Complaint no.:	**563 of 2022**
Date of filing:	**18.04.2022**
First date of hearing:	**31.05.2022**
Date of pronouncement:	**17.09.2024**

LEAD CASE: COMPLAINT NO. 563 OF 2022

Kanwaljeet Singh S/o Baldev Singh
R/o 2806, Basant Pura,
Ambala, Haryana- 133201 ...COMPLAINANT

VERSUS

Taneja Developers Infrastructure Ltd. (TDI)

Office At: Vandana Building, Upper Ground Floor, 11 Tolstoy Marg,

Connaught Place, New Delhi–110001

.....RESPONDENT

Complaint no.:	**564 of 2022**
Date of filing:	**18.04.2022**
First date of hearing:	**31.05.2022**
Date of pronouncement:	**17.09.2024**

Vivek Pal Singh S/o Singh
R/o 2806, Basant Pura,
Ambala, Haryana- 133201 ...COMPLAINANT

VERSUS

Taneja Developers Infrastructure Ltd. (TDI)
Office At: Vandana Building, Upper Ground Floor, 11 Tolstoy Marg,
Connaught Place, New Delhi–110001 .....

CORAM: Dr. Geeta Rathee Singh Member
Chander Shekhar Member

Present: - Col. Kanwaljeet Singh, complainant in person for complaint no. 563 of 2022 and 564 of 2022.
Adv. Shubhnit Hans, Ld. counsel for the respondent, through VC in both complaints.

ORDER

1. Present complaint has been filed by 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 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 allottees as per the terms agreed between them.

2. Captioned complaints are taken up together for hearing as as identical issues were involved and the units in both the complaints are situated in the same project of same respondent. This order is passed by taking complaint no.563 of 2022 titled as *Kanwaljett Singh v. TDI Infrastructure Pvt. Ltd.* as lead case. This common order shall dispose of both captioned complaints.

A. UNIT AND PROJECT RELATED DETAILS AS PROVIDED BY COMPLAINANT

3. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, have been detailed in the following table:

Sr.No.	Particulars	Details
1.	Name of the project	"Tuscan Heights" near TDI mall in TDI City, Kundali, Sonipat.
2.	Name of the promoter	TDI Infrastructure Ltd.
3.	RERA registered/not registered	Un-Registered
4.	Unit No. allotted	T-5/0101, 1st floor
5.	Original Unit area	1390 Sq. feet (revised unit area

		1654.1000 sq.ft.)
6.	Date of allotment	18.08.2011
7.	Date of Apartment Buyers Agreement	24.08.2011
8.	Due date of offer of possession	24.02.2014 (30 months from the date of execution of B.B.A as per Clause 30 of Agreement at page no. 38 of complaint.)
9.	Total sale consideration	Rs.32,96,385/- (as per BBA at page no. 33 of complaint)
10.	Amount paid by complainant	Rs. 47,79,699/-
12.	Offer for fit out possession	08.12.2017
14.	Possession certificate	08.04.2018
11.	Whether O.C received or not	O.C not received till date (Till the date of filing of complaint)

B. FACTS OF THE COMPLAINT AS STATED BY THE COMPLAINANT

4. That a flat/unit bearing no. T-5/ 0101 situated at TDI Tuscan City behind TDI Mall, Kundli Sonipat Haryana was booked by complainant on 16.03.2011 by paying a booking amount of Rs. 3,50,000/-. The said unit/flat was allotted to complainant vide allotment letter dated 18.08.2011. Thereafter, an apartment buyer agreement was executed between the parties on 24.08.2011 and construction linked plan was opted vide said agreement. Copies of booking receipts, allotment letter

and apartment buyer's agreement are annexed as Annexure C-1, C-2 and C-3 respectively.

5. That as per agreement, total super measurement area of allotted unit was 1390 sq ft. and its cost was fixed @ Rs. 1975/- per sq. ft. As per clause 30 of said agreement, flat/unit was to be handed over to complainant within 30 months from the date of execution of agreement i.e., by 24.02.2014. However, the said unit was neither handed over in 2015, 2016 and 2017 nor its actual completion date was ever disclosed by respondent.

6. That after expiry of long period from execution of apartment buyer's agreement, respondent issued an offer for fit-out possession of said unit along with final statement of account on 08.12.2017 and it was instructed to clear last and final payment and take possession by 07.01.2018 in order to avoid further accrual of interest', which was apparently a kind of threaten by respondent for accrual of further interest prior to completion of project. Copy of offer of fit out possession and final statement of account is annexed as Annexure C-4 and C-5 respectively.

7. That on perusal of final statement of account dated 19.02.2018 sent along-with offer for fit out possession, complainant got shocked/surprised that as all of a sudden initial agreed super measurement area of 1390 sq. ft. of allotted unit was increased to

1654.1000 sq. ft. without furnishing any revised plan of project, prior consent and knowledge of the complainant in an unauthorized and illegal manner. Such amount for increment of super measurement area acts as a heavy financial burden upon complainant which is liable to be quashed by Authority.

8. That besides this, the complainant has submitted that respondent company has raised additional demand of Rs.9,87,524/- on account of increased area of the flat as well as other charges like parking fee of Rs.1,82,613/-, stamp duty @5% of Rs.1,75,800/-, club membership fee of Rs.50,000/- and security deposit of maintenance charges of Rs.20,000/- against which complainant made a payment of Rs.9,97,524/- till 02.01.2018 to get the flat booked.

9. That the complainant has vide application dated 19.09.2023, submitted in the Authority calculation sheet in pursuance of order dated 20.04.2023, wherein following charges have been claims to be in excess of the amount that the complainant submits to have been illegally charged from him.

S. no	Particulars	Paid On	Amount
1.	Charges For Increased Area (264 Sq Ft @ 1975 Per Sq Ft)	02-01-2018	Rs 5,21,597/-
2.	Delay Possession Interest @5 Per Sq Ft (As Per Clause 30)	24-03-2014	Rs.7,99,250/-

3.	Faulty Construction	NIL	NIL
4.	EFFC	15-01-2015 02-01-2018	Rs 3,51,406/- Rs 2,74,098/-
5.	EDC	27-01-2015	Rs 3,42,635/-
6.	SEC	02-01-2018	Rs 20,000/-
7.	VAT	02-01-2018	Rs 18,758/-
8.	ALT PLC	02-01-2018	Rs 46,743/-
9.	Misc Charges	02-01-2018	Rs 11,800/-
10.	Parking Charges	04-06-2016	Rs 1,82,010/-
11.	Area Above Carpet Area (1390-1010=380 Sq Ft)	02-01-2018	Rs 7,50,500/-

10. That complainant made total payment as demanded amounting to Rs.47,63,319.50/- against the actual cost of flat amounting to Rs.37,66,369.50/- (where EFFC charges were taken extra of Rs.4,21,525.00/-). The copy of statement of account is annexed herewith as annexure C-3. Accordingly NOC for handing over of possession was issued in favour of complainant on 19.02.2018. A copy of NOC dated 19.02.2018 is annexed as Annexure C-4 colly.

11. That further, complainant got possession certificate from the respondent on 08.04.2018 and subsequently he shifted to the flat in question. Copy of possession certificate is annexed as Annexure C-4 colly. However, complainant submits that the said offer of possession is not a valid offer

of possession, even though possession has been taken by him. Further respondent company has not allotted specific car parking space for which it has charged Rs. 1,82,613/- for which complainant must either be allotted the specific space otherwise the amount be refunded back to him. Furthermore, respondent has charged Rs.4,21,525/- on account of electric and fire fighting equipment charges which was basically included in basic cost price of the flat booked and allotted. That such charge towards electricity connection is additional and illegal, therefore promoter cannot charge amount for EFFC exclusively beyond basic sale price of the unit as per numerous judgments passed by this Hon'ble Authority.

12. That the complainant has been cheated by respondent- developer in many folds after collecting huge extra amount on ground of increased super area, club membership charges, PLC, miscellaneous expenses, etc. due to gross negligence and deficiency in service towards the complainant. Thus, respondent is liable to pay interest to the allottees of apartment, building or project for a delay or failure in handling over of such possession as per terms and conditions of agreement of sale. Accordingly, complainant is entitled to get interest on the paid amount along-with interest at the rate prescribed by Hon'ble Authority.

C. RELIEFS SOUGHT

13. In view of the facts mentioned above, the complainant prays that Hon'ble Authority may be pleased to: -

i. It is respectfully submitted that this Authority may direct the Respondent to compensate amounting to Rs. 16,95,237 to the Complainant towards delay possession of the unit; with effect from the committed date of possession (February, 2014) as per the clause 30 of the Buyer's Agreement to the actual delivery of possession (19-02-2018), at the prescribed rate of interest of 8.65% as allowed by the Hon'ble Tribunal, as per the guidelines laid in RERA Act, 2016.

ii. It is most respectfully prayed that this Hon'ble Authority direct the Respondent to ensure no further demand is raised on the Complainant till the time the entire interest due to the Complainant has been adjusted against additional demand, if any payable by the Complainant to the Respondent.

iii. It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondent not to ask for anything which has not been agreed to between the parties in the Buyer's Agreement as offering possession on the payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession.

iv. It is most respectfully prayed that this Hon'ble Authority be pleased to pass any other reliefs) which this Hon'ble Authority thinks fit in the interest of justice and in favor of the Complainant.

D. REPLY ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed reply on 31.05.2022 pleading therein:

14. That the complainant had voluntarily invested in the project of the respondent namely 'Tuscan Heights', near TDI mall in Tuscan City, Kundli, Sonepat, Haryana.

15. That the said project of respondent is covered under license No. 177 of 2007 dated 13.04.2017 annexed as Annexure R-2 and the respondent company had already applied to the Director General of Town and Country Planning, Haryana, for grant of Occupation Certificate for said project vide letter dated 09.05.2014 annexed as Annexure R-3 with reply. However, till date, DTCP has failed to provide the respondent company with Occupation certificate in respect of said project.

16. That the complainant had already given away his right to make the respondent company liable for any claims as the complainant has signed the NOC dated 19.02.2018 (Annexure 4 colly) and has given an undertaking after his full satisfaction with regard to unit in question.

17. Further, the possession certificate has also been issued on 08.04.2018 and the complainant has been residing in the said flat ever since. It is evident from the perusal of the said NOC and possession certificate that the complainant after duly inspecting his unit cleared all the dues, signed the NOC and accepted the physical possession of the unit way back in 2018 after possession was offered on 07.12.2017. Therefore, now after a delay of about 4 years from the date of accepting the possession, complainant cannot approach the Authority and seek relief as claimed for.

18. That various demand letters were sent to complainant to clear the dues. However, complainant failed to make the payments in time and neglected its obligation to pay the outstanding amount to the respondent company. Therefore, it is complainant who has failed to abide by its obligation. A copy of reminder letters is annexed as Annexure R-4 colly.

19. That the Real Estate Regulation and Development Act, 2016 was not in existence at the time of commencement of construction of the said project. Also, an occupation certificate was applied by the respondent company way back in 2014, therefore, the present complaint is not maintainable and falls outside the purview of the RERA Act. The RERA Act came into effect in 2016 and cannot be held to be retrospective in nature. In a recent judgment, the Hon'ble Supreme

Court in the matter titled as ***"Newtech Promoters and Developers Pvt. Ltd. vs. State of UP and others", in Civil Appeal Nos. 6745-6749 of 2021*** has held that application of the RERA Act, 2016 is retroactive in character. Thus, if the Act is given a retrospective application, the same would be unjust and would gravely prejudice the respondent company.

20. That all the demands made and area increased is consistent with the terms and conditions of the agreement executed between the parties and the complainant cannot run away from his obligations. Further, it denied that principle laid down in case of *Vivek Tandon v. TDI Infrastructure Pvt. Ltd.* (complaint no. 607 of 2018) wherein Authority allowed only 2.01% increase in super area as justified, to be applicable in present case. Further it has been submitted by ld. Counsel for respondent that area of the unit has been increased in terms of agreement executed between the complainant and respondent and complainant at this stage cannot raise such objections. Clause 6 and 7 of the BBA are reproduced herein below for reference:

> *"6. The Company shall have the right to effect alterations in the layout plan of the colony, including the layout plan of the Building as well as the Apartment, as and when considered by the Company to be expedient or necessary or as may be required directed by the Director, Town & Country Planning, Haryana, Chandigarh. Alterations may, inter-alia include all or any of the following changes, namely:*
> *I) Change in the position/location of the Plot on which the Apartment has to be constructed;*
> *II) Change the numbering of the Plot/Apartment;*

III) Change in boundaries, including the preferential location, if any, of the Plot/the Apartment;
IV) Change in the dimensions or area of the Plot/Apartment.
7. In the event of any increase or decrease to the extent of 10% to the agreed area of the Independent Floor/Apartment, due to alteration as aforesaid, the adjustment in the payments shall be made as per the basic rate as mentioned in Clause 2 above. However, if the increase or decrease is more than the extent of 10%, then it shall be the Company which shall have the sole discretion to fix the rate for such an increase or decrease. Further, if due to change in the layout plan of the colony or on account of any other alterations, the Independent Floor/apartment gets dislocated/omitted, then it shall be open for the purchaser to opt for a substituted independent floor/apartment as may be offered by the Company. In case the purchaser is not willing to opt for any substituted allocation of independent floor/apartment or in case of independent floor / apartment is omitted or the company is unable to hand over the same, the company will be liable to refund only the amount received from the purchaser towards the TSC for the independent Floor / apartment along with the simple interest @9% p.a. which shall be calculated from the respective dates when the company has actually received the money in its account. No further compensation of any sort shall be payable by the Company."

21. That the consent was given by the complainant in the agreement as to the change in the area and whatever amount has been charged by the respondent from complainant has been charged as per the terms and conditions of the buyer's agreement. It is submitted that the complainant is bound by the terms of the contract and as such cannot withdraw his consent. Further, even at the time of handing over the possession, complainant was aware about the same, but he did not raise any objection about the same, in fact signed the NOC dated 19.02.2018 stating that he is fully satisfied with the unit. Therefore, at this belated

stage the complainant cannot be allowed to approach the Authority for any relief.

22. That all the demands have been made in accordance with the terms and conditions of the agreement executed between the parties. Therefore, complainant cannot run away from fulfilling his obligations and is liable to pay the same. Therefore, the said demand/amount cannot be withdrawn.

23. That the respondent has not made any violation of the Act or the Rules made thereunder. The reliefs claimed by complainant are denied and claims made therein are not maintainable and are hence, liable to be dismissed.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

24. During oral arguments learned counsel for the complainant and respondent have reiterated arguments as mentioned in their written submissions. Further complainant has submitted that case may be decided in parity with complaint no. 613 of 2022.

F. OBSERVATIONS AND DECISION OF AUTHORITY

25. Authority has gone through the rival contentions. In light of background of the matter as raptured in this order and also arguments submitted by both parties, Authority observes that there is no dispute with respect to facts that a unit was booked by complainant in the

respondent's project namely Tuscan City (Heights), Kundli, Sonipat in the year 2011; Unit No. 0101, in Tower 5, measuring 1390 sq. feet was allotted to complainant vide allotment letter dated 18.08.2011; apartment buyer's agreement dated 24.08.2011 was executed between the parties; complainant had paid Rs. 47,79,699/- as total sale consideration.

26. On perusal of complaint, it is observed that complainant has two main grouses against the respondent promoter, as illustrated below:

    i. That after a delay of approximately 4 years respondent promoter had offered "fit out possession cum demand letter" dated 08.12.2017 and that too without obtaining occupation certificate from the competent authority.

    ii. That vide "offer for fit out possession cum demand letter" dated 08.12.2017 respondent raised illegal and arbitrary demands under different heads.

Aggrieved by alleged violations and contravention of the provisions of The RERA Act, 2016 committed by respondent promoter, complainant is praying for relief of refund and delay interest.

27. In response to complaint, respondent promoter had filed its reply dated 30.05.2022 wherein it had raised preliminary objections regarding maintainability of complaint. Observations of the Authority on these preliminary objections are herein below:

i. Respondent has raised an objection that provisions of The RERA Act of 2016 are not applicable to the present case as the agreement to sell was executed and construction was commenced prior to coming into force of RERA Act, 2016. Respondent in its reply has averred that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and same cannot be examined under the provisions of RERA Act of 2016.

In this regard, Authority observes that after coming into force of The RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After The RERA Act, 2016 coming into force the terms of agreement are not re-written, The RERA Act, 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in ***complaint no. 113 of 2018 titled as Madhu Sareen v/s BPTP Ltd*** decided on 16.07.2018. Relevant part of the order is being reproduced below:

> *"The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller.*

Further, reference can be made to the case titled ***M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP &Ors. Etc. 2022(1) R.C.R. (Civil) 357,*** wherein the Hon'ble Apex Court has held as under:-

> *"41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for al safeguarding the pecuniary interest of consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case."*

As per the aforesaid ratio of law, 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 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 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.

ii. Respondent has further raised an objection that complainant is in peaceful possession of his unit since 08.04.2018 and has approached this Authority after a delay of 4 years, hence, complaint is barred by limitation.

In this regard, it is observed that as per clause 30 of apartment buyer agreement, respondent was to handover the possession of the unit to allottee within 30 months from the date of execution of agreement. The apartment buyer's agreement was executed inter-se the complainant and respondent on 24.08.2011, as per which possession was to be handed over to complainant by 24.02.2014. However, admittedly possession certificate has been issued to

complainant on 08.04.2018 i.e., after a delay of more than 4 years from deemed date of possession. Hence, respondent has failed to fulfil its obligations to hand over the possession of the booked unit in its project within time stipulated in agreement for sale and respondent has neither paid delay possession interest till date nor executed conveyance deed in favour of complainant; thus, the cause of action is re-occurring. Further, in this regard reference is made to the judgement of the **Hon'ble Apex Court in *Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise*** wherein it was held that 'The Indian Limitation Act' applies only to courts and not to the tribunals. Relevant para is reproduced herein:

> *19. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963."*

The RERA Act, 2016 is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act 1963, thus, would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority established under the Act is a quasi-judicial body and not Court.

Therefore, objection of respondent with respect to the fact that complaint is barred by limitation is rejected.

28. Now while proceeding to observe and decide complaint on merits there are two major issues to be decided:

    i. Whether complainant is entitled to relief of delayed possession interest as per Section 18 (1) of The Real Estate (Regulation and Development) Act, 2016 read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 for any delay in offer of possession.

    ii. Whether any amount has been charged from the allottee in contravention to terms of apartment buyer's agreement or provisions of Real Estate (Regulation and Development) Act, 2016 or Rules or Regulations made thereunder.

Issue I - Whether complainant is entitled to relief of delayed possession interest as per Section 18 (1) of The Real Estate (Regulation and Development) Act, 2016.

29. Complainant in his complaint has alleged that he was allotted unit no. T-5/0101 in the real estate project "TDI Tuscan Heights", Sonipat, Haryana. An apartment buyer's agreement was executed between the parties on 24.08.2011 and as per terms of apartment buyer's agreement, possession was to be handed over in a period of 30 months from date of execution of apartment buyer's agreement, thus, respondent-promoter

was obligated to handover possession of the unit by 24.02.2014, however respondent has not handed over possession as per time stipulated, also respondent has not received occupation certificate till date. Therefore, complainant is seeking relief of delay possession interest till the date of receiving occupation certificate.

30. Per contra, respondent in its reply has denied that possession of the unit was to be handed over within a period of 30 months from date of execution of apartment buyer's agreement. Respondent has averred that no fixed timeline for handing over possession was ever committed to complainant and the same was always tentative and subject to any force majeure event. Respondent has further averred that complainant was issued possession certificate for said unit on 08.04.2018 and since then complainant has been enjoying possession of his unit. Therefore, complainant is not entitled to any interest on account of delay in delivery of possession.

31. On perusal of clause-30 of the apartment buyer's agreement dated 24.08.2011, Authority observes that respondent had committed that if possession of the apartment is delayed beyond a 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 for every month of delay, the purchaser shall be entitled to a fixed monthly compensation/damages/penalty @ Rs.5/- per square foot of the total

super area of the apartment. Meaning thereby that the respondent promoter had undertaken/committed to hand over the possession of the unit in question within a period of 30 months from the date of execution of the agreement to sell, i.e. by 24.02.2014. Not only this, the respondent had also undertaken to compensate the complainant allottee in case of delay in handing over possession beyond a period of 30 months.

32. It is observed that respondent had taken a plea that handing over of unit was subject to force majeure condition. However, there is no document on record to show or to prove that any force majeure condition occurred or existed during the 30 months' period from execution of agreement for sale that could have contributed to any delay in completion of construction and handing over of possession. Hence, it was an obligation on the respondent to hand over the possession of the unit by 24.02.2014 and for any delay beyond that respondent after coming into force of Real Estate (Regulation & Development) Act, 2016 is liable to pay delay interest in terms of Section 18 read with Rule 15 of Haryana Real Estate (Regulation & Development) Rules, 2017.

33. It is a matter of fact that the possession certificate was issued in favour of the complainant allottee vide dated 08.04.2018 i.e. after a delay of more than four years. It is observed that the complainant in its complaint has pleaded that the offer of possession was made without

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obtaining a valid occupation certificate from Department of Town & Country Planning, thus is not a valid offer of possession and accordingly, as per Section 18 of Real Estate (Regulation & Development) Act, 2016 he is entitled to delay interest till the time a valid offer of possession is made by respondent promoter after obtaining the occupation certificate from competent authority. Respondent in its reply has also admitted that it had applied for occupation certificate vide letter dated 09.05.2014, however, the same has yet not been granted by the competent authority. There is no dispute regarding the fact that possession was offered and possession certificate dated 08.04.2018 was issued without obtaining an occupation certificate. Nevertheless, it is also a matter of fact and admitted by the complainant that he is in peaceful possession of his unit since 08.04.2018. There could have been a possibility that the complainant allottee was coerced into accepting the offer of possession, however, if so was the case the complainant could have raised a protest against the said offer of possession within a reasonable time after accepting the possession. However, no such communi-cation or documents have been placed on file to prove or to show that the complainant ever protested against the offer of possession made in the year 2018. From these circumstances, it can be concluded that complainant had willingly

accepted the possession of the unit in 2018. Hence, he is entitled to delay possession interest from 24.02.2014 to 08.04.2018.

34. As per statement of accounts annexed at Annexure C-3 of complaint, which is also admitted by the respondent in its reply vide its statement of accounts at Annexure-R-5, complainant had paid an amount of Rs. 47,79,699/- as total sale consideration. Therefore, Rs.47,79,699/-, is taken into account for calculation of interest as prescribed under Rule 15 of Haryana Real Estate (Regulation & Development) Rules, 2017 i.e. @ SBI highest marginal cost of lending rate (MCLR) + 2% i.e., 11.10% (9.10%+2%), from the deemed date of possession till actual handing over of possession (i.e. from 24.02.2014 to 08.04.2018).

35. As per calculations made by accounts branch, amount payable by respondent to the complainant on account of interest for delay in handover of possession of the unit has been worked out to be as given in following table:

Complaint No.	Principal Amount (in Rs.)	Period	Interest (in Rs.)
563 of 2022	47,79,699/-	24.02.2014 to 08.04.2018	21,87,596/-
564 of 2022	47,39,078/-	24.02.2014 to 08.04.2018	21,69,005/-

Thus, the respondent is directed to pay the complainant in complaint no. 563 of 2022 amount of Rs. 21,87,596/-and to complainant in complaint no.564 of 2022 amount of Rs. 21,69,005/-/- as delay interest for the period from 24.02.2014 to 08.04.2018 in each case within 90 days of uploading of this order on the website of the Authority.

Issue- II Whether any amount has been charged from the allottee in contravention to terms of apartment buyer's agreement or provisions of Real Estate (Regulation and Development) Act, 2016 or Rules or Regulations made thereunder.

36. Complainant has alleged that respondent has illegally charged from him on account of parking, preferential location charges, club membership charges, while there is no club at site and other miscellaneous expenses which were not to be paid by complainant. To this, counsel for respondent has submitted that such charges as objected to by the complainant have been charged as per the agreement and wilfully paid by complainant who did not raise any objection at the time of payment. With regards to this conflict on account of demands raised by respondent, complainant was directed to file calculations of the amount allegedly charged by respondent in excess. Complainant then filed the calculation sheet in pursuance of such order (dated 20.04.2023). Thus,

payments under following heads have been alleged to be illegally charged from complainant:-

a) Charges for increased area (264.100 sq ft.);

b) Electrical & Fire Fighting Charges (EFFC) ;

c) EDC charges ;

d) SEC charges ;

e) VAT charged ;

f) ALT PLC charges;

g) Misc Charges;

h) Parking Charges; and

i) Club Membership fee.

It is the case of the complainant that since all these charges/amounts were illegally and arbitrarily collected/levied upon the complainant, which complainant has already paid, respondent is liable to refund the same.

37. With regard to these aforementioned charges/amounts collected from complainant, Authority observes and directs as below:

a) Increase in Super Area

Complainant has alleged that respondent had unilaterally increased area of his apartment from initial booked area of 1390 sq. fts to 1654.1000 sq. fts i.e., increase of about 264.100 sq. fts. and has charged Rs. 5,21,597/- (with taxes amount comes out to be Rs.5,84,190/- which was

paid by complainant). Complainant has further alleged that there is no change in location of the plot, plot number or the dimensions of the apartment, thus, the entire amount collected for the increased area over and above 1390 sq.ft. is liable to be returned.

Whereas, respondent has averred that the increase in area has been in accordance with law and as per approved layout plans and complainant after satisfying himself fully accepted the possession and signed the documents, therefore, now at such belated stage, complainant cannot be allowed to make such bald assertions against the respondent company.

In order to ascertain whether the increase in area from 1390 sq.ft. to 1654.1000 sq.ft. is actual or fictional, Authority vide its interim order dated 09.11.2023 had directed the respondent to file component-wise detail of the increase in super area. In compliance of the same, respondent filed component-wise detail and final statement of account on 22.03.2024. On perusal of component-wise 3 BHK area detail as submitted by the respondent, it is observed that the respondent has also loaded the shaft area of the flat, mumty area, machine room area, overhead tank area, UG tank and pump room area, stilt floor and basement common area, elevated feature area, STP, ESS, guard room, panel room, B.W. etc. proportionately on the flat and has charged for the same. Authority observes that all these areas components as mentioned are generally not part of the FAR and as per the policy of the

Department of Town and Country Planning, only the area which is part of FAR is saleable. Area which is not part of FAR is not saleable, therefore, the same cannot be loaded and charged on the units allotted. Even for a moment, it is presumed that respondent would endeavour to get condonation of increased area as per policy of the department, then also such condonation shall not be over and above 10%, whereas complainant has been charged for almost 19% increased area which is over and above what has been agreed in the agreement for sell and beyond the condonation limit.

Further, perusal of clause-2 of apartment buyer's agreement reveals that it was agreed between the parties that "*the final super area of the said apartment shall be confirmed by the Company only after the construction of the said building is complete and occupation certificate granted by the competent authority.*" Clause-2 further provides that "*if there shall be any increase in super area, the purchaser agrees and undertake to pay for the increase in super area immediately on demand by the company and if there shall be any reduction in the super area, then the refundable amount due to the purchaser shall be adjusted by the company from the final instalment as set forth in the schedule of the payment.*" It furthermore provides that any amount payable or refundable, as the case may be, shall be without any interest at the same rate per square meter as agreed in the apartment buyer's agreement.

Admittedly, as on date occupation certificate has yet not been obtained for the tower in question i.e. tower-5, therefore, the stage at which it could be ascertained whether there is any increase or decrease in the super area has not arrived. Therefore, at this juncture complainant cannot be charged for an area beyond the area mentioned in the apartment buyer's agreement i.e., 1390 sq.ft. Accordingly, respondent is directed to refund any amount charged for an area over and above 1390 sq.ft. Nevertheless, in case the super area of the apartment is enhanced/increased in the occupation certificate, whenever issued by the Department of Town & Country Planning, the complainant shall be liable to pay for the increased area without interest as agreed in clause-2 of the agreement for sale.

b) **Electrical and Fire Fighting Charges (EFFC)**

Another grievance of the complainant is that the charges to the extent of Rs.4,21,525/- levied for EFFC are unreasonable, therefore same may be refunded. It is alleged that as per terms of licence, it is the sole responsibility of the promoter to develop both basic infrastructure of the project like roads, sewage system, storm water disposal, electricity connection, water supply etc. Per contra, stand of the respondent is that EFFC has been levied as per terms of the apartment buyers' agreement.

Authority observes that respondent promoter had signed an agreement with Department of Town and Country Planning to provide

electricity and to install the fire-fighting equipment at the time of issuance of license, therefore, it is mandatory obligation of promoter to provide the same to the allottees within the licensed area. Cost of such mandatory obligations of the promoter are included in the basic sale price of the units. Respondent is liable to provide for electric fire-fighting equipment, levy of EEFC over and above basic price is illegal and hence EEFC charges are quashed. Respondent is directed to refund amount charged from complainant on account of said charges.

c) **External Development charges (EDC)**

External Development charges are the charges to be paid to the State Government for laying external services of the colony by the State Government agencies. This amount payable to the State Government for whole of the colony is apportioned amongst all the apartments/allottees of the colony. Accordingly, the complainant is liable to pay Extemal Development Charges.

d) **Value Added Tax:**

Value Added Tax is the tax paid to the State Government. On perusal of record, it is inferred that as per Clause 3 of the agreement provides "*the parties agree that the basic sale price of the independent floor shall not include the External Development Charges, Infrastructural Charges, Value Added Tax, Works Contract Tax or such other taxes, levies and /or charges present as well as future along with any enhancements*

thereof so imposed or levied by the state or any competent authority.....".

Further it reads " *The charges towards VAT, WCT or such other taxes that may be demanded by the government have not been quantified as of now, however the purchaser shall pay the same without any demur or protest as and when the same are demanded by the company."*

Thus, a plain reading of this clause indicates, that the charges on account of VAT were not quantified at the time of agreement but the same were admitted to be payable by the complainant on demand from the company. Since the VAT charges have been quantified and demanded by the company through the final account statement, the same are justified and hence allowed.

e) **Club Membership Charges (CMC)**

Complainant in his complaint has alleged that the respondent has collected Rs.50,000/- from complainant on account of club membership whereas there is no club in existence in the real estate project 'Tuscan Heights' where the unit of the complainant is located. Therefore, the amount charged from complainant on account of club membership be refunded to him.

On the other hand, during hearing proceedings, learned counsel for respondent stated that 'Tuscan Heights' project is a 22.864 acres group housing colony which was a part of larger residential plotted colony

covered under license no.177 of 2007 falling in the revenue estate of Kundli, Sonepat, Haryana and there already exists an operational club which is enjoyed by all residents. This statement of ld. counsel for respondent was rebutted by ld. counsel for complainant who stated that the club which is being mentioned by ld. counsel for respondent is for 'Kingsbury Apartment' which is a different phase of the larger licensed area.

On perusal of record and hearing averments of the parties on this point, Authority observes that the respondent has failed to place on record any layout plan from its possession which could prove that there is only one club approved on the entire licensed area of 'TDI City' being developed vide licence no.177 of 2007. There is no possibility of such layout plan to be in the possession of a common allottee. In absence of such documents, it could not be ascertained that there is any operational club in existence for the allottees of 'Tuscan Heights', therefore, the demand on account of club membership charges is not justified and stand quashed. However, if in future, a club comes up in the project and the complainant wish to avail its membership, he shall pay the membership fee as charged by the respondent promoter.

f) **Miscellaneous charges (ME):**

Complainant in its calculation chart submitted vide application dated 19.09.2023 that an amount of Rs.11,800/- has been charged from him

on account of miscellaneous expenses. In this regard, Authority observes that in present case, as the stage of execution of conveyance deed has yet not been arrived, and occupation certificate has also not been issued by the competent authority, therefore, respondent is not entitled to charge any amount of registration fees in name of miscellaneous charges years prior to the stage of execution of conveyance deed. Hence, Authority finds this component as unreasonable and directs the respondent to refund the same.

g) **Preferential Location Charges**

Another grievance of the complainant is that preferential location charges have been levied on the unit. However, he has failed to provide any details as to why respondent was wrong to demand such charges from him in respect of unit allotted to him as such unit is located on first floor of Tower-5 in respondent company's apartment.

On perusal of apartment buyers' agreement, it is observed that as per clause 4 complainant had agreed to pay an amount of Rs.2,08,500/- as preferential location charges for allotment of unit no. T-5/0101 at 1st floor. Nevertheless, apparently, (apparent from the perusal of final statement of account dated 19.02.2018) respondent had demanded Rs.2,78,639/- towards preferential location charges which have already been paid by the complainant. Here, Authority observes that since, at the time of allotment, complainant had agreed to pay Rs. 2,08,500/- and

ever since then, there has been no further change in location of the unit, complainant shall remain obligated only to pay to the extent of the agreed amount i.e. Rs. 2,08,500/-. Respondent shall refund the excess amount i.e. Rs.70,139/-, collected from complainant on account of preferential location charges.

h) **Interest Free Maintenance Security (SEC):**

Interest Free Maintenance Security is the money collected from all the allottees of a collective sum of money levied on the allottees of a residential/ commercial project by the builder for the present and future maintenance of colony, on heads like lift maintenance, park development, security enhancement or any other maintenance works. The builder will keep the money under their custody until the RWA (Resident Welfare Association) is formed and thereafter, the builder will transfer the money to the association. Thus, IFMS money is payable by the complainants.

i) **Car Parking Charges:**

Lastly, the grievance of complainant is that the charges levied for car parking space are unreasonable and respondent has charged them from him without actually allotting space for car parking.

As per clause 3 of Annexure -I of apartment buyer agreement, covered car parking area has to be allotted to the purchaser for his exclusive use. Further construction plan at Annexure -II of apartment buyer agreement

mentions that respondent will charge 5% + car parking + club membership at the time of possession. Thus. Rs.1,82,010/- charged by the respondent is valid subject to allotment of specific car parking area to complainant. Therefore, respondent is directed to demarcate and allot a specified car parking space to the complainant for his exclusive use, failing which respondent shall return amount charged for car parking to the complainant.

38. Therefore, Authority awards refund of above discussed reliefs in the following manner:

Complaint no. 563 of 2022:

Sr.no.	Relief Head	Amount awarded (in Rs.)
1.	Increase in Super Area	5,84,190/-
2.	EFFC charges	4,21,525/-
3.	Miscellaneous Charges	11,800/-
4.	PLC charges	70,139/-

Complaint no. 564 of 2022:

Sr.no.	Relief Head	Amount awarded (in Rs.)
1.	Increase in Super Area	5,84,190/-
2.	EFFC charges	4,21,525/-
3.	Miscellaneous Charges	11,800/-
4.	PLC charges	70,139/-

G. DIRECTIONS OF THE AUTHORITY

39. Hence, the Authority hereby passes this common 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 pay the complainant delay interest for the period from 24.02.2014 till 08.04.2018 as mentioned in para no.35.

    ii. Respondent is further directed to refund the amounts which respondent was not liable to demand from complainant as mentioned in para no. 38. Further, since the date of payment of charges/amounts mentioned in the table in para no. 39 is not provided, therefore, respondent is directed to refund the same along with interest from the date of payment till the date of realization within 90 days of uploading of this order.

40. **Disposed of.** File be consigned to record room and order be uploaded on the website of the Authority. Copy of this order be also placed in file of connected matter.

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CHANDER SHEKHAR
[MEMBER]

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