



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1744 of 2023
Date of filing:	02.08.2023
Date of first hearing:	05.09.2023
Date of decision:	02.12.2024

Davinder Kumar Bharadwaj S/o Sh. Ved Prakash
R/o C-6, Soami Nagar,
Malviya Nagar,
Delhi- 110017
2nd Address: B-20, Nizamuddin West,
New Delhi- 110013

....COMPLAINANT

VERSUS

TDI Infrastructures Ltd
UG floor, Vandana Building, 11 Tolstoy Marg,
Connaught Place, New Delhi- 110001

....RESPONDENT

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

Present: - Mr. Rishi Kapoor, Counsel for the complainant through VC.
 Mr. Shubnit Hans, Counsel for the respondent through VC.

ORDER (NADIM AKHTAR- MEMBER)

1. Present complaint dated 02.08.2023 has been filed by the complainant under Section 31 of the Real Estate (Regulation & Development) Act,

2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project	Espania Royal Heights, Kamaspur, Sonapat
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,
5.	Licensed Area	10.8375 acres
6.	Unit no.	A-2-1002
7.	Unit area (Built-up area)	1390 sq. ft.
8.	Date of booking	22.06.2012



9.	Date of allotment letter	05.01.2013
10.	Date of builder buyer agreement	14.07.2016
11.	Deemed date of possession (30 months)	14.01.2019.
12.	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 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."</i></p>
13.	Basic sale price	₹28,84,528/-
14.	Amount paid by complainant	<p>Rs 42,62,431/-</p> <p>Complainant in its pleadings claims to have paid an amount of Rs 42,68,573/-. However, receipts of ₹36,59,905/- are annexed in complaint file. Respondent in its reply has</p>



		admitted paid amount as Rs 42,62,431/- in statement of account dated 29.11.2023 annexed as Annexure R-5. For purpose of calculation Rs 36,59,905/- is taken from receipts and remaining amount of Rs 6,02,526/- (4262431-3659905) is taken from statement of account dated 29.11.2023.
15.	Possession Certificate	08.12.2018
16.	Occupation Certificate	Not obtained.
17.	Conveyance deed executed on	Not executed.

B. FACTS OF THE COMPLAINT

3. Facts of the complaint are that the complainant was searching for a residential property in the Haryana region in the year 2012. During this search, complainant came across the employees and agents of the respondent Company, who represented the respondent company as a reputed developer of residential flats under group housing schemes and as a significant player in the infrastructure industry.
4. That relying on these representations, complainant decided to book a unit in the respondent company's project, 'Espania Royale Heights,



situated in Kamasapura, Kundli, Sonipat, Haryana, and made an advance payment of ₹3,00,000/- via cheque no. 973188, drawn on HDFC Bank, New Delhi. Acknowledgment receipt dated 22.06.2012 is annexed as **Annexure C-1**.

5. That the respondent company allotted flat/unit no. A-2/1002 with a total sale consideration of ₹42,43,573/- vide an allotment letter dated 05.01.2013. A copy of the allotment letter is annexed as **Annexure C-2**. Apartment Buyer's Agreement was executed between the complainant and the respondent company on 14.07.2016, stipulating that possession of the unit would be handed over by 13.01.2019 after obtaining necessary approvals and certificates. A copy of the Apartment Buyer's Agreement is annexed as **Annexure C-3**.
6. That between June 2012 and January 2017, the respondent company raised several demand letters, and the complainant, in bona fide belief, paid a total amount of ₹42,68,573/- towards the unit on various dates. Copies of the receipts are annexed as **Annexure C-4**. After receiving the total sale consideration, the respondent company issued a No Objection Certificate (NOC) dated 03.12.2018 in favor of the complainant. A copy of the NOC is annexed as **Annexure C-5**.
7. That the Respondent Company, without obtaining the required Occupancy Certificate (OC) or Completion Certificate (CC) from the concerned authority, issued an illegal offer of possession letter and



pressured the complainant to either take possession or face additional charges. That under continuous pressure, complainant took possession of the unit. A copy of the possession certificate dated 08.12.2018 is annexed as **Annexure C-6**.

8. That despite lapse of time period of 65 months from the issuance of the possession certificate, respondent company has neither obtained the OC/CC for the project nor registered the sale deed of the said unit in favour of the complainant. Complainant has made numerous visits to the respondent company's office and followed up through emails and other means regarding the registration of the sale deed, but the respondent company provided no concrete or convincing response. This inaction is in contravention of the provisions of the Real Estate (Regulation and Development) Act, 2016 (RERA).
9. That the Respondent Company has wrongfully retained the complainant's hard-earned money and continues to evade its statutory obligations, including obtaining necessary approvals and registering the sale deed. The respondent company has committed acts of omission and commission by making false statements in its advertisements and failing to fulfill its promises, causing significant inconvenience and financial loss to the Complainant. This complaint is filed bona fide and in the interest of justice.

C. **RELIEFS SOUGHT**



10. The complainant in his complaint has sought following reliefs:-
- i. To direct the respondent to register the sale deed of said unit/flat after obtaining OC/CC and pay delay penalty from the due date of possession till the date of OC/CC is not obtained for said project.
 - ii. To direct the respondent company to provide mental agony of Rs. 10,00,000/- (rupees ten lac only).
 - iii. To direct the respondent company to grant a sum of Rs. 1,00,000/- (rupees one lac only) as costs for this complaint to complainant.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 06.12.2023 pleading therein:

11. That due to the reputation of the respondent company, complainant had voluntarily invested in the project of the respondent company namely- Espania Royale Heights, Kamaspur, 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."
12. That 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.



13. 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.
14. 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.
15. That no cause of action has occurred in favour of the complainant to file the present complaint as the respondent had already taken over the possession of the unit and had signed No Objection Certificate (NOC) on 03.12.2018, stating that complainant is fully satisfied with the unit and shall claim nothing in future from respondent. A copy of the NOC is annexed as **Annexure R-3**.
16. That the present complaint is barred by limitation and the same is not maintainable before the Ld. Authority.

**E. ARGUMENTS OF LEARNED COUNSELS FOR
COMPLAINANT AND RESPONDENT:-**

17. During oral arguments learned counsel for the complainant insisted upon execution of conveyance deed and delay interest in terms of



RERA Act and Rules stating that valid offer of possession has not been provided by respondent. Fact is that occupation certificate has not been received by respondent till date. He further stated that respondent forced him to take possession threatening that if complainant will not take possession then his allotment of unit will be cancelled. Under compelling circumstances, complainant took possession of unit.

18. At this stage, Authority has asked the complainant to refer the documentary evidence to establish the fact that complainant was forced to take possession by the respondent. To this, he failed to point out the requisite documents.
19. Ld. Counsel for respondent argued that complaint is an afterthought as complainant has already taken possession in year 2018 and now complainant is agitating upon issue of valid offer of possession and delay interest. In respect of occupation certificate, he stated that occupation certificate stands applied but the same has not been received yet.

F. ISSUES FOR ADJUDICATION

20. Whether the complainant is entitled to the relief sought in terms of RERA Act of 2016?

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

21. 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 respect to objection raised by respondent that the jurisdiction of the Real Estate Regulatory Authority, Panchkula, is barred because the project in question is not an 'on-going project' for the reason that project was completed before the RERA Act, 2016 came into force and respondent had applied for occupation certificate in March, 2017. In this regard, it is observed that the issue as to whether project shall be considered as "on-going project" has been dealt with and settled by the Hon'ble Supreme court in **Newtech Promoters and developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021** herein reproduced:

" 37. Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all "ongoing projects" that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority."

Wherein Hon'ble Apex Court held that the projects in which completion certificate has not been granted by the competent



authority, only 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.

In light of aforesaid observations, Authority concludes that the RERA Act, 2016 was enacted to ensure that both parties, i.e., respondent-promoter as well as complainant-allottee duly fulfil their respective obligations as per agreement for sale executed between them. Herein, the obligation of respondent to actual handover possession of plot still remains which is reoccurring cause of action and the allottee is well within its right to avail relief/remedy under the RERA Act, 2016.

Furthermore, it has been clarified by this Authority in its numerous orders that the term 'on-going project' is only used in Section 3 of RERA Act, 2016 which deals with only one of the obligation of the promoter under RERA Act, 2016, i.e., to get the project registered. There are various other obligations of promoter illustrated in the RERA Act and under those provisions it is nowhere provided that those obligations are only limited to registered projects.



(ii) With regard to plea raised by the respondent that provisions of RERA Act,2016 are applicable with prospective effect only and therefore same is not applicable to the present case. In this regard, 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.”



(iii) 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 14.07.2016, it is clear that complainant is an “allottee” of unit bearing no. A-2/1002, situated in the real estate project “Espania Royale Heights”, Sonipat. The concept/definition of investor is not provided or referred to in the RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there will be “promoter” and “allottee” and there cannot be a party having a status of an investor. Further, the definition of “allottee” as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as **M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. And Anr.** had also held that the concept of investors not defined or referred to in the Act. Thus, the contention of promoter that allottees being investor are not entitled to protection of this Act also stands rejected.

(iv) Respondent has also taken 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.

(v) 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 2013 vide an allotment letter dated 05.01.2013. Following which builder buyer agreement was executed between the parties on 14.07.2016 and in terms of clause 28 of it, the possession was supposed to be delivered within 30 months, i.e., latest by 14.01.2019. In total, complainant has paid an amount of Rs 42,62,431/- against sale consideration of Rs 28,84,528/- . Thereafter, NOC dated 03.12.2018 was issued by respondent and in pursuance of it, possession certificate was issued by respondent on 08.12.2018. However, there is no mention of fact pertaining to 'as to when the possession was offered to complainant



by the respondent'. Grievance of complainant is that respondent without having/receipt of occupation certificate handed him possession of unit. Under compelling circumstances, complainant took possession of unit vide possession certificate dated 08.12.2018. Now, complainant is praying for execution of conveyance deed and delay interest till obtaining of occupation certificate by the respondent.

(vi) At this stage, it is important to refer the contents of NOC dated 03.12.2018 and possession certificate dated 08.12.2018.

NOC – *“Dear Madam/Sir, In reference to above, we hereby certify that all dues towards offer of possession and final statement issued dated 03rd August, 2018 have been cleared except stamp duty and Club membership charges. We are pleased to your goodself to give the possession of the subject unit.*

To be signed by customer:-

I DAVINDER KUMAR BHARDWAJ have received the NOC for my unit no. A-2/1002. I submit that I am fully satisfied regarding my unit and henceforth shall not claim anything from the company. I undertake to take the physical possession of my unit from the site within a period of ninety days from the receipt of this NOC and understand that after expiry of this period, the company shall not be held liable and I shall not claim anything from the company”.



POSSESSION CERTIFICATE- *"We, TDI Infrastructure Ltd. having our Registered Office at 9, Kasturba Gandhi Marg, New Delhi - 110 001, have handed over the physical possession of Espania Royale Heights Flat No. A-2/1002 situated at Espania Royale Heights Kamaspur Sonapat, Haryana to the buyer.*

Mr./Mrs. DAVINDER KUMAR BHARDWAJ.

D/S/W/o. VED. PRAKASH..

..R/o..CG, SOAMI NAZAR, NEW DELHI. on this 8TH day of DECEMBER 2018.

Signed by Authorised signatory of TDI infrastructure Ltd and ALLOTEE.

(vii) Contents of above referred documents clearly establish the fact that complainant in the year 2018 voluntarily took the possession of the unit. That too before the deemed date of possession, i.e. 14.01.2019. Now, after 5 years of taking possession complainant has filed present complaint for seeking delay interest till receipt of occupation certificate stating that he was forced/threatened to take possession. However, no documentary evidence like email, complaint, legal notice is placed on record whereby complainant after taking possession has initiated/taken step for claiming his rights specifically pertaining to delay interest. Complainant has failed to substantiate the fact that possession was



accepted/taken under pressure. Be as it may be, the deemed date in present case is 14.01.2019. Complainant took possession before expiry of said deemed date of possession on 08.12.2018. Meaning thereby that complainant is enjoying possession since 2018 then how can he claim the delay interest till receipt of occupation certificate. Complainant should have raised query pertaining to occupation certificate at the time of taking possession. At this stage, demanding relief of delay interest despite acceptance of possession wilfully in year 2018 is an afterthought of allottee. Moreover, claim of delay interest as on date does not gets covered under purview of Section 18 of RERA Act,2016. For reference section 18 is reproduced below for reference:-

Return of amount and compensation

“18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (emphasis applied)
a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,
he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including



compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."

Wordings of section 18 clearly provides that this section can be invoked only when builder fails to complete the unit or is unable to give possession of unit in terms of agreement of sale. Whereas in present case, complainant has got possession in year 2018 that too before expiry of deemed date of possession. So, there arises no occasion of awarding delay interest to the complainant.

(viii) In respect of relief of conveyance deed, it is observed that respondent-builder by virtue of Section 17 of RERA Act,2016 is duty bound to get conveyance deed executed in favour of



complainant within three months of receipt of occupation certificate. Fact is that respondent had already applied for occupation certificate but same has not been received yet. Therefore, respondent is directed to get conveyance deed executed within 90 days of receipt of occupation certificate. For reference section 17 of RERA Act, 2016 is reproduced below:

“TRANSFER OF TITLE

17. (1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

*Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter **within three months from date of issue of occupancy certificate.***

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the



association of the allottees or the competent authority, as the case may be, as per the local laws:

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate.”

(ix) The complainant is seeking compensation on account of mental agony and cost of litigation. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as “*M/s Newtech Promoters and Developers PvL Ltd. V/s State of U.P. & ors.*” (supra.), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses and compensation.




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 execute the conveyance deed in favour of complainant within three months of receipt of occupation certificate by issuing an intimation letter to complainant duly supported with copy of occupation certificate.

(ii) It is further clarified that the complainant will remain liable to pay stamp duty charges for execution of conveyance deed.

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]