HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**2057 of 2023**
Date of filing:	**13.09.2023**
Date of first hearing:	**12.10.2023**
Date of decision:	**02.12.2024**

Laxmi Narain Ram Dass & Co. through its Propritor
Sh. Hari Om Goyal, R/o House No. 201, 1st floor, Vaishali Enclave,
Pitampura, New Delhi-110034

....COMPLAINANT

VERSUS

TDI Infrastructure Limited,
Vandana Building, Upper Ground Floor
11, Tolstoy Marg, Connaught Place,
New Delhi- 110001

....RESPONDENT

CORAM: **Nadim Akhtar** **Member**

Chander Shekhar **Member**

Present: - Mr. Chaitanya Singhal, Counsel for the complainant through VC.
Mr. Shubhnit Hans, Counsel for the respondent through VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint was filed on 13.09.2023 by the complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or

contravention of the provisions of the Act of 2016 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 Espania Heights", Phase-1, Main NH-1, Sonipat
2.	Name of the promoter	TDI Infrastructure Ltd
3.	RERA registered/not registered	Registered vide HRERA-PKL-SNP-161-2019
4.	DTCP License no.	1065-1068 of 2006.
	Licensed Area	12.64 acres
5.	Unit no.	EH-05-1002
6.	Unit area	1390 sq. ft.
7.	Date of allotment	16.05.2012
8.	Date of builder buyer agreement	Not executed
9.	Due date of offer of possession	Not available

10.	Possession clause in BBA	Not available.
11.	Total sale consideration	₹ 28,45,237/-.
12.	Amount paid by complainant	₹ 22,80,436/-
13.	Offer of possession (fit-out)	11.06.2018
14.	Occupation certificate	Not obtained.

B. FACTS OF THE COMPLAINT

3. Facts of complaint are that complainant had booked a flat by making payment of Rs 2,50,000/- on 22.10.2011 as advance against present and future project for 1390 sq ft built up floor. Copy of payment receipt is annexed as Annexure P-4. Following which 'confirmation of allotment letter' dated 16.05.2012 was issued in favour of the complainant.

4. That no Builder Buyer Agreement (BBA) has been executed between the parties. Instead the respondent had given payment annexure dated 12.02.2014 to the complainant according to which floor no. EH-05-1002 having area 1390 sq ft in project "Espania Heights", NH-1, Kamaspur, Sonipat was allotted.

5. That complainant has paid total amount of Rs 22,80,436/- against total sale consideration of Rs 28,45,237/- till 2014. However,

respondent has failed to offer possession of unit to the complainant till date.

5. That complainant visited the office of respondent on 05.09.2023 and received final statement of account for his unit. On that day, complainant was shocked to see that respondent had increased the area of the unit from 1390 sq. ft to 1598 sq. ft. which had in turn lead to an increase in total cost of the unit from Rs 28,45,237/- to Rs 36,00,194/-. Further, the respondent had wrongly demanded vehicle car parking charges to the tune of Rs 1,75,000/-, club membership charges Rs 50,000/- and electrical and fire fighting charges of Rs 4,11,759/-.

6. That the respondent even after a lapse of 13 years from the date of original booking had failed to obtain the occupation certificate of the tower/project and further failed to offer possession of unit to the complainant. Complainants have trusted their hard earned money with a view to purchase the said unit in question for residing therein and are being denied the use of their property. Respondent has shattered the dreams of owning a house of their own. Now, complainant prays for refund of paid money to respondent. Hence the present complaint has been filed.

C. RELIEFS SOUGHT

7. Complainant in his complaint has sought following relief:

i. The respondent be directed to refund amount of Rs 22,80,436/- (Rupees Twenty Lakhs Eighty Thousand Four Hundred and Thirty Six Only) paid by the complainant alongwith an interest as per HRERA Rule 15.

ii. Any other relief as the Hon'ble Authority may deem fit and proper in light of the facts and circumstances of the above case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 23.02.2024 pleading therein as under:

8. That due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely-Espania Heights, Sonipat, Haryana. That the said project has been duly registered with Ld. RERA Authority.

9. That the allotment was done way back on 16.05.2012 which is much prior from the date when the RERA Act, 2016 came into existence. Moreover, the provisions of RERA Act are to be applied prospectively only. Therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act.

10. 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 in limine.

11. That respondent had vide letter dated 12.09.2016 applied for grant of occupation certificate before the Director, Town & Country Planning Department, Haryana. Copy of said letter is attached as Annexure R-2. Due to some unforeseen circumstances, the respondent had to apply again to the Director, Town and Country Planning for grant of Occupation Certificate vide letter dated 17.02.2022. Copy of said letter is attached as Annexure R-3.

12. That the respondent has also paid a substantial amount of Rs 10,00,000/- requesting the Ld. DTCP to compound the offence of offering the possession without Occupation Certificate. Copy of said letter dated 22.02.2021 is annexed as Annexure R-4.

13. That the possession for fit-out was offered to the complainant on 11.06.2018 alongwith final statement of accounts requesting the complainant to take over the possession after clearing their outstanding dues but complainant had not come forward for the same. Copy of offer letter dated 11.06.2018 is annexed as Annexure R-5. That due to continuous default in making timely payment by the complainant towards the allotted unit, the respondent company vide its letter dated 29.06.2021 had issued a pre-cancellation letter requesting the complainant to clear their outstanding dues failing which the allotment will be cancelled. Copy of Pre-cancellation letter dated 29.06.2021 is annexed as Annexure R-7.

14. That despite pre-cancellation letter issued by the respondent to the complainant, the complainant still did not come forward to clear their outstanding dues. Hence respondent cancelled the allotment of the unit and issued cancellation letter dated 20.07.2021 and communicated the same to the complainant. Copy of cancellation letter dated 20.07.2021 is annexed as Annexure R-8.

15. That the present complaint is barred by limitation and the same is not maintainable before the Ld. Authority.

E. REJOINDER FILED BY COMPLAINANT

Ld. Counsel for complainant had filed the rejoinder in registry on 01.10.2024 reiterating the averments as stated in complaint and denied the each and every objection raised by respondent stating that respondent is at fault by not issuing valid offer of possession till date.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

16. During oral arguments learned counsel for the complainant insisted upon refund of paid amount of Rs 22,80,436/- with interest stating that possession has been delayed by the respondent for around 8 years and even as on today, the respondent is not in a position to give valid offer of possession, as occupation certificate has not been received till date. He further submitted that statement of account in support of paid amount has been filed in registry on 29.11.2024. Learned counsel for

the respondent reiterated the arguments as were submitted in written statement and further submitted that respondent had re-applied for occupation certificate in year 2022 but it has not been received yet.

17. It is pertinent to mention here that complainant had filed statement of account in registry on 29.11.2024, in which total paid amount is shown as Rs 22,81,185/-(inclusive of interest amount of Rs 749/-) , whereas paid amount as stated in relief sought and complaint pleadings is Rs 22,80,436/-. Ld. Counsel for complainant was asked to clarify it at the time of hearing, he stated that final paid amount be taken as Rs 22,80,436/-.

G. ISSUES FOR ADJUDICATION

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

H. 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 16.05.2012 when the complainant was allotted unit bearing No. EH-05-1002, Espania Heights, Sonipat, it is observed that issue regarding operation of

RERA Act,2016 whether retrospective or retroactive has already been decided by Hon'ble Supreme Court in its judgment dated 11.11.2021 passed in ***Civil Appeal No. (s) 6745-6749 OF 2021 titled as Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others.*** Relevant part is reproduced below for reference:-

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

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

53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the

applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

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

(ii) The respondent in its reply has contended that the complainant is a "speculative buyer" who have invested their hard earned money in the project for monetary returns and taking undue advantage of RERA Act, 2016 as a weapon during the present down side conditions in the real estate market and therefore they are not entitled to the protection of the Act of 2016. In this regard, Authority observes that "any aggrieved person" can file a complaint

against a promoter if the promoter contravenes the provisions of the RERA Act, 2016 or the rules or regulations. In the present case, the complainant is an aggrieved person who has filed a complaint under Section 31 of the RERA Act, 2016 against the promoter for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here, it is important to emphasize upon the definition of term "Allottee" under the RERA Act of 2016, reproduced below: -

Section 2(d) of the RERA Act:

(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

(iii) In view of the above-mentioned definition of "allottee" as well as upon careful perusal of allotment letter dated 16.05.2012, it is clear that complainant is an "allottee" of unit bearing no. EH-05-1002, situated in the real estate project "Espania Heights", Sonipat. The concept/definition of investor is not provided or referred to in the RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there will be "promoter"

and "allottee" and there cannot be a party having a status of an investor. Further, the definition of "allottee" as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled **as M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. and Another** 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. Reference in this regard is made to the judgement of Hon'ble Apex Court Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise wherein it was held that Limitation Act does not apply to quasi-judicial bodies. Further, in this case the promoter has till date failed to fulfil their obligations because of which the cause of action is re-occurring. RERA 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 Courts.

(v) Respondent has also taken objection that booking of the unit of complainant was cancelled vide cancellation letter dated 20.07.2021 on account of default in not making the payment towards the sale consideration of unit. It is pertinent to refer to the contents of cancellation letter dated 20.07.2021 *"This is in reference to the provisional allotment of unit no. EH-05/1002 in Espania Heights-KEH, Kamaspur, Sonepat, Haryana. This is to bring to your kind notice that the said provisional allotment was made subject to certain terms and conditions foremost being, your strict adherence to the payment schedule. But on verification of your account, it has been noticed that you have failed to clear your outstanding till date inspite of many reminders through letters and telephone, now we would like to inform you that due to non-payment of dues we hereby CANCEL the provisional allotment of the unit as per company's policy with immediate effect. We would also like to inform you that henceforth you are left with no right, title, interest, or claim over the said unit."* As per statement of respondent's counsel, complainant did not surrender original receipts and hence, no amount was refunded to them till date. In

essence, paid amount still lies with respondent till date. On the other hand, it is relevant to point out that respondent after issuing of termination letter in year 2021 did not make any effort to refund the paid amount to complainant. Moreover, the cancellation notice was issued in respect of due amount not paid of Rs 12,79,758/-, in pursuance of offer of possession dated 11.06.2018. Said offer of possession was not a valid offer of possession as it was not supported with occupation certificate. Infact, respondent has not received occupation certificate till date. Status of occupation certificate as on date is still stand applied and not yet received. Basis of issuing cancellation letter itself was not valid in eyes of law. In these circumstances, the cancellation letter dated 20.07.2021 does not hold any merit and is hereby quashed.

(vi) Factual matrix of the case is that complainant had purchased the booking rights qua the flat/apartment in question in the project of the respondent in the year 2011 against which an amount of ₹ 22,80,436/- already stands paid to the respondent. Out of said paid amount, last payment of Rs 1,06,698/- was made to respondent on 25.02.2015 by allotee which implies that respondent is in receipt of total paid amount since year 2015 whereas fact remains that no valid offer of possession duly supported with occupation certificate has not been yet made to complainant.

(vii) Authority observes that builder buyer agreement has not been executed between the parties. Allotment letter for unit in question was issued on 16.05.2012. There is no clause which specifies the deemed date of handing over of possession. In essence, no date for handing over of possession has been specified in any of the document executed between the parties. In absence of specific clause of deemed date of possession in allotment letter, it cannot rightly be ascertained as to when the possession of said plot was due to be given to the complainant. In Appeal no. 273/2019 titled as TDI Infrastructure Ltd vs Manju Arya, Hon'ble Tribunal has referred to the observation of Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) and Another, in which it has been observed that period of 3 years is a reasonable time of completion of construction work and delivery of possession. In present case, unit was allotted vide allotment letter on 16.05.2012, taking 3 years time period as a reasonable time for completing the project, the deemed date of possession works out to 16.05.2015.

(viii) In present case, respondent failed to honour its contractual obligations of offering possession of the allotted unit within stipulated time without any reasonable justification. Further, respondent has not committed any specific timeline even in its

reply regarding delivery of valid offer of possession. Moreover, respondent vide letter dated 11.06.2018 had offered fit out possession of unit to complainant alongwith additional demand of Rs 12,79,758/-. But complainant did not pay any amount towards acceptance of said offer. In this regard, Authority observes that disputed offer of possession was not a legal offer in eyes of law for the reason that it was not supported with occupation certificate. So, complainant was not bound to accept it. In these circumstances, it is concluded that a valid offer of possession of unit has not been made till date to complainant. At present, unit in project in question is not complete and is not ready for usage. This status of project is duly supported by the fact that occupation certificate which stands applied in the year 2016 by the respondent has not yet been received and respondent is not having reasonable justification for non-receipt of occupation certificate even after delay of 6-7 years. Complainant has 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.

(ix) 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.

(x) The project/unit in question did not get completed within the reasonable time period, nor any 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 fit case for allowing refund along with interest to the complainant.

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

> (za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.
>
> Explanation.-For the purpose of this clause-
>
> (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;
>
> (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

19. 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. 02.12.2014 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

20. 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".*

21. 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 22,80,436/- 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 of deposit 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 said amount works out to Rs 29,89,976/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 02.12.2024
1.	250000	17.10.2011	364627
2	174661	08.11.2011	253576
3.	212331	09.01.2012	304263
4.	469766	06.06.2012	651872
5.	106698	14.07.2012	146827
6.	106698	18.04.2013	137806
7.	106698	08.10.2013	132193
8.	106698	23.11.2013	130700
9.	106698	16.01.2014	128948
10	106698	12.02.2014	128072
11.	106698	19.03.2014	126936
12.	106698	10.06.2014	124243
13.	106698	23.07.2014	122848
14.	106698	10.09.2014	121258
15.	106698	25.02.2015	115807
16.	Total=22,80,436/-		Total= 29,89,976/-
17.	Total Payable to complainant	2280436+2989976=	52,70,412/-

It is pertinent to mention here that complainant had filed statement of account in which total paid amount is shown as Rs 22,81,185/-(inclusive of interest amount of Rs 749/-) , whereas paid amount as stated in relief sought and complaint pleadings is Rs 22,80,436/-. Ld. Counsel for complainant was asked to clarify it at the time of hearing, he stated that final paid amount be taken as Rs 22,80,436/-.

I. DIRECTIONS OF THE AUTHORITY

22. 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 amount of ₹22,80,436/- with interest of ₹29,89,976/- 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.

23. **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]