



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2811 of 2023
Date of filing:	10.01.2024
Date of first hearing:	26.02.2024
Date of decision:	09.12.2024

Ashok Kumar Sonthalia S/o Duli Chand Sonthalia
R/o House No. 201, 1st floor, Vaishali Enclave,
Pitampura, New Delhi-110034

....COMPLAINANT

VERSUS

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

....RESPONDENT

Complaint no.:	2812 of 2023
Date of filing:	10.01.2024
Date of first hearing:	26.02.2024
Date of decision:	09.12.2024

Tara Devi Sonthalia deceased through her beneficiary
husband Sh. Ashok Kumar Sonthalia S/o Duli Chand Sonthalia
R/o House No. 201, 1st floor, Vaishali Enclave,
Pitampura, New Delhi-110034

....COMPLAINANT

VERSUS

TDI Infrastructure Limited,
Vandana Building, Upper Ground Floor
11, Tolstoy Marg, Connaught Place,

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 of Complaint no. 2811/2023	Details of Complaint no. 2812/2023
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-PKI-SNP-161-2019	Registered vide HRERA-PKI-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-05-0303	EH-05-0302
6.	Unit area	1390 sq. ft. (Super area)	1390 sq. ft. (Super area)
7.	Date of booking	02.09.2011	02.09.2011
8.	Date of builder buyer agreement executed.	24.09.2013	24.09.2013
9.	Due date of offer of possession (30 months)	24.03.2016	24.03.2016
10.	Possession clause in	Clause 28 ".....However, if the	Clause 28 ".....However, if the



	BBA	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."	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."
11.	Total sale consideration	₹ 30,40,823/-.	₹ 30,40,823/-.
12.	Amount paid by complainant	₹ 37,79,381/-	₹ 37,84,918/-
13.	Offer of possession	Not given.	Not given.
14.	Occupation certificate	Not obtained.	Not obtained.



B. FACTS OF THE COMPLAINT

4. Facts of this complaint are that complainant had booked a flat by making the payment of Rs 2,50,000/- on 11.10.2011 (cheque dated 02.09.2011, statement issued on 11.10.2011) as advance against present and future project for 1390 sq ft built up floor. Following which Builder Buyer Agreement (BBA) for Floor No. EII-05-0303 having an area 1390 sq ft in project "Espania Heights", NH-1, Kamaspur, Sonipat was executed between the parties on 24.09.2013. As per clause 28 of it, the respondent was supposed to deliver the possession of unit latest by 24.03.2016. Copy of agreement is annexed as Annexure P-1.
5. That complainant has paid total amount of Rs 37,79,381/- against total sale consideration of Rs 30,40,823/- till 2018. However, respondent has failed to offer possession of unit to the complainant till date.
6. That complainant visited the office of respondent on 12.09.2023 and received final statement of account for his unit. On that day, complainant was shocked to know 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. Further, the respondent had wrongly demanded vehicle car parking charges to the tune of Rs 1,75,000/-, club membership charges Rs 50,000/-, electrical and fire fighting charges of Rs 4,11,705/- and external developmental



charges of Rs 4,17,398/-. Further, the respondent had illegally charged VAT amounting to Rs 20,560/- from the complainant. 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.

7. That the respondent even after a lapse of 13 years from the date of original booking had failed to obtain the occupation certificate of the tower/project and further failed to offer possession of unit to the complainant. Complainant has invested his hard earned money with a view to purchase the said unit in question for residing therein and is being denied the use of his property. Respondent has shattered the dreams of owning a house of his own. Now, complainant prays for refund of paid money to the respondent. Hence the present complaint has been filed before this Hon'ble Authority.

C. RELIEF SOUGHT

8. Complainant in his complaint has sought following reliefs:
- i. The respondent be directed to refund amount of Rs 37,79,381/- (Rupees Thirty Seven Lakhs Seventy Nine Thousand Three Hundred and Eight one Only) paid by the complainant alongwith an interest as per HRERA Rule 15.
 - ii. 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:

9. 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, Sonapat, Haryana. That the said project has been duly registered with L.d. RERA Authority.
10. That the agreement was executed way back on 24.09.2013 which is much prior from the date when the RERA Act, 2016 came into existence. Moreover, the provisions of RERA Act are to be applied prospectively only. Therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act.
11. That complainant herein is an investor 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.
12. That respondent had vide letter dated 12.09.2016 applied for grant of occupation certificate before the Director, Town & Country Planning Department, Haryana. Copy of said letter is attached as Annexure R-2. Due to some unforeseen circumstances, the respondent had to apply again to the Director, Town and Country Planning for grant of



Occupation Certificate vide letter dated 17.02.2022. Copy of said letter is attached as Annexure R-4.

13. That the respondent has also paid a substantial amount of Rs 10,00,000/- requesting the Ld. DTCP to compound the offence of offering the possession without Occupation Certificate. Copy of said letter dated 22.02.2021 is annexed as Annexure R-3.
14. That the possession for fit-out was offered to the complainant on 08.06.2018 alongwith final statement of accounts requesting the complainant to take over the possession after clearing their outstanding dues but complainant had not come forward for the same. Copy of offer letter dated 08.06.2018 is annexed as Annexure R-5. That due to continuous default in making timely payment by the complainant towards the allotted unit, the respondent company vide its letter dated 20.11.2019 had issued a pre-cancellation letter requesting the complainant to clear their outstanding dues failing which the allotment will be cancelled. Copy of Pre-cancellation letter dated 20.11.2019 is annexed as Annexure R-7.
15. That despite pre-cancellation letter issued by the respondent to the complainant, the complainant still did not come forward to clear their outstanding dues. However, respondent in its goodwill did not terminate the registration of unit in question and allowed the complainant to continue with the project.



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

E. STATEMENT OF ACCOUNT FILED BY COMPLAINANT

Ld. Counsel for complainant had filed the statement of account in support of paid amount of Rs 37,79,381/- in the registry on 05.12.2024 wherein, details of paid amount alongwith respective dates are mentioned.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

17. During oral arguments learned counsel for the complainant insisted upon refund of paid amount of Rs 37,79,381/- with interest stating that possession has been delayed by the respondent for around 8 years and even as on today, the respondent is not in a position to give valid offer of possession, as occupation certificate has not been received till date. He further submitted that details of paid amount has 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 re-applied for occupation certificate in year 2022 but it has not been received yet.
18. 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 as Rs 37,92,409/- (inclusive of interest amount of Rs 13028/-) ,



whereas paid amount as stated in relief sought and complaint pleadings is Rs 37,79,381/-. L.d. Counsel for complainant was asked to clarify it at the time of hearing, he stated that final paid amount be taken as Rs 37,79,381/-.

G. ISSUES FOR ADJUDICATION

19. Whether the complainant (in both cases) is entitled to refund of amount deposited by him along with interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

20. 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 under:

(i) With regard to plea raised by the respondent that provisions of RERA Act, 2016 are applicable with prospective effect only and therefore same were not applicable as on 24.09.2013 when the complainant was allotted unit bearing No. EII-05-0303, Espania Heights, Sonipat, it is observed that issue regarding operation of RERA Act, 2016 whether retrospective or retroactive has already been decided by Hon'ble Supreme Court in its judgment dated 11.11.2021 passed in *Civil Appeal No. (s) 6745-6749 OF 2021 titled as Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others*. Relevant part is reproduced below for reference:-



“51. Thus, it is clear that the statute is not retrospective merely because it affects existing rights or its retrospection because a part of the requisites for its action is drawn from a time antecedent to its passing, at the same time, retroactive statute means a statute which creates a new obligation on transactions or considerations already passed or destroys or impairs vested rights.

52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term "converting and existing building or a part thereof into apartments" including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.

53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an



overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016.”

(ii) The respondent in its reply has contended that the complainant is a “speculative buyer” who have invested their 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 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 builder buyer agreement dated 24.09.2013, it is clear that complainant is an "allottee" of unit bearing no. EII-05-0303, 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) 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 2011 against which an amount of ₹ 37,79,381/- already stands paid to the respondent. Out of said paid amount, last payment of Rs 1,53,000/- was made to respondent on 03.08.2018 by allottee-complainant which implies that respondent is in receipt of total paid amount since year 2018 whereas fact remains that no valid offer of possession duly supported with occupation certificate has not been yet made to complainant.

(vi) Authority observes that builder buyer agreement was executed between the parties on 24.09.2013 and in terms of clause 28 of it, the respondent was under an obligation to deliver possession latest by 24.03.2016. Relevant fact herein is that respondent had already applied for occupation certificate in year 2022. Today, Id. Counsel for respondent at the time of hearing clarified that occupation certificate has not been received yet.

(vii) In present case, respondent failed to honour its contractual obligations of offering valid possession of the allotted unit duly supported with occupation certificate within stipulated time without any reasonable justification. Further, respondent has not committed any specific timeline even in its reply regarding delivery of valid offer of possession. Moreover, respondent vide letter dated 08.06.2018 had offered fit out possession of the unit to



complainant alongwith additional demand of Rs 7,52,177/-. But complainant did not pay any amount towards acceptance of said offer. In this regard, Authority observes that disputed offer of possession was not a legal offer in eyes of law for the reason that it was not supported with occupation certificate. So, complainant was not bound to accept it. In these circumstances, it is concluded that a valid offer of possession of unit has not been made till date to complainant. At present, unit in project in question is not complete and is not ready for usage. This status of project is duly supported by the fact that occupation certificate which stands applied in the year 2016/2022 by the respondent has not yet been received and respondent is not having reasonable justification for non-receipt of occupation certificate even after delay of 6-7 years. Complainant has unequivocally stated that they are interested in seeking refund of the paid amount along with interest on account of inordinate delay caused in delivery of possession.

(viii) Further, Hon'ble Supreme Court in the matter of "***Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others***" in Civil Appeal no. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per



terms agreed between them. Para 25 of this judgement is reproduced below:

“25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.



(ix) The project/unit in question did not get completed within the reasonable time period, nor any specific date for handing over of possession has been committed by the respondent. In these circumstances the complainant cannot be kept waiting endlessly for possession of the unit, therefore, Authority finds it to be fit case for allowing refund along with interest to the complainant.

(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;

21. 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%.

22. 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".

23. Thus, respondent will be liable to pay the interest to the complainant from the date when the amounts were paid till the actual date of realization of the amount. Accordingly, Authority directs the respondent to refund the paid amount of Rs 37,79,381/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, to the complainant, 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 deposit till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 11.10% till the date of this order as per detail given in the table below:



Complaint no. 2811/2023

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 09.12.2024
1.	2,50,000	11.10.2011	365616
2.	2,13,639	19.11.2011	309905
3.	2,31,800	17.01.2012	332091
4.	4,79,581	06.06.2012	666512
5.	1,16,938	13.08.2012	160100
6.	1,19,841.26	20.04.2013	154964
7.	1,15,000	09.10.2013	142688
8.	1,17,870.35	31.12.2013	143274
9.	1,19,489.74	27.01.2014	144262
10.	1,20,000	14.02.2014	144221
11.	1,20,000	28.03.2014	142688
12.	1,09,630.87	06.06.2014	128025
13.	2,35,426.07	01.10.2014	266549
14.	1,12,931.04	30.03.2015	121679
15.	3,55,000	08.10.2015	361770
16.	1,20,000	17.10.2015	121960
17.	1,75,588	28.01.2017	153412
18.	5,14,243	27.07.2018	364067
19.	1,52,402.67	03.08.2018	107572
20.	Total=37,79,381/-		Total=43,31,355 /-
21.	Total Payable to complainant	3779381+4331355+ =	81,10,736/-

It is pertinent to mention here that complainant had filed statement of account in which total paid amount is shown as Rs 37,92,409/- (inclusive of interest amount of Rs 13028/-) , whereas paid amount as stated in relief sought and complaint pleadings is Rs 37,79,381/-. Ld. Counsel for

complainant was asked to clarify it at the time of hearing, he stated that final paid amount be taken as Rs 37,79,381/-.

Complaint no. 2812/2023

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 09.12.2024
1.	2,50,000	13.10.2011	365464
2.	2,13,639	19.11.2011	309905
3.	2,31,800	18.01.2012	332020
4.	4,79,581	06.06.2012	666512
5.	1,40,000	12.10.2012	189120
6.	1,04,444.89	20.04.2013	135055
7.	1,15,000	09.10.2013	142688
8.	1,18,129.76	31.12.2013	143590
9.	1,14,854.24	27.01.2014	138665
10.	1,20,000	14.02.2014	144221
11.	1,20,000	28.03.2014	142688
12.	1,09,476	06.06.2014	127844
13.	2,35,110.83	01.10.2014	266192
14.	1,15,000	30.03.2015	123908
15.	3,60,000	08.10.2015	366866
16.	1,17,381.48	17.10.2015	119299
17.	1,76,277	28.01.2017	154014
18.	5,11,224	03.08.2018	360842
19.	1,53,000	09.01.2019	100595
20.	Total=37,84,918.2/-		Total= 43,29,488/-
21.	Total Payable to complainant	3784918.2+4329488 =	81,14,406.2/-

It is pertinent to mention here that complainant had filed statement of account in which total paid amount is shown as Rs 38,01,491/- (inclusive of interest amount of Rs 16,572.80/-), whereas paid amount as stated in relief sought and complaint pleadings is Rs 37,84,918.2/-. 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 37,84,918.2/-

I. DIRECTIONS OF THE AUTHORITY

24. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the RERA Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to refund the entire paid amount with interest to the respective complainants as calculated/mentioned in tables mentioned in para 23 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.

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


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]