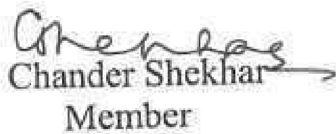
HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint No. 1515 of 2023 date of Decision 17.12.2024 P.C Garg V/s TDI Infrastructure Ltd.

In the above noted captioned complaint order dated 17.12.2024 was uploaded on the website of the Authority on 17.12.2024. However, it was brought to the notice of the Authority by the office that in Para 31 (i) at line No. 3 it was inadvertently written "as specified in the table provided in Para 32 (xi) of this order" instead of "as specified in the table provided in Para 30 (xi) of this order". Consequently correct order has now been re-uploaded to the website of the Authority. This order shall be treated as part of earlier uploaded order. After uploading the correct order on the website of the Authority file be consign to the record room.



Chander Shekhar
Member

Dr. Geeta Rathee Singh
Member

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1515 of 2023
Date of filing:	26.07.2023
Date of first hearing:	29.08.2023
Date of decision:	17.12.2024

P.C. Garg, S/o Lat Sh. K. N. Garg
R/o house no. B-28, Panchwati,
Delhi-110033

....COMPLAINANT

VERSUS

TDI Infrastructure Limited
Through its Chairman/Managing Director
10, Shaheed Bhagat Singh Marg,
New Delhi- 110001

....RESPONDENT

CORAM: **Dr. Geeta Rathee Singh** **Member**
Chander Shekhar **Member**

Present: - Mr. Vikas Deep, Counsel for complainant through VC.
Mr. Shubhnit Hans, Counsel for respondent through VC.

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.

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	"Espania Royale Floors", NH-1, Sonipat
2.	Name of the promoter	TDI Infrastructure Ltd
3.	RERA registered/not registered	Not Registered.
4.	Unit no.	RF-40/ SF
5.	Unit area	1224 sq. ft. which was later increased to 1456.56 sq. ft.
6.	Date of allotment	04.01.2013
7.	Date of flat buyer agreement	30.03.2013
8.	Deemed date of possession	30.09.2015 (as per clause 28 of flat buyer agreement)
9.	Possession clause in FBA -28 months	**Clause 28** *"........However, if the possession of the apartment is delayed beyond a period of 30 months from the date of execution thereof 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 apartment. 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 apartment."
10.	Total sale consideration	₹28,49,085/-
11.	Amount paid by complainant	₹26,74,780/-
12.	Offer of possession (fit-out)	03.04.2019
13.	Occupation Certificate	Not obtained.

B. FACTS OF THE COMPLAINT

3. Facts of the instant complaint are that complainant had booked a residential built-up floor in the project of the respondent namely; Espania Royale Floor situated at NH-1, Sonipat by making payment of ₹3,50,000/- on 07.03.2012. Thereafter unit no. RF-40/Sf was allotted in favor of complainant on second floor having an area of 1224 sq.ft in Espania Royale Floor, at NH-1, Sonipat. Following which flat buyer agreement (hereinafter referred to as FBA) was executed between complainant and respondent on 30.03.2013 and as per clause 28 of it, possession was supposed to be delivered within 30 months, i.e., by 30.09.2015.

4. That as per agreement, total sale consideration of the unit was fixed at Rs.28,49,085/- which includes Rs.25,00,000/- towards basic sale price and rs.3,49,085/- towards EDC. Out of said amount, Rs.26,74,780/- has been paid ti by complainant which includes Rs.23,25,695/- on account of basic sale price and service tax and Rs.3,49,085/- as EDC. However, respondent has failed to abide by the timeline of construction and the construction was delayed way behind the schedule.

5. That thereafter, vide statement of account dated 02.07.2018, it came to the knowledge of complainant that area of the allotted unit has been arbitrarily increased from 1224 sq. ft. to 1456.56 sq. ft. This amounts to an increase of around 20% of the total area. It is pertinent to mention that such increase was without the consent of complainant. Further, complainant submits that no information for such arbitrary increase in area was provided to the concerned statutory authority and no plan of the colony was ever changed or revived, so complainant presumes that the area is not enhanced because the sanctioned plan still remains the same. And that it is illegal on part of respondent to make demands on account of EDC for increase in area which has actually not increased or changed.

6. Further, it is pertinent to mention here that previously complainant had filed the complaint no. 2115/2019 before this Hon'ble Authority but due to jurisdictional issue, the same was withdrawn by the complainant

vide order dated 06.07.2021 with the liberty to file afresh. Further, the complainant had also filed the complaint case no. 190/2021 before the District Consumer and Dispute Redressal Commission, Sonipat which was withdrawn with liberty, vide order dated 16.05.2023. Hence, thereafter, present complaint has been filed before this Authority.

C. RELIEFS SOUGHT:-

7. Complainant in his complaint has sought following reliefs:

   i. The respondent may kindly be directed to refund the amount deposited with the respondent, along with statutory interest, on amount deposited from their respective deposits till realization, in the interest of justice.

   iii. The respondent be further directed to pay cost and litigation charges.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 05.04.2024 pleading therein as under:

8. That due to the reputation of the respondent company, complainant had voluntarily invested in the project of the respondent's company namely; "Espania Royale Floor", at Main NH-1, Sonipat, Haryana.

9. That complainant had earlier also filed complaint bearing no.2115 of 2019 on the same facts and with respect to the same unit as this present complaint against the respondent company before this Ld. Authority

claiming the exact same relief. Such complaint was withdrawn with liberty to file the same before Consumer Commission, which request was allowed vide order dated 06.07.2021. Thereafter complainant filed a complaint before Ld. District Consumer Dispute Redressal Commission, Sonipat, Haryana on the same facts and with similar relief against the respondent company, however the same was also withdrawn with liberty to file the same before Competent Authority. Thus, now the complainant has again approached this Authority and filed present complaint on the same facts and on similar grounds. Therefore, complainant is just trying to exploit and harass the respondent company by filing frivolous complaints before various courts/ commissions and authorities to build pressure against the respondent to accept his undue and frivolous claims.

10. That the respondent submits that complainant is typically indulging in forum shopping by filing complaints here and there just to get a favourable order despite knowing that the complainant is himself at fault and is just trying to arm-twist the facts to mislead the Ld. Authority. That in 1998, Hon'ble Apex Court in ***Chetak Construction Ltd. vs. Om Prakash (1998) 4 SCC 577*** while criticizing the practice of forum shopping by litigants had categorically stated that a litigant cannot be permitted choice of the forum and every attempt at "forum shopping" must be crushed with a heavy hand. That Hon'ble Supreme

Court in its recent Judgement in ***Vijay Kumar Ghai vs. State of W.B. 2022 LiveLaw (SC) 305*** had termed forum shopping as disreputable practice by the courts and has no sanction and paramountcy in law.

11. That the flat buyer agreement was executed between the complainant and the respondent on 30.03.2013 which was much prior to the date when the RERA Act, 2016 came into existence. Therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act,2016.

12. That complainant herein as an investor who invested his money in the project of the respondent company for the sole motive of earning profits and speculative gains. Thus, no cause of action has arisen in filing of present complaint as respondent submits that it has already offered fit out possession in favor of complainant on 03.04.2019, which fact respondent submits has been concealed.

13. That further respondent submits that there has been default on part of complainant in making payment towards the booking made. Various reminder letters were sent to the complainant, however complainant did not come forward to clear his outstanding dues.

14. That respondent submits that vide its letter dated 31.03.2017, applied for grant of occupation certificate before the Director, Town & Country Planning Department, Haryana. Vide letter dated 22.02.2021, respondent had also paid a substantial amount of ₹10,00,000/-

requesting the Ld. DTCP to compound the offence of offering the possession with occupation certificate.

15. That area of the unit has always been tentative and finalisation of the area was to be arrived on the completion of the unit and such fact was duly mentioned in clause 2 of the agreement signed between the parties. Therefore, it is obligatory for both the parties to abide by the same.

16. That it is imperative to stated that the present complaint is time barred and therefore deserves dismissal at the very inception.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND FOR RESPONDENT

17. During oral arguments learned counsel for the complainant and respondent have reiterated arguments as mentioned in their written submissions.

F. ISSUES FOR ADJUDICATION

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

G. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT.

G.I Objection regarding execution of BBA prior to the coming into force of RERA Act,2016.

19. One of the averments of respondent is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into

force of RERA Act,2016. Accordingly, respondent has argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the same cannot be examined under the provisions of RERA Act. In this regard, Authority observes that after coming into force 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 RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 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."

20. Further, as per recent judgement of Hon'ble Supreme court in ***Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021*** it has already been held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act,2016 shall be applicable to such real estate projects. Furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder. Therefore, this Authority has complete jurisdiction to entertain the captioned complaint and objection raised by the respondent regarding maintainability of the present complaint is rejected.

G.II Objections raised by the respondent stating that complainant herein is an investor and have invested in the project of the respondent company for the sole reason of investing, earning profits and speculative gains.

21. In this regard, Authority observes that the complainant herein is the allotee/homebuyer who has made a substantial investment from his hard earned savings under the belief that the promoter/real estate developer will handover possession of the booked unit within 3-4 years of allotment but his bonafide belief stood shaken when the promoter failed to offer a valid possession of the booked unit till date without any reasonable cause. It is after an inordinate delay in handing over of possession that complainant has approached this Authority for seeking refund of paid amount with interest in terms of provisions of RERA Act,2016 being allotee of respondent-promoter. As per definition of allotee provided in clause 2(d) of RERA Act,2016, present complainant is duly covered under it and is entitled to file present complaint for seeking the relief claimed by him. Clause 2(d) of RERA Act,2016 is reproduced for reference:-

> "***Allotee***-*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*".

22. In view of the above-mentioned definition of allottee as well as upon careful perusal of allotment letter dated 04.01.2013 and flat buyer

agreement dated 30.03.2013, it is clear that complainant is an allottee as Unit No. RF-40/SF, measuring 1224 sq. feet in the respondent's project namely Espania Royale Floors, NH-1, Sonipat in the year 2013 was allotted to him by the respondent promoters. The concept/ definition of investor is not provided or referred to in 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 status of an investor. Further, the definition of "allottee" as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose.

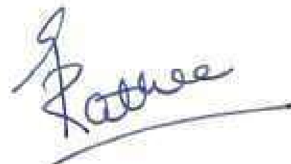
The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as ***M/s Srushti Sangam Developers Ltd. vs Sarvapriya Leasing (P) Ltd. and Anr.*** had also held that the concept of investors is not defined or referred to in the Act. Thus, the contention of the promoter that allottees being investor are not entitled to protection of this Act also stands rejected.

23. Even if complainant has purchased the unit for the purpose of real estate investment and for financial gains, still the right to lease out the property could have been delegated only once a person has become an owner of the property for which it is a pre-requisite that allottee gets a perfect title in the property, however it is a matter of fact that the title

was never perfected as no conveyance deed has been executed. Thus, there is no doubt regarding the fact that complainant is only an allottee and not an investor.

G.III Objection raised by the respondent that complainant is indulging in forum shopping and is just trying to take benefit of his own wrong and negligence.

24. Respondent in its reply has averred that complainant herein has been indulging in forum shopping by first filing complaint before this Authority and then before Hon'ble District Consumer Dispute Redressal Commission, and again before Hon'ble RERA Authority. Authority observes that when complainant approached the court of Adjudicating Officer of HRERA, Panchkula in 2019, at that time it was argued by respondent that as per Rule 28 of the amendment in the Haryana Real Estate Regulatory Authority Rules, 2019 Adjudicating officer of the Authority does not have the jurisdiction to decide/ adjudicate complaints where complainants are seeking relief of refund or alternative relief of handover possession and such complaints are to be filed in appropriate form before the Authority. Thereafter, though the case was transferred to the Authority vide order dated 21.10.2020, complainant requested to withdraw the complaint with the liberty to file the same before appropriate consumer commission. His request was accepted by the Authority and case was dismissed as withdrawn vide



order dated 06.07.2021. Thereafter, complainant filed case before District Consumer Dispute Redressal Commission at Sonipat, Haryana in 2021 itself bearing no. 190/2021, which was later withdrawn on 16.05.2023 with the leave to file case before competent court of law/ Commission/ Tribunal. It is pertinent to mention here that the issue whether it is the Authority or the Adjudicating officer who have the power to decide the complaint pertaining to refund of amount was settled by Hon'ble Supreme Court in the case of "***Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others***" in Civil Appeal no. 6745-6749 of 2021. Once Supreme Court settled the issue pertaining to refund are to be adjudicated by the Authority, complainant in the above captioned complaint chose to withdraw his complaint before the District Consumer Dispute Redressal Commission forum at Sonipat and file the same before this Authority. The Real Estate Regulation and Development Act, 2016 is a relatively new piece of legislation and important issues were settled by Hon'ble Supreme Court in "***Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others***", on 11.11.2021till then there was a state of confusion amongst the allottees with respect to jurisdiction of the Authority to decide complaints pertaining to refund. This Authority sees no malafide in the act of complainant to withdraw complaint from District Consumer Dispute Redressal Commission and file the same

before Authority under the Real Estate Regulation and Development Act, 2016 which is a special law to adjudicate matters pertaining to real estate disputes. Hence conclusion, complainant is within his right to file present case before this Authority.

G.4. Objection raised by respondent that the present complaint is barred by limitation.

25. In this regard, it is observed that as per clause 28 of the flat buyer agreement dated 30.03.2013, respondent was to handover the possession of the unit to complainant within 30 months from the date of execution of agreement i.e. by 30.09.2015. However, offer for fit-out possession was made vide letter dated 03.04.2019, i.e., after a delay of approximately 4 years from the deemed date of possession but the same was also without occupation certificate. Thus, no valid offer of possession has been made till date. 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. Here, Authority has made reference 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:

> *"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."*

26. It is pertinent to note that the Real Estate (Regulation & Development) 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.

27. Furthermore, it has been explained by complainant that why he approached this forum at this point of time. He submitted that previously he had filed complaints before the court of Adjudicating Officer at HRERA, which was later withdrawn with liberty to file before a forum with competent jurisdiction. The complaint was then filed before District Consumer Dispute Redressal Commission at Sonipat in 2021 and the same was also withdrawn with the liberty to institute case before a court/ Tribunal having the jurisdiction to grant relief he was seeking. Hence, present complaint was filed which took him around 5 years. Such delay is explained and Authority observes that complainant is well within his right to file present complaint.

G.5 Objection of the respondent that unit of the area has not been increased arbitrarily and he is well within his right to increase such area.

28. Complainant through his complaint has objected to the arbitrary increase in area of the flat and to the illegal demand of enhanced EDC on account of such increase in area. It is submitted by complainant that vide statement of account dated 02.07.2018, it came to his knowledge that area of the allotted unit has been arbitrarily increased from 1224 sq. ft. to 1456.56 sq. ft. which amounts to an increase of around 20% of the total area. Complainant submits that such an increase was without his consent. To this respondent submits that area of the unit has always been tentative and finalisation of the area was to be arrived on the completion of the unit and such fact was duly mentioned in clause 2 of the agreement signed between the parties. Therefore, it is obligatory for both the parties to abide by the same.

29. On perusal of statement of account dated 02.07.2019 at page no. 40 of complaint file, it transpires that the area of the unit has been increased from 1224 sq. ft. to 1456.56 sq. ft., meaning thereby that the size of the flat was increased by 265 sq. ft. As per clause-7 of the pre-RERA flat buyer agreement, the area of the flat allotted was tentative and subject to the changes as per directions of sanctioning authority. The said clause further provided that in case increase of allotted area of said flat,

the buyer shall pay for initial 10% of increase in area at the rate of booking of the flat. Further on perusal of statement of account dated 09.01.2024 annexed along-with reply filed by respondent, it is observed that the above-mentioned payments against increased in area have not been made by complainant. Authority observes that complainant has not paid such amount and now that he in exercise of his right under Section 18 of the Act is seeking refund of total amount paid, therefore, Authority is of the view that it is not relevant to adjudicate/ discuss issue of these charges at this stage.

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

30. 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 under:

(i) Admittedly, complainant had purchased the a flat in the project of the respondent in the year 2013 against which an amount of ₹26,74,780/- has been paid to the respondent. Out of said paid amount, last payment of ₹2,00,000/- was made to respondent on 30.05.2017 which implies that respondent is in receipt of total paid amount since year 2017 whereas fact remains that no valid offer of possession duly supported with occupation certificate of the booked floor has been made till date.

(ii)Authority observes that the flat in question was allotted by respondent on 04.01.2013. Flat buyer agreement was executed between the parties

on 30.03.2013 and in terms of clause 28 of it, respondent was under an obligation to deliver possession within 30 months, i.e., latest by 30.09.2015. An application was made for the grant of occupation certificate on 09.05.2014, however without issuance of the same, an offer for fit-out possession was made on 03.04.2019. It is a settled principle of law that a fit-out possession cannot be construed as a legally valid offer of possession. As per the order of this Hon'ble Authority in ***Complaint case No. 903 of 2019 titled Sandeep Goyal Vs. Omaxe Ltd.***, it was held that offer of possession without obtaining Occupation Certificate is not a valid offer of possession and the same is reiterated by this Hon'ble Authority in ***Complaint Case No. 252 of 2021 titled Harjit Kaur & An Vs TDI Infra Corp (India) Limited*** decided on 18.05.2023. the relevant part of the order is reproduced below:

> *"7. At this stage, the Authority would express its views regarding the concept of valid offer of possession. It is necessary to clarify this concept because after valid and lawful offer of possession liability of promoter for delayed offer of possession comes to an end, and liability of allottee for paying holding charges as per agreement commences. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The Authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession of an apartment must have following components:*

> *(i) Firstly, the apartment after its completion should have received occupation certificate from the department concerned certifying that all basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm water drainage, electricity supply, roads and street lighting.....*
>
> *(ii) Secondly, the apartment should be in habitable condition. .....*
>
> *(iii) Thirdly, the offer of possession should not be accompanied by unreasonable additional demands. In several cases additional demands are made and sent along with the offer of possession...."*

For the above observation, it follows that offer of fit-out possession dated 03.04.2019 in present case is illegal and cannot be called a lawful offer of possession. Complainant had invested their hard earned money in the project with hope of timely delivery of possession. However, possession of flat was offered to complainant after a delay of more than a year. Fact remains that respondent is yet to receive occupation certificate meaning thereby that a valid possession is yet to be offered to the complainant.

(iii) Further it is pertinent to note that such offer of fit-out possession has not been accepted by complainant till date as no such correspondence has been placed on record that could prove that offer of possession has been accepted. The intention of the complainant to not accept the said offer of fit-out possession is clear from the fact that he filed a complaint before Adjudicating Officer of Haryana Real Estate Regulatory

Authority, Panchkula on 10.09.2019 in response to said offer. Vide such complaint no. 2115 of 2019, he requested for refund of the deposited amount along-with interest. Therefore, intention of the complainant to seek refund of the paid amount is clear from the very beginning, thus it is not a disputed fact that complainant seeks to withdraw from the project of the respondent.

(iv) Further, it is an admitted fact that development of real estate projects gets delayed sometimes due to reasons beyond the control of the builder, however a delay of nearly 11 years is a huge time which takes a toll on the allottees who have invested their hard earned money in the project and are then stuck without the money or possession in hand. Complainant in this case had paid the sale consideration to the tune of ₹26,74,780/- by the year 2017 itself in hopes of receiving a unit. However, the complainant was not only bereft of his hard-earned money but was also not able to enjoy possession since the valid offer of possession had been extraordinarily delayed by the respondent. It is observed that the respondent has severely defaulted in delivering possession as per the agreed terms and conditions. Further, since till date, respondent has not been able to offer a valid offer of possession to the complainant, complainant is left with one option i.e. to approach this Authority and avail one remedy out of the two remedies available under section 18 of the RERA Act, 2016, i.e. either to continue with the

project and claim possession along-with interest or withdraw from the project and demand refund of the amount paid by them along-with interest. In the present complaint, promoter has failed to deliver the possession of the flat within the prescribed time period, and complainant also does not want to continue with the project and seeks refund of the amount paid.

(v) It is to mention here the judgement dated 02.04.2019 passed by Hon'ble Supreme Court in Civil Appeal no. 12238 of 2018 titled as_***Pioneer Urban Land & Infrastructure Ltd v. Govindan Raghavan,*** whereby it is held that the flat purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the agreement expired. Relevant part of said judgement is reproduced below for reference:-

> *"9. We see no illegality in the Impugned Order dated 23.10.2018 passed by the National Commission. The Appellant – Builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the Respondent – Purchaser within the time stipulated in the Agreement, or within a reasonable time thereafter. The Respondent – Flat Purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the Agreement expired. During this period, the Respondent – Flat Purchaser had to service a loan that he had obtained for purchasing the flat, by paying Interest @10% to the Bank. In the meanwhile, the Respondent – Flat Purchaser also located an alternate property in Gurugram. In these circumstances, the Respondent –*

> *Flat Purchaser was entitled to be granted the relief prayed for i.e. refund of the entire amount deposited by him with Interest."*

(vi) Furthermore, since respondent has not offered a valid offer of possession until now after a delay of almost 11 years. complainant who has already waited for more than 11 years does not wish to wait for a further uncertain amount of time or a valid possession. Complainant is at liberty to exercise his right to withdraw from the project on account of default on the part of respondent to deliver possession and seek refund of the paid amount. 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."*

(vii) The aforesaid 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. The complainant wishes to withdraw from the project of the respondent; therefore, Authority finds it to be fit case for allowing refund in favour of complainant. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under: 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;*

Rule 15 of HRERA Rules, 2017 which is reproduced below for ready reference:

> "***Rule 15:*** *Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7)of section19)*
> *(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 (NCLR) 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".*

(viii) Consequently, as per website of State Bank of India i.e. https://sbi.co.in, the marginal cost of lending rate (in short MCLR) as on date i.e. 17.12.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR+2% i.e. 11.10%.

(ix) Accordingly, respondents will be liable to pay the complainants, interest from the date amounts were paid by them till the actual realization of the amount. Hence, Authority directs respondents to refund to the complainant the paid amount of ₹ 26,74,780/- 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.

(x) As per statement of accounts annexed at Annexure R-5 of reply dated 09.01.2024, complainant had paid an amount of Rs. 26,74,780/- as total sale consideration. Therefore, Rs. 26,74,780/-, 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% + 2.00%), as on date which is to be calculated from the deemed date of possession till the date of this order (i.e. from 30.09.2015 to 17.12.2024).

(xi) Authority has got calculated the total amount along with interest at the rate of 11.10% till the date of this order and said amount works out to ₹58,31,285 /- as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued (in Rs.)	TOTAL (in Rs.)
1.	3,50,000	2012-03-07	4,96,961	8,46,961
2.	4,23,719	2012-06-25	5,87,459	10,11,178
3.	6,06,810	2013-03-10	7,93,693	14,00,503
4.	2,55,251	2015-03-05	2,77,584	5,32,835
5.	2,61,000	2015-08-22	2,70,343	5,31,343
6.	5,78,000	2016-03-14	5,62,657	11,40,657

7.	2,00,000	2017-05-30	1,67,808	3,67,808
Total	**26,74,780**		**31,56,505**	**58,31,285**

I. DIRECTIONS OF THE AUTHORITY

31. 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 amounts along with interest of @ 11.10 % i.e. **Rs. 58,31,285** /- to the complainant as specified in the table provided in para 30(xi) of this order.

    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.

32. Captioned complaint is, accordingly, **disposed of.** File be consigned to the record room after uploading orders on the website of the Authority.

....
CHANDER SHEKHAR
[MEMBER]

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

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1515 of 2023
Date of filing:	26.07.2023
Date of first hearing:	29.08.2023
Date of decision:	17.12.2024

P.C. Garg, S/o Lat Sh. K. N. Garg
R/o house no. B-28, Panchwati,
Delhi-110033

....COMPLAINANT

VERSUS

TDI Infrastructure Limited
Through its Chairman/Managing Director
10, Shaheed Bhagat Singh Marg,
New Delhi- 110001

....RESPONDENT

CORAM: **Dr. Geeta Rathee Singh** **Member**
Chander Shekhar **Member**

Present: - Mr. Vikas Deep, Counsel for complainant through VC.
Mr. Shubhnit Hans, Counsel for respondent through VC.

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.

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	"Espania Royale Floors", NH-1, Sonipat
2.	Name of the promoter	TDI Infrastructure Ltd
3.	RERA registered/not registered	Not Registered.
4.	Unit no.	RF-40/ SF
5.	Unit area	1224 sq. ft. which was later increased to 1456.56 sq. ft.
6.	Date of allotment	04.01.2013
7.	Date of flat buyer agreement	30.03.2013
8.	Deemed date of possession	30.09.2015 (as per clause 28 of flat buyer agreement)
9.	Possession clause in FBA -28 months	**Clause 28** "........*However, if the possession of the apartment is delayed beyond a period of 30 months from the date of execution thereof 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 apartment. 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 apartment."
10.	Total sale consideration	₹28,49,085/-
11.	Amount paid by complainant	₹26,74,780/-
12.	Offer of possession (fit-out)	03.04.2019
13.	Occupation Certificate	Not obtained.

B. FACTS OF THE COMPLAINT

3. Facts of the instant complaint are that complainant had booked a residential built-up floor in the project of the respondent namely; Espania Royale Floor situated at NH-1, Sonipat by making payment of ₹3,50,000/- on 07.03.2012. Thereafter unit no. RF-40/Sf was allotted in favor of complainant on second floor having an area of 1224 sq.ft in Espania Royale Floor, at NH-1, Sonipat. Following which flat buyer agreement (hereinafter referred to as FBA) was executed between complainant and respondent on 30.03.2013 and as per clause 28 of it, possession was supposed to be delivered within 30 months, i.e., by 30.09.2015.

4. That as per agreement, total sale consideration of the unit was fixed at Rs.28,49,085/- which includes Rs.25,00,000/- towards basic sale price and rs.3,49,085/- towards EDC. Out of said amount, Rs.26,74,780/- has been paid ti by complainant which includes Rs.23,25,695/- on account of basic sale price and service tax and Rs.3,49,085/- as EDC. However, respondent has failed to abide by the timeline of construction and the construction was delayed way behind the schedule.

5. That thereafter, vide statement of account dated 02.07.2018, it came to the knowledge of complainant that area of the allotted unit has been arbitrarily increased from 1224 sq. ft. to 1456.56 sq. ft. This amounts to an increase of around 20% of the total area. It is pertinent to mention that such increase was without the consent of complainant. Further, complainant submits that no information for such arbitrary increase in area was provided to the concerned statutory authority and no plan of the colony was ever changed or revived, so complainant presumes that the area is not enhanced because the sanctioned plan still remains the same. And that it is illegal on part of respondent to make demands on account of EDC for increase in area which has actually not increased or changed.

6. Further, it is pertinent to mention here that previously complainant had filed the complaint no. 2115/2019 before this Hon'ble Authority but due to jurisdictional issue, the same was withdrawn by the complainant

vide order dated 06.07.2021 with the liberty to file afresh. Further, the complainant had also filed the complaint case no. 190/2021 before the District Consumer and Dispute Redressal Commission, Sonipat which was withdrawn with liberty, vide order dated 16.05.2023. Hence, thereafter, present complaint has been filed before this Authority.

C. RELIEFS SOUGHT:-

7. Complainant in his complaint has sought following reliefs:

   i. The respondent may kindly be directed to refund the amount deposited with the respondent, along with statutory interest, on amount deposited from their respective deposits till realization, in the interest of justice.

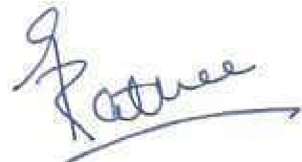
   iii. The respondent be further directed to pay cost and litigation charges.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 05.04.2024 pleading therein as under:

8. That due to the reputation of the respondent company, complainant had voluntarily invested in the project of the respondent's company namely; "Espania Royale Floor", at Main NH-1, Sonipat, Haryana.

9. That complainant had earlier also filed complaint bearing no.2115 of 2019 on the same facts and with respect to the same unit as this present complaint against the respondent company before this Ld. Authority



claiming the exact same relief. Such complaint was withdrawn with liberty to file the same before Consumer Commission, which request was allowed vide order dated 06.07.2021. Thereafter complainant filed a complaint before Ld. District Consumer Dispute Redressal Commission, Sonipat, Haryana on the same facts and with similar relief against the respondent company, however the same was also withdrawn with liberty to file the same before Competent Authority. Thus, now the complainant has again approached this Authority and filed present complaint on the same facts and on similar grounds. Therefore, complainant is just trying to exploit and harass the respondent company by filing frivolous complaints before various courts/ commissions and authorities to build pressure against the respondent to accept his undue and frivolous claims.

10. That the respondent submits that complainant is typically indulging in forum shopping by filing complaints here and there just to get a favourable order despite knowing that the complainant is himself at fault and is just trying to arm-twist the facts to mislead the Ld. Authority. That in 1998, Hon'ble Apex Court in ***Chetak Construction Ltd. vs. Om Prakash (1998) 4 SCC 577*** while criticizing the practice of forum shopping by litigants had categorically stated that a litigant cannot be permitted choice of the forum and every attempt at "forum shopping" must be crushed with a heavy hand. That Hon'ble Supreme

Court in its recent Judgement in ***Vijay Kumar Ghai vs. State of W.B. 2022 LiveLaw (SC) 305*** had termed forum shopping as disreputable practice by the courts and has no sanction and paramountcy in law.

11. That the flat buyer agreement was executed between the complainant and the respondent on 30.03.2013 which was much prior to the date when the RERA Act, 2016 came into existence. Therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act,2016.
12. That complainant herein as an investor who invested his money in the project of the respondent company for the sole motive of earning profits and speculative gains. Thus, no cause of action has arisen in filing of present complaint as respondent submits that it has already offered fit out possession in favor of complainant on 03.04.2019, which fact respondent submits has been concealed.
13. That further respondent submits that there has been default on part of complainant in making payment towards the booking made. Various reminder letters were sent to the complainant, however complainant did not come forward to clear his outstanding dues.
14. That respondent submits that vide its letter dated 31.03.2017, applied for grant of occupation certificate before the Director, Town & Country Planning Department, Haryana. Vide letter dated 22.02.2021, respondent had also paid a substantial amount of ₹10,00,000/-

requesting the Ld. DTCP to compound the offence of offering the possession with occupation certificate.

15. That area of the unit has always been tentative and finalisation of the area was to be arrived on the completion of the unit and such fact was duly mentioned in clause 2 of the agreement signed between the parties. Therefore, it is obligatory for both the parties to abide by the same.

16. That it is imperative to stated that the present complaint is time barred and therefore deserves dismissal at the very inception.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND FOR RESPONDENT

17. During oral arguments learned counsel for the complainant and respondent have reiterated arguments as mentioned in their written submissions.

F. ISSUES FOR ADJUDICATION

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

G. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT.

G.I Objection regarding execution of BBA prior to the coming into force of RERA Act,2016.

19. One of the averments of respondent is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into

force of RERA Act,2016. Accordingly, respondent has argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the same cannot be examined under the provisions of RERA Act. In this regard, Authority observes that after coming into force 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 RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 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."

20. Further, as per recent judgement of Hon'ble Supreme court in ***Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021*** it has already been held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act,2016 shall be applicable to such real estate projects. Furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder. Therefore, this Authority has complete jurisdiction to entertain the captioned complaint and objection raised by the respondent regarding maintainability of the present complaint is rejected.

G.II Objections raised by the respondent stating that complainant herein is an investor and have invested in the project of the respondent company for the sole reason of investing, earning profits and speculative gains.

21. In this regard, Authority observes that the complainant herein is the allotee/homebuyer who has made a substantial investment from his hard earned savings under the belief that the promoter/real estate developer will handover possession of the booked unit within 3-4 years of allotment but his bonafide belief stood shaken when the promoter failed to offer a valid possession of the booked unit till date without any reasonable cause. It is after an inordinate delay in handing over of possession that complainant has approached this Authority for seeking refund of paid amount with interest in terms of provisions of RERA Act,2016 being allotee of respondent-promoter. As per definition of allotee provided in clause 2(d) of RERA Act,2016, present complainant is duly covered under it and is entitled to file present complaint for seeking the relief claimed by him. Clause 2(d) of RERA Act,2016 is reproduced for reference:-

> "***Allotee***-*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*".

22. In view of the above-mentioned definition of allottee as well as upon careful perusal of allotment letter dated 04.01.2013 and flat buyer

agreement dated 30.03.2013, it is clear that complainant is an allottee as Unit No. RF-40/SF, measuring 1224 sq. feet in the respondent's project namely Espania Royale Floors, NH-1, Sonipat in the year 2013 was allotted to him by the respondent promoters. The concept/ definition of investor is not provided or referred to in 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 status of an investor. Further, the definition of "allottee" as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose.

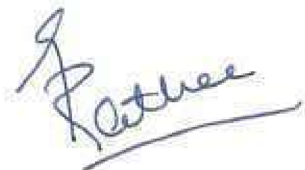
The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as ***M/s Srushti Sangam Developers Ltd. vs Sarvapriya Leasing (P) Ltd. and Anr.*** had also held that the concept of investors is not defined or referred to in the Act. Thus, the contention of the promoter that allottees being investor are not entitled to protection of this Act also stands rejected.

23. Even if complainant has purchased the unit for the purpose of real estate investment and for financial gains, still the right to lease out the property could have been delegated only once a person has become an owner of the property for which it is a pre-requisite that allottee gets a perfect title in the property, however it is a matter of fact that the title

was never perfected as no conveyance deed has been executed. Thus, there is no doubt regarding the fact that complainant is only an allottee and not an investor.

G.III Objection raised by the respondent that complainant is indulging in forum shopping and is just trying to take benefit of his own wrong and negligence.

24. Respondent in its reply has averred that complainant herein has been indulging in forum shopping by first filing complaint before this Authority and then before Hon'ble District Consumer Dispute Redressal Commission, and again before Hon'ble RERA Authority. Authority observes that when complainant approached the court of Adjudicating Officer of HRERA, Panchkula in 2019, at that time it was argued by respondent that as per Rule 28 of the amendment in the Haryana Real Estate Regulatory Authority Rules, 2019 Adjudicating officer of the Authority does not have the jurisdiction to decide/ adjudicate complaints where complainants are seeking relief of refund or alternative relief of handover possession and such complaints are to be filed in appropriate form before the Authority. Thereafter, though the case was transferred to the Authority vide order dated 21.10.2020, complainant requested to withdraw the complaint with the liberty to file the same before appropriate consumer commission. His request was accepted by the Authority and case was dismissed as withdrawn vide



order dated 06.07.2021. Thereafter, complainant filed case before District Consumer Dispute Redressal Commission at Sonipat, Haryana in 2021 itself bearing no. 190/2021, which was later withdrawn on 16.05.2023 with the leave to file case before competent court of law/ Commission/ Tribunal. It is pertinent to mention here that the issue whether it is the Authority or the Adjudicating officer who have the power to decide the complaint pertaining to refund of amount was settled by Hon'ble Supreme Court in the case of "***Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others***" in Civil Appeal no. 6745-6749 of 2021. Once Supreme Court settled the issue pertaining to refund are to be adjudicated by the Authority, complainant in the above captioned complaint chose to withdraw his complaint before the District Consumer Dispute Redressal Commission forum at Sonipat and file the same before this Authority. The Real Estate Regulation and Development Act, 2016 is a relatively new piece of legislation and important issues were settled by Hon'ble Supreme Court in "***Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others***", on 11.11.2021till then there was a state of confusion amongst the allottees with respect to jurisdiction of the Authority to decide complaints pertaining to refund. This Authority sees no malafide in the act of complainant to withdraw complaint from District Consumer Dispute Redressal Commission and file the same

before Authority under the Real Estate Regulation and Development Act, 2016 which is a special law to adjudicate matters pertaining to real estate disputes. Hence conclusion, complainant is within his right to file present case before this Authority.

G.4. Objection raised by respondent that the present complaint is barred by limitation.

25. In this regard, it is observed that as per clause 28 of the flat buyer agreement dated 30.03.2013, respondent was to handover the possession of the unit to complainant within 30 months from the date of execution of agreement i.e. by 30.09.2015. However, offer for fit-out possession was made vide letter dated 03.04.2019, i.e., after a delay of approximately 4 years from the deemed date of possession but the same was also without occupation certificate. Thus, no valid offer of possession has been made till date. 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. Here, Authority has made reference 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:

> *"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."*

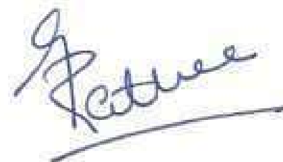
26. It is pertinent to note that the Real Estate (Regulation & Development) Act, 2016 is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act 1963, thus, would not be applicable to the proceedings under 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.

27. Furthermore, it has been explained by complainant that why he approached this forum at this point of time. He submitted that previously he had filed complaints before the court of Adjudicating Officer at HRERA, which was later withdrawn with liberty to file before a forum with competent jurisdiction. The complaint was then filed before District Consumer Dispute Redressal Commission at Sonipat in 2021 and the same was also withdrawn with the liberty to institute case before a court/ Tribunal having the jurisdiction to grant relief he was seeking. Hence, present complaint was filed which took him around 5 years. Such delay is explained and Authority observes that complainant is well within his right to file present complaint.

G.5 Objection of the respondent that unit of the area has not been increased arbitrarily and he is well within his right to increase such area.

28. Complainant through his complaint has objected to the arbitrary increase in area of the flat and to the illegal demand of enhanced EDC on account of such increase in area. It is submitted by complainant that vide statement of account dated 02.07.2018, it came to his knowledge that area of the allotted unit has been arbitrarily increased from 1224 sq. ft. to 1456.56 sq. ft. which amounts to an increase of around 20% of the total area. Complainant submits that such an increase was without his consent. To this respondent submits that area of the unit has always been tentative and finalisation of the area was to be arrived on the completion of the unit and such fact was duly mentioned in clause 2 of the agreement signed between the parties. Therefore, it is obligatory for both the parties to abide by the same.

29. On perusal of statement of account dated 02.07.2019 at page no. 40 of complaint file, it transpires that the area of the unit has been increased from 1224 sq. ft. to 1456.56 sq. ft., meaning thereby that the size of the flat was increased by 265 sq. ft. As per clause-7 of the pre-RERA flat buyer agreement, the area of the flat allotted was tentative and subject to the changes as per directions of sanctioning authority. The said clause further provided that in case increase of allotted area of said flat,



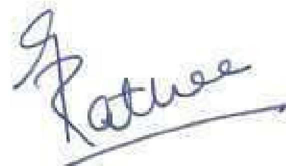
the buyer shall pay for initial 10% of increase in area at the rate of booking of the flat. Further on perusal of statement of account dated 09.01.2024 annexed along-with reply filed by respondent, it is observed that the above-mentioned payments against increased in area have not been made by complainant. Authority observes that complainant has not paid such amount and now that he in exercise of his right under Section 18 of the Act is seeking refund of total amount paid, therefore, Authority is of the view that it is not relevant to adjudicate/ discuss issue of these charges at this stage.

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

30. 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 under:

(i) Admittedly, complainant had purchased the a flat in the project of the respondent in the year 2013 against which an amount of ₹26,74,780/- has been paid to the respondent. Out of said paid amount, last payment of ₹2,00,000/- was made to respondent on 30.05.2017 which implies that respondent is in receipt of total paid amount since year 2017 whereas fact remains that no valid offer of possession duly supported with occupation certificate of the booked floor has been made till date.

(ii) Authority observes that the flat in question was allotted by respondent on 04.01.2013. Flat buyer agreement was executed between the parties



on 30.03.2013 and in terms of clause 28 of it, respondent was under an obligation to deliver possession within 30 months, i.e., latest by 30.09.2015. An application was made for the grant of occupation certificate on 09.05.2014, however without issuance of the same, an offer for fit-out possession was made on 03.04.2019. It is a settled principle of law that a fit-out possession cannot be construed as a legally valid offer of possession. As per the order of this Hon'ble Authority in ***Complaint case No. 903 of 2019 titled Sandeep Goyal Vs. Omaxe Ltd.***, it was held that offer of possession without obtaining Occupation Certificate is not a valid offer of possession and the same is reiterated by this Hon'ble Authority in ***Complaint Case No. 252 of 2021 titled Harjit Kaur & An Vs TDI Infra Corp (India) Limited*** decided on 18.05.2023. the relevant part of the order is reproduced below:

> *"7. At this stage, the Authority would express its views regarding the concept of valid offer of possession. It is necessary to clarify this concept because after valid and lawful offer of possession liability of promoter for delayed offer of possession comes to an end, and liability of allottee for paying holding charges as per agreement commences. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The Authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession of an apartment must have following components:*

(i) Firstly, the apartment after its completion should have received occupation certificate from the department concerned certifying that all basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm water drainage, electricity supply, roads and street lighting.....

(ii) Secondly, the apartment should be in habitable condition.

.....

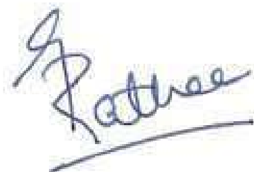
(iii) Thirdly, the offer of possession should not be accompanied by unreasonable additional demands. In several cases additional demands are made and sent along with the offer of possession...."

For the above observation, it follows that offer of fit-out possession dated 03.04.2019 in present case is illegal and cannot be called a lawful offer of possession. Complainant had invested their hard earned money in the project with hope of timely delivery of possession. However, possession of flat was offered to complainant after a delay of more than a year. Fact remains that respondent is yet to receive occupation certificate meaning thereby that a valid possession is yet to be offered to the complainant.

(iii) Further it is pertinent to note that such offer of fit-out possession has not been accepted by complainant till date as no such correspondence has been placed on record that could prove that offer of possession has been accepted. The intention of the complainant to not accept the said offer of fit-out possession is clear from the fact that he filed a complaint before Adjudicating Officer of Haryana Real Estate Regulatory

Authority, Panchkula on 10.09.2019 in response to said offer. Vide such complaint no. 2115 of 2019, he requested for refund of the deposited amount along-with interest. Therefore, intention of the complainant to seek refund of the paid amount is clear from the very beginning, thus it is not a disputed fact that complainant seeks to withdraw from the project of the respondent.

(iv) Further, it is an admitted fact that development of real estate projects gets delayed sometimes due to reasons beyond the control of the builder, however a delay of nearly 11 years is a huge time which takes a toll on the allottees who have invested their hard earned money in the project and are then stuck without the money or possession in hand. Complainant in this case had paid the sale consideration to the tune of ₹26,74,780/- by the year 2017 itself in hopes of receiving a unit. However, the complainant was not only bereft of his hard-earned money but was also not able to enjoy possession since the valid offer of possession had been extraordinarily delayed by the respondent. It is observed that the respondent has severely defaulted in delivering possession as per the agreed terms and conditions. Further, since till date, respondent has not been able to offer a valid offer of possession to the complainant, complainant is left with one option i.e. to approach this Authority and avail one remedy out of the two remedies available under section 18 of the RERA Act, 2016, i.e. either to continue with the



project and claim possession along-with interest or withdraw from the project and demand refund of the amount paid by them along-with interest. In the present complaint, promoter has failed to deliver the possession of the flat within the prescribed time period, and complainant also does not want to continue with the project and seeks refund of the amount paid.

(v) It is to mention here the judgement dated 02.04.2019 passed by Hon'ble Supreme Court in Civil Appeal no. 12238 of 2018 titled as ***Pioneer Urban Land & Infrastructure Ltd v. Govindan Raghavan,*** whereby it is held that the flat purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the agreement expired. Relevant part of said judgement is reproduced below for reference:-

> "9. We see no illegality in the Impugned Order dated 23.10.2018 passed by the National Commission. The Appellant – Builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the Respondent – Purchaser within the time stipulated in the Agreement, or within a reasonable time thereafter. The Respondent – Flat Purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the Agreement expired. During this period, the Respondent – Flat Purchaser had to service a loan that he had obtained for purchasing the flat, by paying Interest @10% to the Bank. In the meanwhile, the Respondent – Flat Purchaser also located an alternate property in Gurugram. In these circumstances, the Respondent –

Flat Purchaser was entitled to be granted the relief prayed for i.e. refund of the entire amount deposited by him with Interest."

(vi) Furthermore, since respondent has not offered a valid offer of possession until now after a delay of almost 11 years, complainant who has already waited for more than 11 years does not wish to wait for a further uncertain amount of time or a valid possession. Complainant is at liberty to exercise his right to withdraw from the project on account of default on the part of respondent to deliver possession and seek refund of the paid amount. 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."*

(vii) The aforesaid 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. The complainant wishes to withdraw from the project of the respondent; therefore, Authority finds it to be fit case for allowing refund in favour of complainant. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HIRERA Rules, 2017 provides for prescribed rate of interest which is as under: 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;*

Rule 15 of HRERA Rules, 2017 which is reproduced below for ready reference:

> "***Rule 15:*** *Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7)of section19)*
> *(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 (NCLR) 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".*

(viii) Consequently, as per website of State Bank of India i.e. https://sbi.co.in, the marginal cost of lending rate (in short MCLR) as on date i.e. 17.12.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR+2% i.e. 11.10%.

(ix) Accordingly, respondents will be liable to pay the complainants, interest from the date amounts were paid by them till the actual realization of the amount. Hence, Authority directs respondents to refund to the complainant the paid amount of ₹ 26,74,780/- 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.

(x) As per statement of accounts annexed at Annexure R-5 of reply dated 09.01.2024, complainant had paid an amount of Rs. 26,74,780/- as total sale consideration. Therefore, Rs. 26,74,780/-, 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% + 2.00%), as on date which is to be calculated from the deemed date of possession till the date of this order (i.e. from 30.09.2015 to 17.12.2024).

(xi) Authority has got calculated the total amount along with interest at the rate of 11.10% till the date of this order and said amount works out to ₹**58,31,285** /- as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued (in Rs.)	TOTAL (in Rs.)
1.	3,50,000	2012-03-07	4,96,961	8,46,961
2.	4,23,719	2012-06-25	5,87,459	10,11,178
3.	6,06,810	2013-03-10	7,93,693	14,00,503
4.	2,55,251	2015-03-05	2,77,584	5,32,835
5.	2,61,000	2015-08-22	2,70,343	5,31,343
6.	5,78,000	2016-03-14	5,62,657	11,40,657

7.	2,00,000	2017-05-30	1,67,808	3,67,808
Total	**26,74,780**		**31,56,505**	**58,31,285**

I. DIRECTIONS OF THE AUTHORITY

31. 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 amounts along with interest of @ 11.10 % i.e. **Rs. 58,31,285** /- to the complainant as specified in the table provided in para 32(xi) of this order.

    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.

32. Captioned complaint is, accordingly, **disposed of.** File be consigned to the record room after uploading orders on the website of the Authority.

It has been brought to the notice of the Auth by office that the para no. has been mentioned as "32(xi)" instead of 30(xi). It is an inadvertent mistake and the same stand corrected. Corrected order be printed and uploaded. Same shd be read as part of this order.

CHANDER SHEKHAR
[MEMBER]

DR. GEETA RATHEE SINGH
[MEMBER]