



**ORDER(NADIM AKHTAR – MEMBER)**

1. Present complaint has been filed on 29.05.2023 by the complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of 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	Park Street, Sector-19, Village Kamsapur, Sonipat
2.	Name of the promoter	TDI Infrastructure Ltd
3.	RERA registered/not registered	Not registered.
4.	DTCP License nos.	999-1002 of 2006 dated 16.06.2006.
	Licensed Area	8.31 acres



5.	Unit no.(Shop)	GF-122
5	Unit area	594.21 sq. ft.
6.	Date of allotment in favor of original allottee	21.02.2007
7.	Date of builder buyer agreement with complainant	23.07.2008
8.	Due date of offer of possession (24+6 months)	23.01.2010
9.	Possession clause (date of sanction of building plan has not been revealed by respondent so 24+6 months are taken from date of agreement)	Clause 4.1 That, the seller shall try to devolve the ownership of the unit upon purchaser within twenty four months from the date of sanctioning of the building plans for the said complex(handing over period) which handing over period can further be extended by another six months, which shall be treated as the grace period.
10.	Total sale consideration	₹ 28,22,497/-
11.	Amount paid by complainant	₹ 16,93,999/- Complainant in its pleadings claims to have paid an amount of Rs 21,42,785/-. However, receipts of Rs 15,63,999/- have been attached in complaint file and statement of account attached in reply of respondent shows paid amount as Rs 16,93,999/-. Since no proof of





		claimed/paid amount of Rs 21,42,785/- is available on file, total paid amount is taken as Rs 16,93,999/-.
12.	Offer of possession	No offer.

### B. FACTS OF THE COMPLAINT

4. Facts of complaint are that original allottee M/s Shivaay Estates had booked a shop in in the project- Park Street, Village Kamaspur, Sonipat of the respondent by paying Rs 4,50,000/- on 15.01.2007. Following which respondent had issued allotment letter of shop no. GF-122 having an area measuring 594.21 sq. ft. in respondent's project on 21.02.2007 in favor of original allottee. Thereafter, allotment rights of said shop were purchased by complainant on 25.06.2008.
5. Builder buyer agreement was executed between the complainant and respondent on 23.07.2008. As per the terms and conditions of the agreement, the possession was to be provided by 23.01.2010 whereas fact remains that respondent has not offered the possession of the unit till date. An amount of Rs 21,42,785/- (proof of only Rs 16,93,999/- is available on file) has already been paid to the respondent against basic sale price of Rs 28,22,498/-.



6. That respondent has failed to abide by the contractual terms stipulated in the agreement. No justification has been provided by respondent for lapse of 14 years from deemed date of possession respondent in not completing the project. Therefore, complainant is left with no other option but to approach this Authority. Hence the present complaint has been filed.

### **C. RELIEF SOUGHT**

7. Complainant in his complaint has sought following relief:
- i. In the event the registration has been granted to the respondent promoter for the project namely-Park Street situated at Sector-19, Main National Highway-1, Kamaspur, Sonipat, Haryana under RERA read with relevant Rules, it is prayed that the same may be revoked under Section 7 of the RERA for violating the provisions of the RERA.
  - ii. In exercise of powers under Section 35, direct the respondent to place on record all statutory approvals and sanctions of the project.
  - iii. In exercise of powers under Section 35 and Rule 21 of HRE (R&D) Rules,2017 to provide complete details of EDC/IDC and statutory dues paid to the competent authority and pending demand,if any.
  - iv. To compensate the petitioners for the delay in completion of the project and refund the entire amount of Rs 21,42,785/- alongwith



interest @21% compound interest from the date of respective installments/realization of the sale consideration by the respondent.

v. To pay compensation of Rs 15,00,000/- for each unit on account of harassment, mental agony and undue hardship caused to the petitioners on account of deficiency in service and unfair trade practice.

vi. The complainant may be allowed with costs and litigation expenses of Rs 1,00,000/-.

vii. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.

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

Learned counsel for the respondent filed detailed reply on 15.03.2024 pleading therein:

8. That due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely- Park Street, Sector-19, Village Kamaspur, Sonipat, Haryana.
9. That when the respondent Company commenced the construction of the said project, the 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.





Therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act.

10. That the respondent has applied for grant of occupation certificate with respect to the present project and same is awaited. Further, it is submitted that the application for registration of the project in question has been filed and the same is pending consideration before Authority.
11. That complainant herein is an investor and 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.
12. That there has been default on the part of the complainant in making payments towards the booking made in the said project of the company and therefore, the booking was also cancelled once in January, 2012. Copy of cancellation letter dated 13.01.2012 is annexed as Annexure R-2.

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

13. During oral arguments learned counsel for the complainant insisted upon refund of paid amount stating that there is no hope of getting possession even in near future as construction work of the project is not complete as on date. He apprised that complainant does not want to stay invested in the project and is interested only in refund of paid



amount. Learned counsel for the respondent reiterated arguments as were submitted in written statement and further submitted that project in which booked shop is located is at standstill from last 3-4 years, however the structure of the shops is ready but it is not complete. He stated that occupation certificate is still awaited.

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

14. Whether the complainant is entitled to refund of amount deposited by him alongwith interest in terms of Section 18 of Act of 2016?

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

15. 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 21.02.2007 when the original allottee was allotted shop bearing No. GF-122, Park Street, Sonipat 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 complainant is a “speculative buyer” who has invested his hard earned 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 complainant is an aggrieved person who has 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 21.02.2007 and builder buyer agreement dated 23.07.2008, it is clear that complainant is an "allottee" of shop bearing no. GF-122, situated in the real estate project "Park Street, Sector-19", 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 booking of the shop of complainant was cancelled vide letter dated 13.01.2012 on account of default in not making the payment towards the sale consideration of shop. It is pertinent to refer contents of cancellation letter dated 13.01.2012 '*we write to inform you that as per terms and conditions of booking form the delay in payments of the amount will lead to cancellation of your booking and you shall not be entitled to claim any right, title, or interest in the said shop and registration amount shall be forfeited. We regret to inform you that now we are left with no alternative but to cancel the said registration. The registration of above shop now stands cancelled. Henceforth, you ceases to have any right, title or interest in the said shop. You are requested to surrender the original receipts issued to you*'. As per statement of respondent's counsel, complainant did not surrender original receipts and hence, no



amount was refunded to him till date. In essence, paid amount still lies with respondent till date. On the other hand, it is relevant to point out that respondent after issuing of termination letter in year 2012 duly accepted payments towards sale consideration in further years 2013 and 2014. Same is evident from receipt dated 24.12.2013 for Rs 1,45,000/- , 20.01.2014 for Rs 1,45,000/- and 15.07.2014 for Rs 1,45,000/-. After acceptance of said amounts it does not lie in mouth of respondent that allotment of unit stands cancelled in year 2012 and complainant is not having any claim towards shop in question.

(v) Admittedly, complainant 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 ₹28,22,498/- against which an amount of ₹ 16,93,999/- has been paid by the complainant. Out of said paid amount, last payment of Rs 1,45,000/- was made to respondent on 15.07.2014 by the complainant which implies that respondent is in receipt of total paid amount since year 2014 whereas fact remains that no offer of possession of the booked shop has been made till date.

(vi) In the written statement submitted by the respondent, it has been admitted that possession of the booked shop has not



offered till date to the complainant. With respect to status of handing over of possession, it is submitted that the respondent had applied for grant of occupation certificate with respect to the project in question but the same is awaited. In regard to delay caused, it is submitted that deemed date of possession was tentative and was subject to force majeure. Though no reason/factor attributed for causing delay in offer of possession has been specified in the written statement. Mere writing of force majeure for causing delay in offering the possession is not sufficient to justify the delay caused.

(vii) Authority observes that the builder buyer agreement was executed between the parties on 23.07.2008 and as per terms of clause 4.1, the possession was to be delivered upto 23.01.2010. Fact remains that possession has not been offered to complainant till date for the reason that project is lying incomplete. In present situation, respondent failed to honour its contractual obligations without any reasonable justification.

(viii) In present situation, respondent failed to honour its contractual obligations of offering possession within stipulated time without any reasonable justification. Respondent in its written statement has not attached any documentary evidence to prove the fact that development works are lying complete at project site and





complainant can peacefully enjoy the physical possession of plot in upcoming years. On the other hand, complainant has unequivocally stated in his complaint that he is interested in seeking refund of the paid amount along with interest on account of inordinate delay caused in delivery of possession.

(ix) Besides this, Hon'ble Supreme Court in the matter of "*Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others*" in Civil Appeal no. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

*"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*



The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.

(x) This project did not get completed within the time stipulated as discussed in aforesaid paragraphs and possession of the booked unit is not possible even in near future. In these circumstances, Authority finds it to be fit case for allowing refund along with interest in favor of complainant in terms of provisions of Section 18 (1) (a) of RERA Act,2016.

(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. 04.11.2024 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".*

16. Thus, respondent will be liable to pay the complainant 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 16,93,999/- 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 27,83,203/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 04.11.2024
1.	4,50,000/-	15.01.2007	890068/-
2.	3,96,749/-	26.06.2008	721035/-
3.	2,82,250/-	01.09.2008	507199/-
4.	1,45,000/-	24.12.2013	175017/-
5.	1,45,000/-	20.01.2014	173826/-
6.	1,30,000/-	17.06.2014	149993/-
7.	1,45,000/-	15.07.2014	166065/-
8.	Total=16,93,999/-		Total= 27,83,203/-
9..	Total Payable to complainant	16,93,999+27,83,203 = /-	44,77,202/-

#### H. DIRECTIONS OF THE AUTHORITY

17. 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 ₹16,93,999/- with interest of ₹27,83,203/- to the complainant. It is further clarified that respondent will remain liable to pay interest to the complainant till the actual realization of the amount.



(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.

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

  
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**CHANDER SHEKHAR**  
[MEMBER]

  
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**NADIM AKHTAR**  
[MEMBER]