



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1615 of 2023
Date of filing:	01.08.2023
Date of first hearing:	05.09.2023
Date of decision:	16.12.2024

Puneet Vig S/o Sh. Parveen Vig
R/o D-303, Cypress Tower, House of Hiranandani,
Devanhalli, Bengaluru,
Karnataka-562110

....COMPLAINANT(S)

VERSUS

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

....RESPONDENT(S)

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

Present: - Puneet Vig, Complainant himself through VC.
 Mr. Shubnit Hans, counsel for the respondent through VC.

ORDER (NADIM AKHTAR- MEMBER)

1. Present complaint dated 01.08.2023 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 Royale Floors, Kamaspur, Sonapat
2.	Name of the promoter	TDI Infrastructure Ltd
3.	RERA registered/not registered	Registered vide HRERA-PKI-SNP-162-2019 dated 01.10.2019
4.	DTCP License no.	70 of 2012,
5.	Licensed Area	10.8375 acres
6.	Unit no.	RF-2A-DUPLEX
7.	Unit area (Built-up area)	1499 sq. ft.
8.	Date of booking	02.01.2014
9.	Date of allotment letter	18.01.2014

10.	Date of builder buyer agreement	18.01.2014
11.	Deemed date of possession (30 months)	18.07.2016.
12.	Possession clause in BBA	<p>Clause 28</p> <p>".....However, if the possession of the floor 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 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 floor.."</p>
13.	Total sale price	₹43,44,984/-
14.	Amount paid by complainant	Rs 42,48,060/- As per statement of account annexed as Annexure-4 to complaint.
15.	Offer of possession given	01.09.2018
16.	Occupation Certificate	Not obtained.
17.	Conveyance deed executed or not	Not executed.



B. FACTS OF THE COMPLAINT

3. Facts of the present complaint are that the complainant had booked a unit in the respondent company's project, 'Espania Royale Heights, situated in Kamasapura, Kundli, Sonapat, Haryana, and made an advance payment of ₹5,87,613/- on 02.01.2014. Pursuance to it, the respondent company allotted flat/unit no. RF-2A-DUPLEX with a total sale consideration of ₹43,44,984 /- vide an allotment letter dated 18.01.2014. A copy of the allotment letter is annexed as **Annexure-2**. Floor Buyer's Agreement was executed between the complainant and the respondent company on 18.01.2014, stipulating that possession of the unit would be handed over by 18.07.2016. A copy of the Floor Buyer's Agreement is annexed as **Annexure-3**.
4. That complainant has made payment of Rs 42,48,060/- towards the total Sale Consideration of the unit to the respondent till 18.12.2018. In support, statement of account is annexed as **Annexure-4**.
5. 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 dated 01.09.2018. Vide said offer, respondent has unilaterally increased the unit area from 1499 sq. ft. to 1783.81 sq. ft. without any prior intimation to the complainant and without any justification for same. A copy of the



offer of possession (fit-out) dated 01.09.2018 is annexed as **Annexure-6**.

6. That the respondent had indulged in an unfair trade practice and service is deficient on the part of respondent by misleading the complainant. Respondent illegally kept delaying the handing over of possession and failed to obtain Occupancy Certificate even after 5 years of issuing a fit-out possession on 01.09.2018. Complainant for buying the unit in question took home loan from Canara Bank which ultimately led to finance burden as respondent delayed the handing over of possession till date. Feeling aggrieved, present complaint has been filed.

C. RELIEFS SOUGHT

7. The complainant in his complaint has sought following reliefs:-
- i. Request Hon'ble HRERA Chairman and members to issue interim order, pending the final decision on the complaint the complainant seeks to issue the following interim order: Direct the respondent party to deposit the consideration amount of Rs 90,00,000/- (Ninety Lacs) with the Hon'ble authority till the disposal of the present complaint.
 - ii. Direct the Respondent to pay upfront compensation on account of the delay, physical harassment, financial losses, and mental agony caused to the Complainant due to deficiency in services on the part of the Respondent as per Appendix DDD.



- iii. Direct the Respondent to pay monthly interest till the date of a valid offer of possession with Completion Certification (CC), Occupancy Certification (OC), and execution of Transfer of Title.
- iv. Direct the Respondent to withdraw the unreasonably charged amount raised as per the offer Fit Out Possession cum demand letter dated 01-09-2018.
- v. Direct the Respondent to pay compensation against deviation in the site layout and failure to basic essential committed amenities infrastructure like club house, swimming pool, and primary school.
- vi. The Respondent failed to comply with Competent Authority norms as per ACT and Rules and could not meet OC and CC requirements by Oct 2023. Direct Respondent for Full Refund along with Compensation and Penalty.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

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

8. That due to the reputation of the respondent company, complainant had voluntarily invested in the project of the respondent company namely- Espania Royale Floors, Kamaspur, Sonipat, Haryana. That occupation certificate for the said project was applied prior to commencement of



RERA Rules, so project is not covered within the definition of an “On-going project.”

9. 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.
10. 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.
11. 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.
12. That no cause of action has occurred in favor of the complainant to file the present complaint as the respondent had already offered possession of unit vide letter dated 01.09.2018.
13. That the present complaint is barred by limitation and the same is not maintainable before the Ld. Authority.



E. DOCUMENTS FILED BY THE PARTIES.

14. Rejoinder filed by complainant in registry on 29.01.2024 –Vide said rejoinder complainant has denied the submissions made by respondent in its reply dated 06.12.2023.
15. Rejoinder filed by complainant in registry on 22.04.2024 –Vide said rejoinder complainant has submitted the statement of account dated 02.04.2014 as proof of total paid amount with dates.
16. Document filed by respondent in registry on 03.05.2024 –Vide aid document respondent has placed on record comparative area statement of unit (component wise detailed break up) as per original area 1499 sq. ft and then as per revised area 1783.5 sq. ft in compliance of order dated 26.02.2024.
17. Rejoinder filed by complainant in registry on 10.10.2024 –Vide said rejoinder complainant has denied the increase in area referring to the agreement dated 18.01.2014 and registration certificate issued to respondent for the project in question.

**F. ARGUMENTS OF LEARNED COUNSELS FOR
COMPLAINANT AND RESPONDENT**

18. During oral arguments complainant insisted upon legal possession of the unit and quashing of illegal offer of possession dated 01.09.2018 and delay interest in terms of RERA Act,2016 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 be also directed to get the conveyance deed executed after handing over of legal offer of possession.

19. Id. Counsel for respondent reiterated the submissions as made in written statement and argued that the respondent after completing the unit had applied for occupation certificate in year 2017. Thereafter, possession of complete unit was offered to complainant but it is the complainant who is not coming forward to accept the same. In respect of occupation certificate, he stated that occupation certificate stands applied but the same has not been received yet.

G. ISSUE FOR ADJUDICATION

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

H. 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(c) 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 handover legal possession of the unit 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:-

“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."

(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 he 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 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;

(iv) In view of the above-mentioned definition of "allottee" as well as upon careful perusal of builder buyer agreement dated 18.01.2014, it is clear that complainant is an "allottee" of unit bearing no. R1-2A-Duplex, situated in the real estate project "Espania Royale Floor", 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.

(v) 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.

(vi) Factual matrix of the case is that complainant had purchased the booking rights qua the flat/apartment in question in the project of the respondent in the year 2014 vide an allotment letter dated



18.01.2014. Following which builder buyer agreement was executed between the parties on 18.01.2014 and in terms of clause 28 of it, the possession was supposed to be delivered within 30 months, i.e., latest by 18.07.2016. In total, complainant has paid an amount of Rs 42,48,060/- against sale consideration of Rs 43,44,984/- . In present situation, respondent failed to honour its contractual obligations without any reasonable justification. On the other hand, complainant is insisting upon possession of booked unit.

(vii) Admittedly, respondent had issued offer of possession (fit-out) to complainant on 01.09.2018. However, complainant did not accept the offer for the reason that said offer was not supported with occupation certificate and was accompanied with illegal demand on account of increased in area from 1499 sq. ft to 1783.5 sq. ft.. As on date, respondent has clarified that occupation certificate which stands applied in year 2017 has not yet been received. Therefore, the offer of possession made by respondent on 01.09.2018 is not a valid offer of possession and complainant was not bound to accept the same. Further, in respect of issue of increase in area as alleged by complainant, Authority observes that respondent is entitled to charge only for the area of the unit which is actually to be provided to allottee at the time of handing over of possession that too which



must have got approved in Occupation Certificate. Without receipt of occupation certificate, the increase in area claimed by respondent is not justified. Infact, the offer of possession dated 01.09.2018 itself is not a valid offer of possession without receipt of occupation certificate. Hence, the said offer of possession deserves to be quashed.

(viii) Now, issue which remains to be adjudicated is delay interest. Respondent had not offered valid possession of unit till date to the complainant. Complainant herein is interested in having possession of his unit. In these circumstances, the provisions of Section 18 of the RERA Act clearly come into play by virtue of which while exercising the option of taking possession of the unit, the allottee can also demand, and the respondent is liable to pay, interest for the entire period of delay caused at the rates prescribed. The Authority observes that the respondent has severely misused its dominant position. Allotment of the plot was done on 18.01.2014, due date of possession as explained above is 18.07.2016. Now, even after lapse of 9 years respondent is not able to offer possession to the complainant. Complainant however is interested in getting the possession of the booked unit. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date of possession, i.e., 18.07.2016 up to the date on which



a valid offer is sent to him after receipt of occupation certificate. For purpose of calculation delay interest is calculated upto date of this order. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.

(ix) In the present complaint, the complainant intends to continue with the project and is seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act, Section 18 (1) proviso reads as under:-

“18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-

.....

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”.

(x) 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;

(xi) 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. 16.12.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

(xii) Rule 15 of IIRERA 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".

(xiii) Authority has got calculated the interest on total paid amount from the deemed date of possession till the date of this order at the rate of 11.10% till and said amount works out as per detail given in the table below:



Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 16.12.2024
1.	39,08,174	18.07.2016	36,53,490/-
2.	16,459	12.04.2017	14,045/-
3.	3,23,427	18.12.2018	2,15,501/-
	Total = 42,48,060/-		₹38,83,036/-
4.	Monthly interest		₹ 38,756/-

(xiv) In respect of relief Clause no. (i) and (vi), it is to mention here that said reliefs are neither pressed nor argued at the time of arguments. Hence, no relief is passed against these reliefs.

(xv) Further, the complainant is seeking compensation and litigation cost. 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 Pvt 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 compensation and litigation cost.

I. DIRECTIONS OF THE AUTHORITY

22. Hence, the Authority hereby passes this order and issue following directions to the respondent 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 upfront delay interest of Rs 38,83,036/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order. Further, on the entire paid amount, monthly interest of Rs 38,756/- shall be payable by the respondent to the complainant up to the actual date of handing over the possession to the complainant after obtaining occupation certificate from the competent authority.
- (ii) Complainant will remain liable to pay balance consideration amount to the respondent at the time when actual/legal possession will be offered to the complainant.
- (iii) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate, i.e., 11.10% by the respondent/ Promoter which is the



same rate of interest which the promoter shall be liable to pay to the allottees.

(iv) 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.

(v) 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]