3.
5. That till date builder buyer agreement has not been executed. Instead the respondent has given one document titled 'Revised Annexure' to the complainant wherein each and every detail of plot, total cost of plot and amount being paid by the complainant is mentioned. As per



said revised annexure, complainant was allotted plot in question at total sale price of Rs 21,87,500/-. Against which an amount of Rs 27,38,750/- stands paid by the complainant. A copy of revised annexure is annexed as Annexure P-4.

6. It has been alleged that the respondent had failed to deliver the possession of the plot as per the agreed terms and conditions till date even after a lapse of 19 years. The respondent had failed to fulfill his commitment in delivering the possession of plot from the date of initial booking in the year 2004 till date. Due to respondents' failure to deliver the plot, the complainant had suffered huge financial losses in terms of steep rise in the prices of the surrounding plots located near the project of the respondent.
7. That the facts of the present case are similar and pertain to the same project of the respondent as has been earlier decided by the Hon'ble HRERA Authority in complaint no. 152/2022 titled as Naresh Kumar and Inder Kumar vs TDI Infrastructure Ltd. Copy of order dated 31.01.2023 is annexed as Annexure P-5.
8. That due to delay on respondent's part to make a valid offer of possession after obtaining completion certificate, complainant has become entitled for interest on the amounts deposited by him calculated at the rate provided in Section 18 of RERA Act,2016. During all these years, the respondent was under illegal enjoyment of



hard earned money of the complainant, earning monetary benefits out of it and it was the complainant who was deprived for a sufficient longer duration to make use of the plot booked with respondent. Therefore, complainant is left with no other option but to approach this Authority. Hence, the present complaint has been filed by the complainant.

B. RELIEFS SOUGHT

9. Complainant in his complaint has sought following reliefs:
- i. That the Respondent be directed to handover the possession of plot along with grant of delayed possession charges (DPC) from due date of possession (i.e. 36 months from the date of booking since due date of possession is mentioned anywhere) till the actual handing over of possession of plot to the complainant.
 - ii. The respondent be directed to pay stamp duty cost to the complainant since the price and circle rate of plot have increased more than 20 times from the date of booking of plot back in the year 2004 till date.
 - iii. Any other relief(s) as the Hon'ble Authority may deem fit and proper in light of the facts and circumstances of the above case.

C. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 19.07.2024 pleading therein as under:



10. That due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely- TDI City at Kundli, Sonipat, Haryana. Respondent company has already received part Completion Certificate in respect of 927 acres. Copy of certificates are annexed as Annexure R-1,2 and 3.
11. That when the respondent Company commenced the construction of the said project, RERA Act 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. That the provisions of RERA Act are to be applied prospectively. Thus, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act.
12. That the project was completed way back before the enactment of RERA Act, so the complainant cannot approach Ld. Authority for adjudication of its grievances. Further, the complaint is barred by limitation as the last payment was made by the complainant in 2009, hence the same is not maintainable before this Authority.
13. That complainant herein is an investor, has accordingly invested in the project of the respondent company for the sole reason of investing, earning profits and speculative gains, therefore, the captioned complaint is liable to be dismissed in limine.

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14. That respondent company has already offered an alternative unit to the complainant vide letter dated 22.05.2019 for the reason that actual plot booked by complainant could not be completed/constructed by the respondent due to some unforeseen circumstances/beyond control of respondent. Vide said letter the respondent also offered the complainant to get its money (already paid) adjusted in any other project of respondent of his choice. However, the complainant did not come forward to respondent to said letter.

D. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

15. During oral arguments learned counsel for the complainant insisted upon possession of booked plot alongwith delay interest stating that respondent despite availing opportunities has not offered him a similarly placed alternative unit. Learned counsel for the respondent reiterated arguments as were submitted in the written statement and further submitted that no alternative plot/un-allotted plot with clear title is available in the inventory of respondent company.

E. ISSUES FOR ADJUDICATION

16. Whether the complainant is entitled to get possession of booked plot alongwith delay interest in terms of Section 18 of RERA Act, 2016?



F. OBSERVATIONS AND DECISION OF THE AUTHORITY

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

(i) With regard to plea raised by the respondent that provisions of RERA Act,2016 are applicable with prospective effect only, therefore same were not applicable as on 01.08.2008 when the complainant was allotted plot no. B-B51/2, 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:-

"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 complainant is an "investor" who has invested 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, therefore, he is 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, complainant is an aggrieved person who has filed the present



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 01.08.2008, it is clear that complainant is an "allottee" as plot bearing no. B-B51/2 in the Real Estate Project of the respondent namely, "TDI, City, Kundli", Sonipat was allotted to him by the respondent promoter. 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 any 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 allottee being investor is 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 because of which the cause of action is re-occurring.

(v) Admittedly, complainant in this case had purchased the booking rights qua the floor in question in the project of the respondent in the



year 2006 from erstwhile allottee against which an amount of ₹ 27,38,750/- already stands paid to the respondent. Out of said paid amount, last payment of Rs 7,08,750/- was made to respondent on 31.08.2009 by the complainant which implies that respondent is in receipt of total paid amount since the year 2009 whereas fact remains that no offer of possession of the booked plot has been made till date.

(vi) In the written statement submitted by the respondent, it has been admitted that possession of the booked plot has not been offered till date to the complainant. With respect to status of handing over of possession, the respondent vide letter dated 22.05.2019 has already expressed its inability to provide possession of originally booked unit to the complainant and offered to either choose any alternate plot in same project or adjustment of entire paid amount in any other project but the complainant did not come forward to accept said offer. It is pertinent to mention here that no specific reason for the unavailability of booked plot has been detailed out either in the written statement or at the time of arguments. Respondent has not substantiated the plea of inability to provide the originally booked plot to complainant with relevant documentary evidence. Raising of plea without any documentary proof is not admissible. No latest photographs of the site or any other sort of justification as to what all factors are responsible for creating hindrance to not to offer possession of booked plot has not



been placed on record. It has not been established that offer of booked plot is not possible due to some genuine reliable reason/circumstances. Respondent has pleaded that part completion certificates for the 927 acres has already been received. Copies of said part completion certificates have been placed on record but it is not specified in written statement that as to whether plot of complainant gets covered in said part completion certificates or not? At this juncture, it is pertinent to highlight the content of letter dated 22.05.2019 which is "*You had booked a plot in our project at TDI CITY, KUNDLI SONEPAT. On account of reasons beyond our control, we have been unable to offer the unit to you till date. This correspondence is being issued to reassure you of our commitment to the completion of the project and ensuring the satisfaction of our customers*". It clearly highlights the fact respondent without specifying any concrete reason/justification expressed its inability to deliver possession of plot to the complainant. Complainant filed this complaint in year 2023, i.e., after lapse of 4 years from the date of said letter. During all these years, respondent remained silent and did not even bother to refund the amount received from complainant towards sale consideration of plot. Now, the respondent cannot take the benefit of its own wrong for causing delay in offering of the possession stating that possession of booked unit is not possible.



(vii) Authority observes that the allotment letter for the plot in question was issued to complainant on 01.08.2008. But builder buyer agreement has not been executed till date and there is no clause pertaining to deemed date of possession in the allotment letter. In absence of specific clause of deemed date of possession in allotment letter, it cannot rightly be ascertained as to when the possession of said floor was due to be given to the complainant. In **Appeal no 273 of 2019 titled as TDI Infrastructure Ltd Vs Manju Arya**, Hon'ble Tribunal has referred to the observation of Hon'ble Apex Court in **2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr.** in which it has been observed that period of 3 years is reasonable time of completion of construction work and delivery of possession. In present complaint, the plot was allotted vide allotment letter dated 01.08.2008 by the respondent, accordingly, taking a period of 3 years from the date of allotment, i.e, 01.08.2008 as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 01.08.2011. In present situation, respondent failed to honour its contractual obligations without any reasonable justification.

(viii) Complainant is insisting upon possession of booked plot only as alternate plot is not available with respondent. Respondent who is in



receipt of total amount of Rs 27,38,750/- since year 2009 has not even made sincere efforts to provide atleast reasonable number of options of alternate plot to choose from. It is the respondent who has failed to develop the booked plot till date. However, no such circumstances have been specified in written statement/ oral arguments which can be relied upon to convince the Authority that physical possession of the booked plot is actually not possible. For reference judgement dated 14.03.2005 passed by **Hon'ble Supreme Court in Appeal (civil) 6306-6316 of 2003 titled as Manager, R.B.I., Bangalore vs S. Mani & Ors.** is relied upon. Relevant part of the judgement is reproduced is follow:-

"The concerned workmen in their evidence did not specifically state that they had worked for 240 days. They merely contended in their affidavit that they are reiterating their stand in the claim petition. Pleadings are no substitute for proof. No workman, thus, took an oath to state that they had worked for 240 days. No document in support of the said plea was produced. It is, therefore not correct to contend that the plea raised by the Respondents herein that they have worked continuously for 240 days was deemed to have been admitted by applying the doctrine of non-traverse. In any event the contention of the Respondents having been denied and disputed, it was obligatory on the part of the Respondents to add new evidence. The contents raised in the letters of the Union dated 30th May, 1988 and 11th April, 1990 containing statements to the effect that the workmen had been working continuously for 240 days might not have been replied to, but the same is of no effect as by reason thereof, the allegations made therein cannot be said to have been proved particularly in view of the fact that the contents thereof were not proved by any witness. Only by



reason of non-response to such letters, the contents thereof would not stand admitted. The Evidence Act does not say so.

In Range Forest Officer Vs. S.T. Hadimani [(2002) 3 SCC 25], it was stated: "3\005 In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."

(ix) In the present complaint, complainant intends to continue with the project and is seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act. Though, the respondent was ready to offer alternate plot in year 2019 which was never actually offered by respondent. Respondent did not take any serious steps towards allotment of any alternate unit till date. Even in the prevailing situation, complainant has chosen to seek possession of the plot allotted to him and is insisting upon interest for delay in handing over of possession. Section 18 (1) proviso reads as under :-

"18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-

.....



Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed".

(x) The Authority observes that the respondent has severely misused its dominant position. Allotment of the plot was done on 01.08.2008, due date of possession as explained above in para 16 (vii) is 01.08.2011. Now, even after lapse of 13 years respondent is not able to offer possession to the complainant. Respondent has not even specified the valid reason/ground for not offering the possession of the booked plot. Complainant however is interested in getting the possession of the booked plot. He does not wish to withdraw from the project. In these circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising option of taking possession of the apartment the allottee can also demand, and respondent is liable to pay, monthly interest for the entire period of delay caused at the rates prescribed. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date i.e. 01.08.2011 to the date on which a valid offer is sent to him after obtaining completion certificate.

(xi) 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;

(xii) 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%.

(xiii) 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".



18. Authority has got calculated the interest on total paid amount from the deemed date of possession till the date of this order at the rate of 11.10% till and said amount works out as per detail given in the table below:

In complaint no. 2319-2023

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 02.09.2024
1.	₹ 27,38,750/-	01.08.2011	39,82,833/-
	Total = ₹ 27,38,750/-		₹39,82,833/-
2.	Monthly interest		₹ 24,986/-

In complaint no. 1280-2023

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 02.09.2024
1.	₹ 21,76,250/-	07.01.2009	37,84,278/-
	Total = ₹ 21,76,250/-		₹ 37,84,278/-
2.	Monthly interest		₹ 19,855/-

In complaint no. 2058-2023

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is	Interest Accrued till 02.09.2024

		later	
1.	₹ 15,81,250/-	10.04.2009	27,04,912/-
2.	₹ 2,18,125/-	14.09.2009	3,62,714
	Total = ₹ 17,99,375/-		₹ 30,67,626/-
3.	Monthly interest		₹16,416 /-

In complaint no. 2059-2023

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 02.09.2024
1.	₹ 16,60,000/-	10.04.2009	28,39,623/-
2.	₹ 2,18,125/-	14.09.2009	3,62,714
	Total = ₹ 18,78,125/-		₹32,02,337 /-
3.	Monthly interest		₹ 17,135/-

In complaint no. 2370-2023

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 02.09.2024
1.	₹ 27,17,900/-	27.01.2009	47,09,622/-
2.	₹ 3,05,375/-	01.09.2009	5,09,007
	Total = ₹ 30,23,275/-		₹52,18,629 /-
3.	Monthly interest		₹27,582 /-



In complaint no. 2425-2023

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 02.09.2024
1.	₹ 31,33,062/-	06.01.2009	54,49,030/-
2.	₹ 3,05,375/-	30.07.2009	5,12,071
	Total = ₹ 34,38,437/-		₹59,61,101 /-
3.	Monthly interest		₹ 31,370/-

19. In respect of relief clause (ii) pertaining to payment of stamp duty cost, a query was raised to ld. Counsel for complainant to specify the provisions of allotment letter as well as RERA Act,2016 under which this relief is being claimed. Faced in these circumstances, ld. Counsel for complainant chosen to withdraw said relief in captioned complaints. Accordingly, relief clause (ii) stands withdrawn and no direction is passed/issued against said relief. Further, it is pertinent to mention here complainant has referred order dated 31.01.2023 passed by this Authority in complaint no. 152/2022, copy of which is annexed as Annexure P-5. Perusal of said order reveals that vide said order the complainant was awarded refund of paid amount whereas complainant in present complaint is praying for relief of possession alongwith delay interest. So, the referred case is of no help to the complainant for availing relief of possession.



20. In complaint no. 1280/2023, the complainant in addition to the relief of possession with delay interest has sought two more reliefs; *(ii) Direct inquiry forensic audit in relation to the affairs of respondent and (iii) Direct the respondent to desist from making illegal demands in the nature of charging maintenance charges, holding charges or any other charge that are per se violative of the law of the land.* In this regard, it is observed that complainant in its pleadings has not substantiated its claim of illegal demand by relying upon any demand letter nor any amount has been referred which has been paid against illegal demands. In respect of forensic audit, nothing is mentioned in pleadings as well as during oral arguments. No basis has been provided by complainant in order to prove necessity of conducting forensic audit of respondent. This Authority deals with cases in summary manner wherein documentary evidence is required to establish an allegation/cause of action. In absence of proper evidence, relief cannot be awarded to the complainant on basis of mere pleading.

G. DIRECTIONS OF THE AUTHORITY

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

- (i) Respondent is directed to pay upfront delay interest as calculated above in para 18 of this order to the respective




complainants towards delay already caused in handing over the possession within 90 days from the date of this order. Further, on the entire paid amount, monthly interest shall be payable by the respondent to the complainant up to the date of actual handing over of the possession after obtaining occupation certificate.

(ii) Complainant will remain liable to pay balance consideration amount to the respondent at the time when possession offered to the complainant.

(iii) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate, i.e., 11.10% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

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


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]