HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**2826 of 2023**
Date of filing:	**15.01.2024**
Date of first hearing:	**26.02.2024**
Date of decision:	**09.12.2024**

Shruti Mahesh Lad W/o Sh. Mahesh
R/o House No. 201, 1st floor, Vaishali Enclave,
Pitampura, New Delhi-110034

....COMPLAINANT

VERSUS

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

....RESPONDENT

Complaint no.:	**2827 of 2023**
Date of filing:	**15.01.2024**
Date of first hearing:	**26.02.2024**
Date of decision:	**09.12.2024**

Shruti Mahesh Lad & Om Parkash Narula
Both R/o House No. 201, 1st floor, Vaishali Enclave,
Pitampura, New Delhi-110034

....COMPLAINANT

VERSUS

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

....RESPONDENT

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

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

ORDER (NADIM AKHTAR - MEMBER)

1. Above captioned complaints are taken up together for hearing as these complaints involve similar issues and are related to same project of the respondent. This final order is being passed by taking complaint no. 2826/2023 titled as "Shruti Mahesh Lad vs TDI Infrastructure Ltd" as lead case.

2. Present complaint was filed on 15.01.2024 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

3. 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 in complaint no. 2826/2023	Details in complaint no. 2827/2023
1.	Name of the project	"TDI Espania Heights", Main NH-1, Sonipat	"TDI Espania Heights", Main NH-1, Sonipat
2.	Name of the promoter	TDI Infrastructure Ltd	TDI Infrastructure Ltd
3.	RERA registered/not registered	Registered vide HRERA-PKL-SNP-161-2019	Registered vide HRERA-PKL-SNP-161-2019
4.	DTCP License no.	1065-1068 of 2006.	1065-1068 of 2006.
	Licensed Area	12.64 acres	12.64 acres
5.	Unit no.	EH-05-0902	EH-04-1003
6.	Unit area	1390 sq. ft.	1390 sq. ft.
7.	Date of booking	12.10.2011	Date of allotment in favour of complainants-14.05.2021
8.	Date of builder buyer agreement	Not executed.	Not executed.
9.	Due date of offer of possession	Not available	Not available
10.	Possession	Not given till date.	Not given till date.

	clause in BBA		
11.	Total sale consideration	₹21,49,996/-	₹21,29,698/-
12.	Amount paid by complainant	₹ 36,69,714 /-	₹ 34,99,327 /-
13.	Offer of possession	*19.06.2021 claimed by complainant. But no documentary proof has been attached in complaint file. 08.06.2018 claimed by respondent. Copy of offer for fit out has been placed on record as Annexure R-5 at page no. 37 of reply.*	*13.06.2021 claimed by complainant. But no documentary proof has been attached in complaint file. 02.11.2018 claimed by respondent. Copy of offer for fit out has been placed on record as Annexure R-4 at page no. 26 of reply.*
14.	Occupation certificate	Not obtained.	Not obtained.
15.	NOC for handover	11.06.2021	11.06.2021
16.	Possession Certificate	13.06.2021	13.06.2021

B. FACTS OF THE COMPLAINT

4. Facts of complaint are that complainant had booked a flat by making payment of Rs 2,50,000/- on 12.10.2011 as booking amount for 3 BHK flat in respondent's project " TDI Espania Heights", NH-1, Kamaspur, Sonipat.

5. That no builder buyer agreement got executed between the parties till date. Instead respondent had given a document 'Final Statement of

Accounts' to the complainant in which details of unit, sale price and other charges are mentioned. As per said statement of account, respondent had allotted unit no. EII-05-0902 located on 9th floor measuring 1390 sq. ft. Complainant has paid total amount of Rs 36,69,714/- against basic sale price of Rs 21,49,996/- till 2021.

6. That in the year 2021, respondent arbitrarily increased the area of the flat which was originally 1390 sq. ft to 1598 sq. ft. which had led to the increase in the basic sale price of unit from Rs 21,49,996/- to Rs 24,71,722/-. Further, complainant had additionally paid a sum of Rs 79,536/- towards interest charges @ 24% p.a. which is wrong and illegal and not in terms of RERA Act,2016.

7. That respondent despite receiving more amount than the total sale consideration has failed to obtain Occupation Certificate. Respondent also failed to give a valid offer of possession to the complainant and failed to execute the Conveyance Deed even after a huge lapse of 13 years from the date of initial booking in the year 2011.

8. That on 13.06.2021, the respondent offered possession of flat to the complainant without getting occupation certificate. Complainant took the possession of unit since the complainant had already waited for 13 long years for getting the possession of her unit. Respondent had neither paid delayed possession interest for causing huge delay in offering possession of unit to the complainant nor executed

conveyance deed in favor of the complainant till date. A copy of possession letter is annexed as Annexure P-2.

9. That respondent had wrongly charged Vehicle Car Parking charges amounting to Rs 1,75,000/-, Club Membership charges of Rs 50,000/-, Electrical and Fire Fighting Charges of Rs 4,11,759/-, External Development Charges of Rs 4,17,398/- and VAT of Rs 19,615/-. Said amount is not payable by the complainant since the deemed date of possession of unit was 3 years from date of booking which comes to year 2014 and VAT was not applicable at that time. Complainant visited the office of respondent on 12.09.2023 and received final statement of account for her unit. On that day, complainant was shocked to see that respondent had increased the area of the unit from 1390 sq. ft to 1598 sq. ft. which had in turn lead to an increase of Rs 9 lacs in total cost of the unit.

10. That the complainant has trusted her hard earned money with a view to purchase the said unit in question for residing therein and is being denied the use of her property. Respondent has completely shattered the dreams of owning a house of her own. Now, complainant prays for grant of delayed possession interest at the prescribed rate from deemed date of possession, i.e. 2014 taking a period of 3 years from date of booking.

C. RELIEFS SOUGHT

11. Complainant in her complaint has sought following reliefs:

i. Respondent be directed to execute the conveyance deed in favor of the complainant.

ii. Respondent be directed to repay back various illegal charges collected on account of vehicle car parking, club charges, VAT, EFFC.

iii. Respondent be directed to pay delayed possession interest as prescribed in terms of Section 18 of the Act of 2016 and as per HRERA Rule 15.

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

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 20.05.2024 pleading therein as under:

12. That due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely-Espania Heights, at Main NH-1, Sonipat, Haryana. That the said project has been duly registered with Ld. RERA Authority.

13. 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.

14. That complainant herein is an investor and has accordingly invested in the project of the Respondent Company for the sole reason of investing, earning profits and speculative gains, therefore, the captioned complaint is liable to be dismissed in limine.

15. That the complainant has deliberately concealed the fact that unit was allotted to complainant by way of transfer from the previous allottee through an Agreement to Sell dated 07.07.2015. Copy of said agreement is annexed as Annexure R-3. After execution of agreement to sell, a tripartite agreement dated 21.07.2015 was executed between the complainant, respondent and insurance company, i.e., India Bulls Housing Finance Ltd for securing a loan of Rs 23,42,000/- by the complainant. Copy of tripartite agreement is annexed as Annexure R-4.

16. That possession for fit outs has already been offered to the complainant vide letter dated 08.06.2018 alongwith final statement of accounts requesting the complainant to take over the possession for fit out and clear her outstanding dues but it is the complainant who has not come forward for the same. Copy of offer of possession is annexed as Annexure R-5. In pursuance of it, various reminder letters

were issued to complainant to clear her outstanding dues. However, complainant still did not come forward. Copies of reminder letters are annexed as Annexure R-7. Due to continuous default in making timely payments by the complainant towards the allotted unit, the respondent vide letter dated 24.09.2020 had issued a pre-cancellation letter requesting the complainant to clear outstanding dues failing which the allotment will be cancelled. Despite issuance of pre-cancellation letter, complainant still did not come forward to clear her dues. Hence, respondent cancelled the unit of allotee vide cancellation letter dated 04.12.2020. A copy of Cancellation letter is annexed as Annexure R-9. Complainant in very clever manner concealed all the aforesaid facts and has not approached this Authority with clean hands.

17. In respect of disputed charges, respondent has denied the allegations made in complaint and stated that complainant is liable to pay the charges being an allotee of completed project.

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

19. Respondent vide an application filed in registry on 05.12.2024 has placed on record a copy of Declaration cum Undertaking dated 18.12.2020 wherein, complainant has undertaken that all the issues regarding the said apartment are fully satisfied and further undertakes not to raise any claim or complaint in future qua the aforesaid

apartment before any Judicial Authority. In support, para 6 and 7 are reproduced for reference. In view of said declaration, the complainant is bound to honour the terms of said Declaration cum Undertaking and complainant could have not filed the present complaint. In view of same, the present complaint is liable to be dismissed in toto.

E. STATEMENT OF ACCOUNT FILED BY COMPLAINANT

Ld. Counsel for the complainant had filed the Statement of Account in support of paid amount of Rs 36,69,714/- in the registry of the Authority on 05.12.2024 wherein details of paid amount alongwith respective dates are mentioned.

F. ARGUMENTS OF LEARNED COUNSELS FOR COMPLAINANT AND RESPONDENT

20. During oral arguments learned counsel for the complainant argued upon awarding of delay interest stating that respondent had delayed handing over of possession from year 2014. He further argued upon refund of illegal charges-vehicle car parking, club membership, VAT and EFFC. He further submitted that details of paid amount have already been filed in registry on 05.12.2024. Learned counsel for the respondent reiterated the arguments as were submitted in written statement and further submitted that respondent had already cancelled the allotment of unit in year 2020 and in view of declaration cum undertaking, present complaint is liable to be dismissed. Further, he

argued that complainant herein is a subsequent allotee so delay interest, if in case is to be awarded then same is entitled to complainant w.e.f stepping into shoes of original allotee, i.e. 07.07.2015, not before that.

21. It is pertinent to mention here that complainant had filed statement of account in registry on 05.12.2024, in which total paid amount is shown is Rs 37,49,250.22/-(inclusive of interest amount of Rs 79,536.22/-) , whereas paid amount as stated in relief sought and complaint pleadings is Rs 36,69,714/-. Ld. Counsel for complainant was asked to clarify it at the time of hearing, he stated that final paid amount be taken as Rs 36,69,714/-. Further, query was posed to ld. Counsel for complainant that relevant documents be referred in order to prove that respondent has illegally collected amount on account of respect of 'vehicle car parking, club membership, VAT and EFFC'. To this, ld. counsel for complainant stated that builder buyer agreement has not been executed between the parties and as such no other document is available with him to substantiate the claim.

G. ISSUES FOR ADJUDICATION

22. Whether the complainant is entitled to get the reliefs as sought or not?

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

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

(i) With regard to plea raised by the respondent that provisions of RERA Act,2016 are applicable with prospective effect only and therefore same is not applicable to the present case, 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:-

"41. *The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case." "45.*

At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the pre-existing contract and rights executed between the parties in the larger public interest." "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."

(ii) The respondent in its reply has contended that the complainant is a "speculative buyer" who has invested her 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 she is not entitled to the protection of the Act of 2016. In this regard, Authority observes

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

Section 2(d) of the RERA Act:

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

(iii) In view of the above-mentioned definition of "allottee" as well as upon careful perusal of final statement of account, it is clear that complainant is an "allottee" of unit bearing no. EII-05-0902, situated in the real estate project "Espania Heights", Sonipat. The concept/definition of investor is not provided or referred to in the RERA Act, 2016. As per the definitions provided under section 2

of the RERA Act, 2016, there will be "promoter" and "allottee" and there cannot be a party having a status of an investor. Further, the definition of "allottee" as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled **as M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. and Another** had also held that the concept of investors not defined or referred to in the Act. Thus, the contention of promoter that allottees being investor are not entitled to protection of this Act also stands rejected.

(iv) Respondent has also taken objection that complaint is grossly barred by limitation. Reference in this regard is made to the judgement of Hon'ble Apex Court Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise wherein it was held that Limitation Act does not apply to quasi-judicial bodies. Further, in this case the promoter has till date failed to fulfil their obligations because of which the cause of action is re-occurring. RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the limitation Act 1963 would not be

applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not Courts.

(v) Respondent has also taken an objection that complainant at the time of purchasing unit has conducted due diligence to her satisfaction and was acquainted with the terms and conditions of the declaration cum undertaking dated 23.03.2021 wherein complainant has agreed not to raise any claim against respondent in respect of unit in question. Therefore, the present complaint filed by complainant is liable to be dismissed. To deal with this objection reference is made to **Civil Appeal no. 12238 of 2019 titled as Pioneer Urban Land & Infrastructure Ltd v/s Govindan Raghavan**. Operative part of the said judgment is being reproduced below:

> *Section 2 (r) of the Consumer Protection Act, 1986 defines 'unfair trade practices' in the following words : "'unfair trade practice' means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice ...", and includes any of the practices enumerated therein. The provision is illustrative, and not exhaustive.*
>
> *In Central Inland Water Transport Corporation Limited and Ors. v. Brojo Nath Ganguly and Ors.,4 this Court held that :*
>
> *"89. ... Our judges are bound by their oath to 'uphold the Constitution and the laws'. The Constitution*

was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and equal protection of the laws. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them.

It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not 4 (1986) 3 SCC 156.

It applies where both parties are businessmen and the contract is a commercial transaction. ... ... These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances." (emphasis supplied) 6.7. A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The

contractual terms of the Agreement dated 08.05.2012 are ex-facie one-sided, unfair, and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2 (r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the Builder.

7. In view of the above discussion, we have no hesitation in holding that the terms of the Apartment Buyer's Agreement dated 08.05.2012 were wholly one-sided and unfair to the Respondent – Flat Purchaser. The Appellant – Builder could not seek to bind the Respondent with such one-sided contractual terms.

In this case, respondent promoter and complainant were not having equal bargaining power and respondent promoter was in a dominant position. Complainant was bound to sign on dotted lines of undertaking to get the possession of unit. Said declaration cum undertaking is ex-facie one-sided, unfair, and unreasonable. Therefore said undertaking cannot bind the complainant with such one-sided terms.

(vi) Respondent in its reply has stated that complainant has concealed the material fact pertaining to purchase of allotment rights of unit from original allottee vide Agreement to Sell dated 07.07.2015. Perusal of said agreement reveals that complainant bought the unit from original allottee named Sh. Amit Jindal. Said fact has not been rebutted by complainant's counsel at the time of

arguments. Therefore, said agreement is relied upon to decide the issues involved in present case.

(vii) On merits, original allottee had booked unit in question in respondent's project in the year 2011. Thereafter, complainant stepped into shoes of original allotee vide Agreement to Sell dated 07.07.2015. As on 04.02.2021, complainant has already paid an amount of Rs 36,69,714/-. Fact remains that builder buyer agreement has not been executed between the parties. Details of unit are mentioned in final statement of account issued by respondent which is relied upon by complainant as proof of paid amount.

(viii) Authority observes that builder buyer agreement has not been executed till date and there is no clause pertaining to deemed date of possession in any of the documents placed on record. In absence of specific clause of deemed date of possession, it cannot rightly be ascertained as to when the possession of said floor was due to be given to the complainant. In **Appeal no 273 of 2019 titled as TDI Infrastructure Ltd Vs Manju Arya**, Hon'ble Tribunal has referred to the observation of Hon'ble Apex Court in **2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr.** in which it has been observed that period of 3 years is reasonable time of completion of

construction work and delivery of possession. In present complaint, the unit was booked on 12.10.2011 which is evident from statement of account filed by complainant in registry on 05.12.2024. Accordingly, taking a period of 3 years from the date of booking, i.e. 12.10.2011 as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 12.10.2014.

(ix) In present case, complainant's version is that respondent has offered possession on 13.06.2021. However, no documentary evidence has been referred in support of it, except possession certificate dated 13.06.2021. On the other hand, respondent in its reply has stated that fit-out possession was offered to complainant on 08.06.2018. But it is the complainant who did not come up to clear outstanding dues. Several reminders dated 29.09.2018,15.11.2018, 18.06.2019, 09.10.2019, 20.11.2019 and pre-cancellation letter dated 24.09.2020 were issued to complainant but complainant still did not respond to it. Hence, respondent had cancelled allotment of unit vide cancellation letter dated 04.10.2020. It is pertinent to mention here complainant remain silent on this issue and did not raise any objection to said pleadings/submission of respondent even at the time of hearing. Hence, complainant is admitting this factual position. Further, it is

relevant to point here that complainant as well as respondent has not attached any communication between the year 2020 to 2021, as to what has happened between the event of cancellation letter dated 04.10.2020 till the event of possession certificate dated 13.06.2021. However, perusal of statement of account revealed that complainant has made payment of Rs 4,00,000/- on 15.12.2020 and Rs 2,24,574/- on 04.02.2021. Said payments are admitted by respondent in its statement of account. These transactions are sufficient to establish the fact that respondent accepted payment towards possession of unit and resumed the allotment in favour of complainant or in other words, it can be said that respondent did not act upon cancellation letter for the reason that complainant made payment towards acceptance of offer of possession on 15.12.2020 and 04.02.2021. Therefore, cancellation letter dated 04.12.2020 relied upon by respondent does not hold any merit as on date and does not require adjudication for passing of directions in this final order.

(x) Now, issues left to be adjudicated are delay interest and illegal demands disputed by complainant. In respect of delay interest, it is observed that respondent was duty bound to deliver the possession upto 12.11.2014 as discussed in aforesaid para no. (viii). However, possession was offered by respondent on

08.06.2018 which at last was accepted by complainant on 13.06.2021. No objection certificate for handing over was issued by respondent to complainant on 11.06.2021 and in pursuance of it, possession certificate was issued on 13.06.2021. Grievance of complainant is that respondent without having/receipt of occupation certificate handed him possession of unit. So, the possession offered was not a legal valid offer of possession. Now, complainant is praying for execution of conveyance deed and delay interest in terms of Section 18 of the RERA Act,2016 by the respondent.

(xi) At this stage, it is important to refer the contents of NOC dated 11.06.2021 and possession certificate dated 13.06.2021.

NOC – "*Dear Madam/Sir, In reference to above, we hereby certify that all dues towards offer of possession and final statement issued dated* ***8rd August, 2018*** *have been cleared except CMC and stamp duty. We are pleased to your goodself to give the possession of the subject unit.*

To be signed by customer:-

I SHRUTI MAHESH LAD have received the NOC for my unit no. EH-05-0902. 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 ninty 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 Heights Flat No. EII-05-0902 situated at Espania Heights Kamaspur Sonepat, Haryana to the buyer.*

Mrs. SHRUTI MAHESH LAD W/o MR. MAHESH.

..R/o..H.NO. A-604, Purushottam Park, APT, Anand Nagar, Maharashtra-400615 on this 13th day of June 2021.

Signed by Authorised signatory of TDI infrastructure Ltd and ALLOTEE.

(xii) Contents of above referred documents clearly establish the fact complainant in year 2021 voluntarily took the possession of the unit without raising any objection. Fact herein is that respondent has not received occupation certificate till date. Now, after 1.5 years of taking possession complainant has filed present complaint for seeking delay interest in terms of Section 18 of RERA Act,2016. Be as it may be, the deemed date in present case is 12.11.2014. 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.****- (emphasis applied)*
(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 interest in case of continuation with project, i.e. 'possession', the allotee has to be awared interest till handing over of possession. In present case, possession was handed over to the complainant on 13.06.2021. So, the complainant is entitled to receive delay interest upto 13.06.2021. At this stage, question arises is as to w.e.f which date

the complainant is entitled to claim the delay interest. Complainant herein is a subsequent allotee who stepped into shoes of original allotee vide agreement to sell dated 07.07.2015.

(xiii) The principal argument of the respondent is with regards to the rights of the subsequent allottee, i.e, the complainant who purchased a unit after being aware of the fact that the due date of possession has already expired and that the possession of the unit is delayed. In cases where the complainant/ subsequent allottee had purchased the unit after expiry of the due date of possession, i.e., 12.11.2014 (36 months from date of booking), the Authority is of the view that the subsequent allottee cannot be expected to wait for an uncertain period of time to take possession. Even such allottee is waiting for the promised unit and surely he would be entitled to all reliefs under this Act. It would, no doubt, be fair to assume that the subsequent allottee had knowledge of delay, however, to attribute that knowledge that such delay would continue indefinitely based on prior assumption, would not be justified. Furthermore, in cases where the floor buyer agreement/allotment was a pre-RERA contract and the subsequent allottee stepped into the shoe of the original allottee after the deemed date of possession but before RERA Act,2016 coming, the statutory right to seek delayed possession interest or refund had not accrued in favour of the

original allottee. However, after the date of endorsement/agreement to sell, i.e., 07.07.2015, the subsequent allottee stepped into the shoe of original allottee w.r.t the unit and the possession was not handed over, the subsequent allottee became entitled to the statutory relief of delayed interest or refund and same shall be applicable only from the date he was acknowledged as allottee by the respondent promoter. In support, reliance is placed upon the judgement dated 22.07.2021 passed in Civil Appeal No. 7042 of 2019 titled as "**M/s Laurate Buildwell Pvt Ltd vs Charanjeet Singh**" in which the Hon'ble Supreme Court observed that the subsequent allottee who stepped into the shoes of original allottee is already aware of the delay caused in delivery of possession. However, mere knowledge that there is delay in delivery of possession does not justify delay beyond a reasonable period of time. Therefore, such subsequent allottee is entitled to relief of possession and delay interest, from the date the builder acquired knowledge of the transfer, or acknowledged it. Relevant part of the order of the Hon'ble Supreme Court is reproduced below:

> "31. *In view of these considerations, this court is of the opinion that the per se bar to the relief of interest on refund, enunciated by the decision in Raje Ram (supra) which was applied in Wg. Commander Arifur Rehman (supra) cannot be considered good law. The nature and extent of relief, to which a subsequent purchaser can be entitled to, would be fact dependent.*

However, it cannot be said that a subsequent purchaser who steps into the shoes of an original allottee of a housing project in which the builder has not honoured its commitment to deliver the flat within a stipulated time, cannot expect any - even reasonable time, for the performance of the builder's obligation. Such a conclusion would be arbitrary, given that there may be a large number- possibly thousands of flat buyers, waiting for their promised flats or residences; they surely would be entitled to all reliefs under the Act. In such case, a purchaser who no doubt enters the picture later surely belongs to the same class. Further, the purchaser agrees to buy the flat with a reasonable expectation that delivery of possession would be in accordance within the bounds of the delayed timeline that he has knowledge of, at the time of purchase of the flat. Therefore, in the event the purchaser claims refund, on an assessment that he too can (like the original allottee) no longer wait, and face intolerable burdens, the equities would have to be moulded. It would no doubt be fair to assume that the purchaser had knowledge of the delay. However, to attribute knowledge that such delay would continue indefinitely, based on an a priori assumption, would not be justified. The equities, in the opinion of this court, can properly be moulded by directing refund of the principal amounts, with interest @ 9% per annum from the date the builder acquired knowledge of the transfer, or acknowledged it.

32. In the present case, there is material on the record suggestive of the circumstance that even as on the date of presentation of the present appeal, the occupancy certificate was not forthcoming. In these circumstances, given that the purchaser/respondent had stepped into the shoes of the original allottee, and intimated Laureate about this fact in April 2016, the interests of justice demand that interest at least from that date should be granted, in favour of the respondent. The directions of the NCDRC are accordingly modified in the above terms"

Possession of unit was accepted by complainant on 13.06.2021. But there is delay of around 6 years in offer of possession, date of endorsement/agreement to sell, i.e, 07.07.2015

which is an unreasonable delay. Therefore, in light of M/s Laureate Buildwell Pvt Ltd. Vs Charanjeet Singh judgement, the complainant will be entitled to interest on the total paid amount from the date of endorsement/agreement to sell, i.e., 07.07.2015 till 13.06.2021, date of possession certificate.

(xiv) In respect of illegal demands of vehicle car parking, club membership charges, VAT and EFFC, it is pertinent to mention here that complainant's counsel was asked at the time of hearing to argue this relief by referring requisite documentary evidence. He could not refer to any of the documents. Moreover, it is relevant to point out that complainant has accepted the possession way bak in year 2021 by making payment towards dues including alleged illegal demands. There is no objection conveyed by complainant in writing from year 2021 till filing of present complaint in respect of disputed demands. No documents challenging these demands are placed on record by complainant. In these circumstances, it is concluded that complainant has failed to establish the illegality of disputed demands. Hence, no relief is passed against issue of illegal demands.

(xv) 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 for reference:-

"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."

(xvi) Keeping in view the aforesaid observations, the Authority finds it to be fit case for allowing delay interest to the complainant from 07.07.2015 (date of agreement to sell) to 13.06.2021 (date of possession certificate).

(xvii) 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;

24. 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. 09.12.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

25. 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".

26. Thus, Authority directs respondent to pay delay interest to the complainant on the paid amount of Rs 36,69,714/- 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 agreement to sell to date of possession certificate. Authority has got calculated the total amount along with interest calculated at the rate of 11.10% till the date of this order as per detail given in the table below:

Complaint no. 2826/2023

Sr. No.	Principal Amount in ₹	Date of agreement to sell or date of payment whichever is later	Interest Accrued till 13.06.2021
1.	23,54,542	07.07.2015	1553088
2	22,800	08.09.2015	14602
3.	4,67,798	18.11.2015	289503
4.	2,00,000	08.12.2016	100295
5.	4,00,000	18.12.2020	21653
6.	1,53,000	04.02.2021	6049
7.	71,574	04.02.2021	2830

8.	Total=36,69,714/-		Total= 19,88,020/-
9.	Total Payable to complainant =19,88,020/-		

It is pertinent to mention here that complainant had filed statement of account in which total paid amount is shown as Rs 37,49,250/-(inclusive of interest amount of Rs 79536.22/-) , whereas paid amount as stated in relief sought and complaint pleadings is Rs 36,69,714/-. I.d. Counsel for complainant was asked to clarify it at the time of hearing, he stated that final paid amount be taken as Rs 36,69,714/-.

Complaint no. 2827/2023

Sr. No.	Principal Amount in ₹	Deemed date of possession or date of payment whichever is later	Interest Accrued till 13.06.2021
1.	21,73,477	14.05.2015	14,69,348
2	5,50,000	19.11.2015	3,40,207
3.	1,54,053	07.03.2017	73,084
4.	4,00,000	18.12.2020	21,653
5.	1,53,000	04.02.2021	6049
6.	68,797	04.02.2021	2720
7.	Total=34,99,327/-		Total= /-
8.	Total Payable to complainant =19,13,061/-		

It is pertinent to mention here that complainant had filed statement of account in which total paid amount is shown as Rs 35,03,411.16/-(inclusive of interest amount of Rs 4084.16/-) , whereas paid amount as stated in relief sought and complaint pleadings is Rs 34,99,327/-. I.d. Counsel for

complainant was asked to clarify it at the time of hearing, he stated that final paid amount be taken as Rs 34,99,327/-. Further, it is observed that unit was booked on 15.10.2011, however it is not clear booking was made by original allotee or complainant? Respondent in its reply has stated that 'complainant has failed to disclose the fact that unit was allotted to complainant by way of transfer from the previous allottee and the complainant had subsequently received the allotment of unit vide Allotment letter dated 14.05.2012. A copy of same is annexed as Annexure R-3'. Perusal of allotment letter establish that the complainants were allotted allotment of unit no. EII-04-1003 on 14.05.2012. Builder buyer agreement was not executed between the parties. There is no other document to provide deemed date of possession. In absence of specific clause of deemed date of possession, it cannot rightly be ascertained as to when the possession of said floor was due to be given to the complainant. In **Appeal no 273 of 2019 titled as TDI Infrastructure Ltd Vs Manju Arya**, Hon'ble Tribunal has referred to the observation of Hon'ble Apex Court in **2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr.** in which it has been observed that period of 3 years is reasonable time of completion of construction work and delivery of possession. In present complaint, the unit was allotted vide allotment letter dated 14.05.2012, accordingly, taking a period of 3 years from the date of allotment, i.e. 14.05.2012 as a reasonable time to complete development works in the

project and handover possession to the allottee, the deemed date of possession comes to 14.05.2015. Accordingly, the complainants are entitled to delay interest for the period ranging from deemed date of possession, i.e., 14.05.2015 to date of possession certificate, i.e., 13.06.2021.

I. DIRECTIONS OF THE AUTHORITY

27. 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 pay the delay interest to the respective complainants as calculated/mentioned in tables mentioned in para 26 of this order. It is further clarified that respondent will remain liable to pay interest to the complainant till the actual realization of the amount.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

(iii) Respondent is directed to execute the conveyance deed in favour of complainants within three months of receipt of occupation certificate by issuing an intimation letter to the respective complainants duly supported with copy of occupation certificate. It is

further clarified that the complainants will remain liable to pay stamp duty charges for execution of conveyance deed.

28. **Disposed of**. File be consigned to record room after uploading of order on the website of the Authority.

CHANDER SHEKHAR
[MEMBER]

NADIM AKHTAR
[MEMBER]