



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>2718 of 2022</b>
<b>Date of filing:</b>	<b>20.10.2022</b>
<b>Date of first hearing:</b>	<b>21.12.2022</b>
<b>Date of decision:</b>	<b>02.09.2024</b>

**Anil Chahal S/o Sh. Ramphal Chahal**  
R/o H.no. 1654/21, Urban Estate,  
Jind-126102

....COMPLAINANT

VERSUS

**TDI Infrastructure Limited**  
Creating Land Marks TDI Infrastructure Ltd,  
9, Kasturba Gandhi Marg, Connaught Place,  
New Delhi- 110001

....RESPONDENT

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

**Present: -**        Mr. Sudeep Gehlawat, Counsel for the complainant through  
                          VC.  
                          Mr. Shubhnit Hans, Counsel for the respondent

### **ORDER(NADIM AKHTAR – MEMBER)**

1. Present complaint has been filed on 20.10.2022 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 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	TDI City, Kundli , Sonipat
2.	Name of the promoter	TDI Infrastructure Ltd
3.	RERA registered/not registered	Not registered.
4.	DTCP License nos.	183-228 of 2004, 153-167 of 2004, 42-60 of 2005, 101-144 of 2005, 200-285 of 2005, 652-722 of 2006, 729-872 of 2006, 177 of 2007 and 51 of 2010.
	Licensed Area	927 acres
5.	Unit no.(independent floor)	B-B29/31
6.	Unit area	897 Sq. ft. (83.36 sq. mtrs)
7.	Date of allotment	25.01.2010



8.	Date of independent floor buyer agreement	15.04.2011.
10.	Due date of offer of possession	15.10.2013.
11.	Possession clause in BBA	Clause 30 <i>"However, if the possession of the Independent Floor 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 quantified @ Rs.5 per square foot of the total super area of the Independent Floor. The Purchaser 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 Independent Floor."</i>
12.	Total sale consideration	₹ 21,61,386/-
13.	Amount paid by complainant	₹ 19,97,832 /-
14.	Offer of possession	25.09.2019
15.	Occupation certificate	Not received .

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

3. Facts of complaint are that complainant had booked a unit in project of respondent by paying the booking amount of Rs 3,00,000/- on 19.09.2009. Following which respondent allotted the unit/an independent floor bearing no. B-B29/31, 897 sq.ft Ground Floor



situated in 'TDI City, Kundli, Sonipat' in favor of the complainant vide the allotment letter dated 25.01.2010. A copy of same is annexed as Annexure P-2. Builder buyer agreement was executed between the parties on 15.04.2011 for total sale consideration of ₹21,61,386/-. A copy of floor buyer agreement is annexed as Annexure P-3. Complainant had paid total amount of ₹19,97,832/- to the respondent till date and copy of receipts as well as account statement are annexed as Annexure P-4.

4. That the complainant has made all the payments on time, the respondent has miserably delayed the construction and development of the project.
5. As per clause 30 of independent floor buyer agreement, respondent was under obligation to handover possession within 30 months from the date of execution of agreement, thus possession was to be handed over on 15.10.2013. However, respondent had issued letter of offer of possession on 25.09.2019. A copy of possession letter is annexed as Annexure P-5.
6. Respondent failed to abide by the contractual terms of the agreement and therefore, cause of action arises in favour of complainant, hence the present complaint is filed before the Authority for possession of said floor alongwith delay interest.





### **C. RELIEF SOUGHT**

7. Complainant in his complaint has sought following reliefs:
1. In exercise of powers under Section 35, direct the Respondent to place on record all statutory approvals and sanctions of the project.
  2. To pay delay possession interest over the payment deposited by the complainant @21% per annum w.e.f to 15th October 2013 till the date of actual delivery of physical possession.
  3. To direct the respondent to handover the possession of residential flat as soon as possible.
  4. To direct the respondent to pay rent of accommodation taken by him on rent @ Rs. 28,000/- per month from the deemed date of possession, i.e., 15th October 2013 to till date, future and pendent lite to the complainant.
  5. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.

### **AMENDED RELIEF SOUGHT VIDE APPLICATION DATED 09.07.2024**

8. Complainant vide application dated 09.07.2024, sought following relief:
- Direct the respondent to refund the entire deposited amount alongwith interest @ 12% per annum in terms of independent floor buyer agreement.



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

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

9. That due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely-TDI City, Residential plots at Kundli, Sonipat, Haryana. Part completion certificates for the said project-927 acres approx. with respect to the township have already been received on 23.01.2008, 18.11.2013 and 22.09.2017.
10. That when the respondent company commenced the construction of the said project, the RERA Act,2016 was not in existence, therefore, the respondent company could not have contemplated any violations and penalties thereof, as per the provisions of the RERA Act, 2016. The Act penalizes the developers of the project much more severely than stipulated in the terms and conditions of the allotment of the said plot, signed and submitted by the complainant to the respondent company.
11. That the provisions of RERA Act are to be applied prospectively. Therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act.
12. That complainant herein is an investor and has accordingly invested in the project of the Respondent Company for the sole reason of



investing, earning profits and speculative gains, therefore, the captioned complaint is liable to be dismissed.

13. That complainant had already been offered possession way back in year 2019 and said fact had been duly admitted by the complainant in its complaint. Therefore, at this belated stage, when the complainant has already slept over his right for such long period, complainant does not deserve any relief from the Authority.
14. Present complaint is barred by limitation and same is not maintainable before Authority.
15. That handing over of possession has always been tentative and subject to force majeure conditions and complainant has been well aware about the same. It is the complainant who is not coming forward to take over the possession when possession has been offered to the complainant. Therefore, no cause of action arises in favour of complainant.

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

16. During oral arguments learned counsel for the complainants insisted upon refund of paid amount with interest stating that possession has been delayed by the respondent for around 11 years. Further, he stated that respondent is not in receipt of occupation certificate till date so there is no hope of getting a valid offer of possession even in near



future. Learned counsel for the respondent reiterated arguments as were submitted in written statement. He further stated that possession was offered in the year 2019 after completion of construction work of unit so refund at this belated stage should not be awarded to complainant.

**F. ISSUES FOR ADJUDICATION**

17. 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**

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

(i) With regard to plea raised by the respondent that provisions of RERA Act,2016 are applicable with prospective effect only and therefore same were not applicable as on 25.01.2010 when the complainant was allotted independent floor bearing no. B-B29/31, Ground floor, TDI City, Kundli, it is observed that issue regarding operation of RERA Act,2016 whether retrospective or retroactive has already been decided by Hon'ble Supreme Court in its judgment dated 11.11.2021 passed in *Civil Appeal No. (s) 6745-6749 OF 2021 titled as Newtech Promoters and Developers Pvt. Ltd. versus State*





*of Uttar Pradesh and others.* Relevant part is reproduced below for reference:-

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

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

*53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.*



*54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."*

(ii) The respondent in its reply has contended that the complainant is "speculative buyer" who has invested in the project for monetary returns and taking undue advantage of RERA Act, 2016 as a weapon during the present down side conditions in the real estate market and therefore he is not entitled to the protection of the Act of 2016. In this regard, Authority observes that "any aggrieved person" can file a complaint against a promoter if the promoter contravenes the provisions of the RERA Act, 2016 or the rules or regulations. In the present case, 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 25.01.2010 and builder buyer agreement dated 15.04.2011, it is clear that complainant is an "allottee" as independent floor bearing no. B-B29/31, Ground floor in the real estate project "TDI, City, Kundli", Sonipat. The concept/definition of investor is not provided or referred to in the RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there will be "promoter" and "allottee" and there cannot be a party having a status of an investor. Further, the definition of "allottee" as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 000600000010557 titled as **M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. And Anr.** had also held that the concept of investors not defined or referred to in





the Act. Thus, the contention of promoter that allottees being investor are not entitled to protection of this Act also stands rejected.

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

(v) Admittedly, complainant in this case had purchased the booking rights qua the plot in question in the project of the respondent in the year 2009 for a total sale consideration of ₹ 21,61,386/- against which an amount of ₹ 19,97,832/- has been paid by the complainant. Out of said paid amount, last payment of Rs 2,11,000/- was made to respondent on 20.02.2014 by the





complainant which implies that respondent is in receipt of total paid amount since year 2014, whereas fact remains that no valid offer of possession duly supported with occupation certificate of the booked unit has been made till date even after delay of 10 years from receipt of paid amount.

(v) Authority observes that the unit in question was allotted to complainant vide allotment letter dated 25.01.2010. Thereafter, builder buyer agreement got executed between the complainant and respondent on 15.04.2011 and in terms of clause 30 of it, the possession was supposed to be delivered latest by 15.10.2013(30 months from date of agreement). In the pleadings, it has been admitted by both parties that possession was offered to complainant on 25.09.2019, i.e. after a delay of round 6 years from deemed date of possession. Complainant did not accept said offer as it was not supported with occupation certificate. No document in respect of receipt of occupation certificate for the unit in question has been placed on record by respondent. It is the stand of complainant that respondent is not in a position to offer valid offer of possession as on date for the reason that occupation certificate has not yet been received by respondent. In support, he relied upon reply received from office of District Town Planner, Sonipat through RTI dated 29.02.2024 wherein it is clearly stated that 'No



occupation certificate has been granted of Plot no. B/B-29/31, TDI City, Kundli'. Said reply has been placed on record in registry on 09.07.2024. In absence of receipt of occupation certificate, the offer of possession made on 25.09.2019 by respondent to complainant was not a valid offer of possession and keeping in view the fact that respondent is not in receipt of occupation certificate till date so the valid offer of possession cannot be issued to complainant even today. In the prevailing circumstances, complainant cannot be forced to wait for indefinite time/period to have possession of the unit which was due in year 2013 and thus prayer of complainant for refund of paid amount with interest is justifiable.

(vii) In present situation, respondent failed to honour its contractual obligations without any reasonable justification. Thereafter, vide reply of District Town Planner, Sonipat through RTI dated 29.02.2024, it is clear that respondent is not in receipt of occupation certificate of the unit in question. It clearly implies that a valid offer of possession cannot be issued to complainant even after 11 years of delay from the deemed date of possession. 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.



(viii) 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.

(ix) This project did not get completed within the time stipulated as per agreement and possession of the booked unit is not possible even as on date, i.e. after 11 years of delay which creates apprehension in mind of complainant that delivery of physical possession of unit cannot be expected even in near future. In these circumstances, Authority finds it to be fit case for allowing refund along with interest in favor of complainant.

(x) The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

*(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation.-For the purpose of this clause-*

*(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*

*(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;*






(xi) Complainant in its complaint has sought refund of paid amount with interest @12%. It is pertinent to mention here that the legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

(xii) Consequently, as per website of the State Bank of India, i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 02.09.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

(xii) Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

*"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%; Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public".*

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 19,97,832/- 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 49,87,926/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 02.09.2024
1.	3,00,000/-	19.09.2009	4,98,405/-
2.	3,14,999/-	02.02.2010	5,10,296/-
3.	1,07,508/-	23.03.2010	1,72,560/-
4.	3,13,091/-	22.05.2010	4,96,827/-
5.	1,02,675/-	25.08.2010	1,59,963/-
6.	2,02,345/-	26.07.2011	2,94,630/-
7.	160/-	26.07.2011	233/-
8.	7,774/-	26.07.2011	11,320/-
9.	2,01,889/-	15.11.2011	2,87,089/-
10.	5,279/-	15.11.2011	7,507/-
11.	832/-	15.11.2011	1183/-
12.	2,10,280/-	10.03.2012	2,91,604/-
13.	2,11,000/-	20.02.2014	2,46,915/-
14.	20,000/-	21.06.2019	11,562/-
10	Total=19,97,832/-		Total= 29,90,094/-
	Total Payable to complainant	19,97,832 + 29,90,094/- = 49,87,926/-	



## 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 ₹19,97,832/- with interest of ₹29,90,094/- 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 record room after uploading of order on the website of the Authority.

  
.....  
CHANDER SHEKHAR  
[MEMBER]

  
.....  
NADIM AKHTAR  
[MEMBER]