

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint was filed by the complainants on 18.04.2023 before the Authority under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short "Act of 2016") read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, 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	" Lake Side Heights ", TDI Lake Grove City, TDI City, Kundli, Sonipat
2.	RERA registered/not registered	Registered with registration no. 43 of 2017
3.	Unit no	0503, Tower No. T-3
4.	Unit area	1590 sq. ft.
5.	Date of allotment	22.09.2015
6.	Date of builder buyer agreement	22.09.2015



7.	Due date of offer of possession (36 months)	22.03.2018
8.	Possession clause in BBA (Clause 28)	Clause 28 <i>".....However, if the possession of the apartment is delayed beyond the stipulated period of 30 months from the date of execution hereof and the reasons of delay are solely attributable to the wilful neglect or default of the Company then thereafter for every month of delay, the Buyer shall be entitled to a fixed monthly compensation/ damages/penalty quantified @ Rs.5 per square foot of the total super area of the apartment. The Buyer agrees that he shall neither claim nor be entitled for any further sums on account of such delay in handing over the possession of the Apartment."</i>
9.	Basic sale price	₹ 58,40,000/-
10.	Amount paid by complainant	₹ 31,22,207/- Complainants claims to have paid an amount of Rs 31,22,207/-, but receipts of Rs 30,59,018/- only has been attached with the complaint. Remaining amount of Rs 63,189/- is taken from statement of account dated 14.02.2023. At page 12 of complaint, complainant has provided details/table of each paid amount and there total of amount is shown as Rs. 31,22,207/-, However total of said amount comes out to Rs 30,59,018/- only.
11.	Offer of possession	Not given till date.



B. FACTS OF THE COMPLAINT

3. Facts of complaint are that complainants had booked a 3 BHK flat in the project- Lake Side Heights, located in TDI Lake Grove City, Kundli, Sonipat of the respondent, following which allotment letter dated 22.09.2015 was issued in favour of complainants and unit no. T-3/0503 having an area measuring 1590 sq ft was allotted to them. Copy of allotment letter is annexed as Annexure C-1.
4. Complainants entered into the Builder Buyer Agreement (BBA) with the respondents on 22.09.2015. As per Clause 28 of the said BBA, possession of the unit was to be made within 36 months from the date of execution of agreement, thus deemed date of delivery comes out to 22.03.2018. An amount of Rs 31,22,207/- has been paid against the basic sale price of Rs. 58,40,000/-.
5. It was alleged by the complainants that the respondents have committed grave deficiency in service so far as misrepresenting the complainants regarding the timeline for delivery and status of the unit, and also by not offering possession of the unit in question within the specific timeline agreed as per buyer's agreement. Feeling aggrieved, present complaint has been filed by the complainants before this Authority.

C. RELIEFS SOUGHT:-

6. Complainants in their complaint has sought following reliefs:



- i. To direct the Respondents/Builders/developers to refund the total Principal Amount of Rs. 31,22,207/- as paid/deposited by the Complainants with the Respondents / Builders/developers aforesaid;
- ii. To direct the Respondents/ Builders/developers to pay interest amount, i.e., Rs 22,24,530/- from the date of default in delivering the possession of the unit/flat/apartment to the complainants in accordance with the terms of Apartment Buyer Agreement under Section 18 of the act i.e. for the period of 90 months w.e.f. 01.10.2015 to 01.04.2023 and pendent-lite Interest as well as future interest till realization of entire amount.
- iii. To direct the Respondents/Builders/developers to pay compensation/damages to the tune of Rs. 5,00,000/- (Rs. Five Lakh) to the Complainants on account of harassment, torture and causing mental agony and unfair trade practice.
- iv. To direct the Respondents/Promoters Builders/developers to pay cost of litigation to the Complainants to the tune of Rs. 1,10,000/- (Rupees One Lakh Ten Thousand only).
- v. To pass any such other order which this Ld. Authority deems fit and proper in the above said case peculiar facts and



circumstances of the present case in favour of the complainants and against the respondents in the interest of justice.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO. 1

Learned counsel for the respondent no. 1 filed a detailed reply on 27.03.2024 pleading therein:

7. That the present complaint is not maintainable and same is liable to be dismissed.
8. That the RERA is enacted for effective consumer protection. RERA is not enacted to protect the interest of investors and in the present complaint, complainant is an investor and not a consumer.
9. That provisions of RERA Act,2016 are prospective in nature and not retrospective.
10. That respondent had incurred huge expenses in obtaining approvals and carrying on the construction and development of the project and despite several adversities has completed the construction of the project and has offered the possession of the said unit and also applied for the occupation certificate. That the respondent denies each and every averment or allegation made by the complainant.
11. That delay, if any, have been caused due to the reasons beyond control of respondent like Covid pandemic, restriction on construction activity in NCR due to pollution, Farmer's agitation which resulted in stoppage of construction work. Further, the complainant was not punctual in



making timely payment of instalments and interest is chargeable on account of delay. The outstanding amount of unit is Rs. 67,44,876/- but complainant has not come forward to make payment of due amount.

12. It is pertinent to mention here that neither reply has been filed by respondent no. 2 nor anyone has put in appearance on behalf of it.

E. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANTS AND RESPONDENTS

13. During oral arguments, learned counsel for complainant reiterated the facts and submitted that complainants have requested for refund of the amount paid by them along with interest. On the other hand, no one has put in appearance on behalf of respondents.

F. ISSUES FOR ADJUDICATION

14. Whether the complainants are entitled to refund of amount deposited by them along with interest in terms of Section 18 of RERA, 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 respect to the objection raised by the respondent no. 1 that complainants herein are the investors, not a consumer/allottee, it is observed that the complainants herein are the allottee/homebuyer



who have made a substantial investment from their hard earned savings under the belief that the promoter/real estate developer will handover possession of the booked unit in terms of buyer's agreement dated 22.09.2015 but their bonafide belief stood shaken when the promoter failed to handover the possession of the booked unit till date without any reasonable cause. At that stage, complainants have approached this Authority for seeking refund of paid amount with interest in terms of provisions of RERA Act,2016 being allottee of respondent-promoter. As per definition of 'allottee' provided in clause 2(d) of RERA Act,2016, present complainant is duly covered in it and is entitled to file present complaint for seeking the relief claimed by him. Clause 2(d) of RERA Act,2016 is reproduced for reference: -

“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”.

Complainants have been allotted flat in the project of respondents by the respondent/promoter no. 1 itself and said fact is duly revealed in allotment letter and Builder Buyer Agreement dated 22.09.2015. Also, the definition of allottee as provided under Section 2 (d) does not



distinguish between an allottee who has been allotted a unit for consumption/self-utilization or investment purpose. So, the plea of respondent that complainants herein is investor does not hold merit and same is rejected.

(ii) Respondent no. 1 in its reply has raised an objection that the provisions of RERA Act, 2016 cannot be applied retrospectively. Reference can be made to the case titled M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. (supra), wherein the Hon Apex Court has held as under:-

“ 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 ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016. ”

The provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the Rules applicable to the acts or transactions, which were in the process of the completion though the contract/ agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will only be prospective in nature and will not be applicable to the



agreement for sale executed between the parties prior to the commencement of the Act.

(iii) Complainants in present case have impleaded two respondents, i.e, TDI Infracorp (India) Ltd as Respondent no. 1 and TDI Realcon Pvt Ltd. as Respondent no. 2. Authority at the time of hearing raised query to give clarification by specifying the name of the respondent from memo of parties against whom relief of refund have been sought. In compliance of it, Ld. counsel for complainants states that the relief of refund by the complainant be made against Respondent no. 1, i.e. M/s TDI Infracorp (India) Ltd since the Respondent no. 1 have solely received the payments from complainants on account of booked flat and not respondent no. 2. Considering said fact that no relief in particular is sought against respondent no. 2, this order is passed issuing directions to respondent no. 1 only.

(iv) Admittedly, complainants in this case had purchased the allotment rights qua the unit in question in the project of the respondent vide allotment letter followed by the builder buyer agreement dated 22.09.2015 for a basic sale consideration of ₹ 58,40,000/- against which an amount of ₹31,22,207/- has been paid by the complainants. Out of said paid amount, last payment of Rs 12,09,000/- was made to Respondent no. 1 in the year 2015 by the complainants which implies



that respondent no. 1 is in receipt of total paid amount till year 2015 whereas, fact remains that no offer of possession of the booked unit has been made till date.

(v) In the written statement submitted by the respondent no. 1, it has been admitted that possession of the booked unit has not been delivered to the complainants. That the respondent has completed the construction of the project and has offered the possession of the said unit and also applied for the occupation certificate. No latest photographs of the site of the project or any documentary evidence have been placed on record to show that there are chances of actual handing over of possession of unit within reasonable time. Mere pleading for more time on the basis that respondent/ promoter has applied for occupation certificate without any concrete plan of action does not suffice to give assurance to the complainant for handing over of possession. Moreover, time of around 6 years have already expired from date of deemed date of possession but respondent no. 1 is still not in a position to offer a valid possession of booked unit to the complainant.

(vi) Authority observes that the builder buyer agreement got executed between the complainants and respondent no. 1 on 22.09.2015 and in terms of Clause 28 of it, respondent was supposed to handover possession within 30 months i.e. upto 22.03.2018. In present case,

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respondent failed to honour its contractual obligations of offering possession of the booked unit within stipulated time without any reasonable justification. Further, respondent has not committed any specific timeline with proper documentary evidence in its reply regarding delivery of possession. However, respondent has pleaded that force majeure factors like Covid-19, ban on construction activities in NCR region and farmer's agitation resulted in delay in construction work. However, no documents have been placed on record in support of it. Considering the fact that deemed date of possession falls in year 2018 and it well known nation-wide as well as world-wide, that COVID-19 pandemic affected the whole country w.e.f March,2020. Any event/activity which occurred post deemed date of possession cannot be considered towards causing delay in possession/completion of project. Had it been the case that respondent no. 1 could have completed construction by end of 2018 or initial months of year 2019, then the complainant must have regained the trust/confidence in respondent no. 1 and choose to wait for possession of booked unit. But act of respondent in not completing the construction and receiving of occupation certificate till date, i.e., year 2024 strengthens the belief of complainants as well as the Authority that possession of booked unit is not possible even in near future and in these circumstances, complainants cannot be forced to wait for an indefinite period in hope



of getting possession of unit. Additionally, complainants have unequivocally stated that they are interested in seeking refund of the paid amount along with interest on account of inordinate delay caused in delivery of possession.

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

"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.

16. The project in question did not get completed within the time stipulated as per agreement and no specific date for handing over of possession has been committed by the respondent. In these circumstances the complainant cannot be kept waiting endlessly for possession of the unit, therefore, Authority finds it to be a fit case for allowing refund along with interest in favour of complainant.
17. The definition of term 'interest' is defined under Section 2(z a) 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;



18. 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. 12.08.2024 is 9%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11%.

19. 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”.

20. Thus, respondent no. 1 is liable to pay the interest to the complainants 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 31,22,207/- 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% (9% + 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 at the rate of 11% till the date of this order and



total amount of interest works out to Rs 33,84,693/- as per detail given in the table below:

In complaint no. 924/2023

Complainant claims to have paid an amount of Rs 31,22,207/-, but receipts of Rs 30,59,018/- only has been attached in file. Remaining amount of Rs 63,189/- is taken from statement of account dated 14.02.2023.

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 12.08.2024
1.	4,50,000	01.08.2013	5,46,534
2.	3,80,000	09.11.2013	4,50,066
3.	4,05,018	14.11.2013	4,79,086
4.	6,15,000	25.02.2014	7,08,379
5.	2,09,000	12.08.2015	2,07,162
6.	10,00,000	08.09.2015	9,83,068
7	63,189	14.02.2023	10,398
7	Total=31,22,207/-		Total=33,84,693/-
8.	Total Payable to complainant	31,22,207 +33,84,693 =	65,06,900/-

21. Further, the complainant is seeking compensation on account of harassment and torture and cost of litigation. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the



learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of compensation and litigation expenses.

22. It is pertinent to mention here that vide last order dated 22.04.2024, it was recorded that 'As per office record, respondent has filed reply in registry on 27.03.2024 with an advance copy already supplied to complainant. Respondent has paid cost of Rs 15,000/- payable to Authority and Rs 7,000/- payable to complainant via net banking on 05.02.2024, Reference no. RERA-PKLC1707108196. Cost of Rs 7,000/- which was to be paid to complainant has been paid in account of Authority. So, complainant is directed to file his account details alongwith a copy of cancelled cheque so that cost of Rs 7,000/- can be paid to him'. Accordingly, complainant has filed his account details alongwith cancelled cheque in registry on 03.06.2024. Office is directed to remit an amount of Rs 7,000/- in account of complainant.

H. DIRECTIONS OF THE AUTHORITY

23. 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 no. 1 is directed to refund the paid amount of Rs 31,22,207/- with interest of Rs 33,84,693/- as calculated in table mentioned above in paragraph 20 of this order. It is further clarified that respondent will remain liable to pay interest to the respective 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.

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


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CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]