

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	Espania Royale Floors, Main NH-1, Kamaspur, Sonipat
2.	Name of the promoter	TDI Infrastructure Ltd
3.	RERA registered/not registered	Registered vide HRERA-PKL-SNP-162-2019 dated 01.10.2019
4.	DTCP License no.	70 of 2012,
	Licensed Area	10.8375 acres
5.	Unit no.	RF-25/FF
6.	Unit area	1224 sq. ft.
8.	Date of builder buyer agreement	12.02.2013
9.	Due date of offer of possession -30 months	12.08.2015

10.	Possession clause in BBA	<p>“Clause 28</p> <p><i>However, if the possession of the apartment is delayed beyond a period of 30 months from the date of execution hereof and the reasons of delay are solely attributable to the wilful neglect or default of the Company then for every month of delay, the buyer shall be entitled to a fixed monthly compensation/ damages/ penalty quantified @ Rs.5 per square foot of the total super area of the Floor. The Buyer agrees that he shall neither claim nor be entitled for any further sums on account of such delay in handing over the possession of the Floor.”</i></p>
11.	Basic sale consideration	₹ 26,00,000/-.
12.	Amount paid by complainant	₹ 28,67,553/-
13.	Offer of possession (fit-out) given on	19.03.2020
14.	Occupation certificate	Not obtained.

B. FACTS OF THE COMPLAINT

3. Facts of the present complaint are that the complainant had booked a flat by making payment of Rs 4,00,000/- on 25.03.2012 as advance against present and future project for 1224 sq ft built up floor. Following which unit no. RF-25-FF was allotted vide allotment letter dated 04.01.2012. Copy of allotment/Buyer agreement is attached as



- Annexure P-3. (No allotment letter dated 04.01.2012 is placed on record and Annexure P-3 is copy of buyer agreement).
4. That Floor Buyer Agreement (FBA) was executed between the parties on 12.02.2013 and in terms of clause 28 of it, possession was supposed to be delivered latest by 12.08.2015. Complainant has paid an amount of Rs 28,67,553/- against basic sale consideration of Rs 26,00,000/- till 2017. However, respondent has failed to offer valid possession of unit to the complainant till date.
 5. That respondent has failed to fulfill the obligation of delivering the possession even by February, 2020. Complainant made many requests to the respondent but in vain. Lastly vide letter dated 19.03.2020 the respondent offered possession and raised demand of Rs 9,69,298/- for the increased area.
 6. That respondent instead of adjusting the amount of compensation for the non-delivering of the possession as well as interest on deposit, illegally started threatening the complainant to cancel the allotment and the respondent, vide letter dated 30.06.2021 cancelled the allotment of the complainant.
 7. That on 27.08.2021 the complainant had sent a legal notice to the respondent which was duly delivered to the respondent but till today respondent has not completed the project. Further, on 13.05.2023 complainant sent an email to the respondent to provide completion



and occupancy certificate but till date the respondent neither provided the same nor completed the construction of the project. Hence the present complaint has been filed by the complainant before this Hon'ble Authority.

C. RELIEFS SOUGHT

8. Complainant in his complaint has sought following relief:
 - i. Direct the respondents (only one respondent-TDI as per performa-B as well as memo of parties) to pay amount, i.e. Rs 28,67,553/- paid by the applicant/petitioner alongwith 18% per month.
 - ii. Issue any order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.
 - iii. Service of advance notice on the respondents may kindly be dispended with.
 - iv. Filing of certified copies of Annexures and typed copies of Annexures may kindly be exempted and permitted to file true photocopies of the same duly signed by counsel.
 - v. The application/petition may be allowed in favor of the petitioner.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

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



9. That due to the reputation of the respondent company, complainant had voluntarily invested in the project of the respondent company namely-Espania Royale Floor, Main NH-1, Sonipat, Haryana. That occupation certificate for the said project was applied prior to commencement of HRERA Rules, so project is not covered within the definition of an "On-going project."
10. That the agreement was executed way back on 12.02.2013 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.
11. That complainant herein is an investor 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.
12. That respondent vide letter dated 31.03.2017 had applied for grant of occupation certificate before the Director, Town & Country Planning Department, Haryana. Copy of said letter is attached as Annexure R-2. Further, respondent has also paid a substantial amount of Rs 10,00,000/- requesting the Ld. DTCP to compound the offence of offering the possession with Occupation certificate.



13. That the possession for fit-out was offered to the complainant on 19.03.2020 alongwith final statement of accounts requesting the complainant to take over the possession after clearing his outstanding dues but it is the complainant who has not come forward for the same. Copy of offer letter dated 19.03.2020 is annexed as Annexure R-3. Due to continuous default in making timely payment by the complainant towards to allotted unit the respondent company vide its letter dated 30.06.2021 had issued a pre-cancellation letter requesting the complainant to clear his outstanding dues failing which the allotment will be cancelled. Copy of Pre-cancellation letter dated 30.06.2021 is annexed as Annexure R-4.
14. That despite pre-cancellation letter issued by respondent to the complainant, it is the complainant who still did not come forward to clear his outstanding dues hence Respondent cancelled the allotment of the unit and issued cancellation letter dated 20.07.2021 communicating the same to the complainant. Copy of cancellation letter dated 20.07.2021 is annexed as Annexure R-5.
15. That the present complaint is barred by limitation and the same is not maintainable before the Ld. Authority.



E. 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 28,67,553/- with interest stating that possession has been delayed by the respondent for around 9 years and even as of today, the respondent is not in a position to give valid offer of possession as occupation certificate has not been received till date. In respect of offer of possession dated 19.03.2023, he stated that said offer was not accepted by complainant on account of demand raised for increased area. Said increased area has not been justified by respondent till date. Learned counsel for the respondent reiterated arguments as were submitted in written statement and further submitted that respondent had completed the construction work of unit and occupation certificate already stands applied but the same is awaited. Further, he referred to cancellation letter dated 20.07.2021 stating that complainant has not made due amount towards offer letter dated 19.03.2020.

F. 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 RERA Act of 2016?



G. OBSERVATIONS AND DECISION OF THE AUTHORITY

18. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the 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 12.02.2013 when the complainant was allotted the unit bearing No. RF-25/FF, Espania Roayle Floors,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 has invested his 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 the present 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 builder buyer agreement dated 12.02.2013, it is clear that complainant is an "allottee" of unit bearing no. RF-25/FF, situated in the real estate project "Espania Royale Floors", 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 Anr.** had also held that the concept of investors not defined or referred to in the Act. Thus, the contention of promoter that



allottees being investor are not entitled to protection of this Act also stands rejected.

(iii) Respondent has also taken an objection that complaint is grossly barred by limitation. Reference in this regard is made to the judgement of 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 Limitation Act does not apply to quasi-judicial bodies. Further, in this case the promoter has till date failed to fulfil his obligations because of which the cause of action is continuing. 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.

(iv) 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 contents of cancellation letter dated 20.07.2021 *'This is in reference to the provisional allotment of unit no. RF-25/FF in Espania Royale Floor (KRF) Kamaspur, Sonapat, 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 him 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 the 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 9,69,298/-, in pursuance of offer of possession dated 19.03.2020. 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.

(iii) 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 2012 against which an amount of ₹ 28,67,553/- already stands paid to the respondent. Out of said paid amount, last payment of Rs 14,913/- was made to respondent on 18.04.2017 by allottee 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 has not been yet made to complainant.

(iv) Authority observes that builder buyer agreement was executed between the parties on 12.02.2013 and as per Clause-28 of it, the deemed date of possession works out to 12.08.2015. 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 19.03.2020 had offered fit out possession of unit to complainant alongwith additional demand of Rs 9,69,298/-. 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 year 2017 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 he is interested in seeking refund of the paid amount along with interest on account of inordinate delay caused in delivery of possession.

(v) 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.

(vi) The project/unit in question did not get completed within the time stipulated as per agreement, 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.

(viii) 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 28,67,553/- 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 endorsement 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 33,62,365/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 02.12.2024
1.	400000	28.03.2012	563576
2	402094	06.06.2012	557967

3.	349085	22.01.2013	459992
4.	303090	12.03.2013	394867
5.	2000	09.10.2013	2477
6.	276798	22.04.2014	326438
7.	277992	09.11.2015	279997
8.	278356	22.04.2016	266396
9.	282555	17.11.2016	252456
10.	150000	17.01.2017	131238
11.	130670	17.01.2017	114326
12.	14913	18.04.2017	12635
13.	Total=28,67,553/-		Total=33,62,365 /-
14.	Total Payable to complainant	2867553+3362365=	62,29,918/-

H. DIRECTIONS OF THE AUTHORITY

22. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the RERA 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:

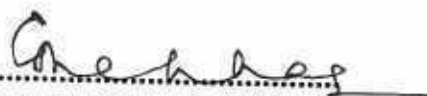
- (i) Respondent is directed to refund the entire deposited amount of ₹28,67,553/- with interest of ₹ 33,62,365/- to the complainant. It is further clarified that the respondent will remain liable to pay interest to the complainant till the actual realization of the amount.
- (ii) A period of 90 days 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 the record room after uploading of order on the website of the Authority.


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]

