



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2779 of 2022
Date of filing:	19.10.2022
Date of first hearing:	21.12.2022
Date of decision:	04.11.2024

Radhika Billa W/o Sh. Ashwani Kumar Billa
R/o A-3/69, First floor,
Paschim Vihar, New Delhi-110063

....COMPLAINANT

VERSUS

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

....RESPONDENT

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

Present: - Mr. Ojas Singh Sachdeva, Counsel for the complainant
 through VC.
 Mr. Shubhmit Hans, Counsel for the respondent through VC.

ORDER(NADIM AKHTAR – MEMBER)

1. Present complaint has been filed on 19.10.2022 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 and 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	TDI Mall, TDI City, Kundli , Sonipat
2.	Name of the promoter	TDI Infrastructure Ltd
3.	RERA registered/not registered	Not registered.
4.	DTCP License nos.	183-228 of 2004, 153-157 of 2004, 101-144 of 2005, 200-285 of 2002, 652-722 of 2006, 729-872 of 2006, 42-60 of 2005, 51 of 2010 and 177 of 2007.
	Licensed Area	927 acres
5.	Unit no.(Shop)	41, Upper ground floor
6.	Unit area	610.49 Sq. ft.



7.	Date of advance registration form executed with authorised broker-Pragati Estates	No date mentioned. Attached at page no. 15-17 of complaint file.
8.	Date of booking and amount	Rs 4,57,860/- paid on 13.11.2006
9.	Date of Builder Buyer Agreement	Not executed
10.	Due date of offer of possession	Not available.
11.	Possession clause in BBA	Not available.
12.	Total sale consideration of the shop	₹ 30,52,450/-
13.	Amount paid by the complainant	₹ 27,61,960 /-
14.	Offer of possession	13.05.2013 attached at page no. 30 of complaint.
15.	Last payment was made by complainant on	08.06.2010

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

3. Facts of the present complaint are that the complainant had booked a shop bearing no. 41, upper ground floor, measuring 610 sq. ft. in the respondent's project-TDI Mall, TDI City, Kundli, Sonipat, Haryana by paying booking amount of Rs 4,57,867.50/- on 13.11.2006. That for the purchase of the shop in the said project, complainant opted for the construction linked payment plan, as provided by respondent and accordingly, the payment was to be made in installments linked with the stage of construction as per the said plan.



4. That respondent while receiving the booking amount, represented and assured that the same terms and condition agreed at the time of booking shall be reduced into writing in the building buyer agreement to sell, to be executed between respondent and complainant. Complainant upon making the payment for the booking amount, honored each demand further raised by the respondent and made payments as demanded by the Respondent.
5. That after making the said payment against the booking amount, the complainant time and again made requests to the respondent to execute a builder buyer agreement with respect to the shop that had been allotted to her by the respondent but the respondent kept on delaying and avoiding the same on one or the other pretext. That till date, no builder buyer agreement has been executed against the said shop irrespective of the fact that 90% of the total consideration has been paid to the respondent against the said project/unit.
6. That thereafter complainant was made to make the payment as and when demanded by respondent, without even apprising him with the stage of construction at site. Further, respondent raised demands and received installments from the complainant despite not having reached the linked stage of construction at the relevant time. That the respondent has received an amount of Rs. 27,61,960/- from the complainant till date against the said allotment out of the total sale



consideration of Rs. 30,52,450/-. Payment receipts, demand letters alongwith statement of accounts are annexed as Annexure A-3, Annexure A-4 and Annexure A-5.

7. That possession of the shop was to be handed over within 24 months from the date of sanctioning of the building plans for the said complex. Upon visit of project in year 2010, complainant found that the respondent has not even commenced the work of project till then and even as on date there is no progress at the site of respondent.
8. That considering the inordinate delay in even commencing with the work at site, the complainant anticipated that respondent has no intention of completing the project on the time, or even at any time in near future. Considering the same, complainant visited the office of respondent in year 2012 and called for cancellation of unit and refund of paid amount.
9. That upon making a number of representations and visits to the office of the respondent and after running from pillar to post seeking refund along with interest of the amount paid by the complainant, the respondent paid no heed to the grievance of the complainant and for no good reason are utilizing the funds of the complainant for their personal gains and benefits causing wrongful loss to the complainant. That even today despite expiry of the 24 months from the date of signing of advance registration form, respondent have even failed to



complete the said project in time. From the aforesaid conduct, it is crystal clear that the intentions of respondent were malafide from the very beginning and respondent had no intention of completing the said project on time and handing over the allotted unit to the complainant.

10. That aggrieved from the unprofessional and careless attitude of the respondent, complainant approached the office of the respondent and sought cancellation of her booking and refund of the amount paid to respondent along with interest. Complainant also gave a detailed account of the amount due and payable by respondent on account of cancellation of booking and for refund to complainant to which the official of respondent assured a positive response upon taking instruction from higher authorities.
11. That the complainant is entitled to receive the amount of Rs. 27,61,960/- paid by the complainant against shop no. UGF-41 along with interest on the same @ 18% p.a. from the date of payment of each respective amount to till date, alongwith sum of Rs. 10,00,000/- as a consolidated amount conservatively quantified on account for mental torture and agony suffered by the complainant as well as the interest and other penalties paid by the complainant to the respondent "TDI INFRASTRUCTURE LTD" for the inordinate delay in handing over the possession. The complainant is also entitled to receive cost of



legal expenses along with future interest from the respondent till the realization of the same.

12. That the cause of action for filing the present complaint arose in favour of the complainant and against the respondent when the shop in question was booked on 13.11.2006, and thereafter the complainant made payments to the respondent as per the "construction linked plan". It further arose when the respondent blatantly ignored the requests of the complainant to execute a builder buyer agreement. It further arose in favour of complainant when the respondent failed to deliver timely possession. The cause of action finally arose on all occasions when due to inordinate delay in possession the complainant sought cancellation of booking of shop.

C. RELIEFS SOUGHT

13. Complainant in his complaint have sought following reliefs:
- i. For refund of sum of Rs. 27,61,960/- (Rupees Twenty Seven Lacs Sixty One Thousand Nine Hundred Sixty Only) paid against shop No. UGF-41 by the complainant (in installments) to the Respondent along with interest @ 18% from the date of payment of each respective amount/installment till date.
 - ii. A sum of Rs. 10,00,000/-(Rupees Ten Lacs Only) as a consolidated amount conservatively quantified on account for



damages for mental torture and agony suffered by the complainant.

- iii. Penalize the respondent / developer with sum equivalent to 10% of the estimated cost of the project for non registration of the said project.
- iv. For cost of legal expenses along with future interest from the Respondent on the amount claimed along with interest till the realization of the same.
- v. Any other relief which this Hon'ble court deems fit may also be granted in favor of the complainants and against the Respondent.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed reply on 26.05.2023 pleading therein as under:

14. That due to the reputation of the respondent company, complainant had voluntarily invested in the project of the respondent company namely-TDI Mall, TDI City, Kundli, Sonipat, Haryana. Part completion certificates for the said project-927 acres approx. with respect to the township, have already been received on 23.01.2008, 18.11.2013 and 22.09.2017.



15. That when the respondent company commenced the construction of the said project, the RERA Act, 2016 was not in existence. Therefore, the respondent company could not have contemplated any violations and penalties thereof, as per the provisions of the RERA Act, 2016. The Act penalizes the developers of the project much more severely than stipulated in the terms and conditions of the allotment of the said plot, signed and submitted by the complainant to the respondent company.
16. That the provisions of RERA Act are to be applied prospectively, therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act.
17. That complainant herein is an investor and have 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.
18. That the project has been completed way back and as such is a delivered project. Occupation certificate was received way back in year 2012, i.e., on 25.05.2012. Copy of occupation certificate is attached at Annexure R-5. Further, it has been submitted that the complainant has not come up clean hands and has concealed the material facts that possession has already been offered to complainant



on 14.05.2012 and 13.05.2013. It is the complainant who is not coming forward to perform its part of the obligation.

19. Present complaint is barred by limitation and is miserably hit by the principle of delay and laches, therefore, the same is not maintainable before Authority.
20. That complainant has already been offered possession at two occasions back in the year 2012 and 2013, therefore, no cause of action has occurred in favor of complainant to file the captioned complaint.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

21. During oral arguments learned counsel for the complainant insisted upon refund of paid amount with interest stating that respondent failed to deliver the possession within assured time as per advance booking form. Now, complainant does not want to continue with the project. Learned counsel for the respondent reiterated arguments as were submitted in written statement. He further stated that occupation certificate already stands received on 25.05.2012 and offer of possession was made on 14.05.2012 and 13.05.2013. But complainant did not come forward after the year 2012-2013 to take possession so refund at this belated stage should not be awarded to the complainant.



F. ISSUE FOR ADJUDICATION

22. Whether the possession offered to the complainant by respondent on 14.05.2012/13.05.2013 was a legally valid offer of possession or not?
23. Whether the complainant is entitled to relief of refund along with interest in terms of Section 18 of RERA Act of 2016?

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

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

(i) With regard to plea raised by the respondent that provisions of RERA Act,2016 are applicable with prospective effect only and therefore same were not applicable as on 13.11.2006 when the complainant had booked shop no. UGF-41,TDI Mall, TDI City, Kundli, 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 ongoing 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 “speculative buyer” who has invested her hard 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 and the rules and regulations framed thereunder. 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 advance registration form and receipts issued by respondent alongwith offer of possession dated 13.05.2013, it is clear that complainant is an “allottee” of shop bearing no. UGF-41, situated in the real estate project “TDI Mall,TDI, City, Kundli”, Sonipat. The concept/definition of investor is not provided or referred to in the RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there will be “promoter” and “allottee” and there cannot be a party having a status of an investor. Further, the definition of “allottee” as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as **M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. And Anr.** had also held that the concept of investors not defined or referred to in the Act. Thus, the contention of promoter that allottees being investor are not entitled to protection of this Act also stands rejected.

(iv) Respondent has also taken objection that complaint is grossly barred by limitation. In this regard Authority places reliance upon



the judgement of Apex court Civil Appeal no. 4367 of 2004 titled as **M.P Steel Corporation v/s Commissioner of Central Excise** where it has been held that Indian Limitation Act deals with applicability to courts and not tribunals. Further, RERA Act 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 a Court.

(v) Admittedly, complainant in this case had purchased the booking rights qua the shop in question vide execution of advance registration form (undated) executed with authorized broker-Pragati Estates of respondent in year 2006. Booking amount of Rs 4,57,860/-, which also find mention in 'Advance registration form' was paid by complainant on 13.11.2006. In total, complainant has paid an amount of Rs 27,61,960/-, out of said amount last payment of Rs 3,20,000/- was made by complainant on 08.06.2010. Payment of aforesaid amount has not been disputed by the respondent.

(vi) It is the stand of complainant that possession of the shop was to be delivered by respondent within 24 months from booking.



Also, that the complainant time and again made requests to respondent to execute builder buyer agreement but respondent kept it delaying on one pretext or another. It is pertinent to mention here that complainant has not attached any document in support of claim that he made repeated requests to respondent for execution of agreement. Neither any agreement nor any allotment letter has been executed between the parties. No other document has been attached by complainant in support of fact that possession was supposed to be delivered within 24 months of booking. In absence of specific clause of deemed date of possession in allotment letter, 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 shop was booked vide receipt dated 13.11.2006 by the respondent, accordingly, taking a period of 3 years from the date of receipt of booking amount, i.e, 13.11.2006 as a reasonable time to complete development works in the project and handover



possession to the allottee, the deemed date of possession comes to 13.11.2009.

(vii) As per aforesaid observations, possession was supposed to be delivered upto 13.11.2009. However, respondent had issued offer of possession on 14.05.2012/ 13.05.2013 after obtaining of occupation certificate on 25.05.2012. Respondent in its reply has attached letter of offer of possession which was first issued on 14.05.2012 and then in shape of reminder on 13.05.2013. Complainant in its complaint has attached both these letters of possession 13.05.2013. No mention of any offer has been made by complainant in complaint pleadings. For the sake of clarity of facts, offer of possession dated 13.05.2013 is taken as the final offer of possession for the reason that same is admitted by both the parties and it was an intimation issued to complainant after issuance of occupation certificate on 25.05.2012. It is the stand of respondent that complainant has not come forward to accept said possession till date. Complainant neither in complaint nor at the time of arguments failed to provide the reason for not accepting said offer of possession except the issue that said offer of possession was made by respondent after expiry of 24 months of booking (oral submission). It is relevant to state here that complainant in its pleadings stated that he visited office of respondent and requested



for cancellation of unit and sought refund of amount in year 2012. However, no document substantiating this claim has been placed on record by complainant. Plea of complainant that he pressed for refund in the year 2012 or even after issuance of offer of possession dated 13.05.2013 is not established by any document on record. Facts emerging out of aforesaid position are that the offer of possession dated 13.05.2013 duly supported with occupation certificate dated 25.05.2012 was a legally valid offer of possession nonetheless complainant neither accepted nor agitated the said offer of possession till date. Since, complainant did not conveyed his intention to withdraw from the project after paying an amount of Rs 27,61,960/- upto year 2010 to respondent, which shows that complainant wished to continue with the project. Respondent had completed the unit and offered the possession to complainant on 13.05.2013 but complainant rather than taking the possession had filed a case before Authority on 19.10.2022 for withdrawing out of the project. Respondent had prayed that at such later stage, the complainant cannot be allowed to withdraw from the project. It is established that the complainant was issued a valid/legal offer of possession on 13.05.2013 and thereafter, he was silent for the years 2013-2022, i.e. for good number of 9 years and chosen to file this complaint seeking refund of paid amount stating that the



respondent failed to deliver possession timely and also failed to refund paid amount after making cancellation of the unit. Cause of action, if any arose to complainant was at the time when offer of possession dated 13.05.2013 was issued by respondent. But complainant remained silent over his rights to agitate upon same till year 2022. In support, reliance is placed upon judgement dated 18.04.2024 passed by Hon'ble Apex Court in Civil Appeal nos. 5027 of 2024 (@ Special leave Petition (civil) no. 30152 of 2018) Mrinmoy Maity versus Chhanda Koley and others. Relevant part of the judgement is reproduced below for reference:-

"9. Having heard rival contentions raised and on perusal of the facts obtained in the present case, we are of the considered view that writ petitioner ought to have been non-suited or in other words writ petition ought to have been dismissed on the ground of delay and laches itself. An applicant who approaches the court belatedly or in other words sleeps over his rights for a considerable period of time, wakes up from his deep slumber ought not to be granted the extraordinary relief by the writ courts. This Court time and again has held that delay defeats equity. Delay or laches is one of the factors which should be born in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. In a given case, the High Court may refuse to invoke its extraordinary powers if laxity on the part of the applicant to assert his right has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action.

(viii) In order to adjudicate the case of the complainant, Authority during hearing asked specific question to the complainant as to



what communications were made by complainant after passing of deemed date of possession, i.e, 13.11.2009 or offer of possession dated 13.05.2013 till filing of the captioned complaint, i.e, on 19.10.2022. Further, complainant was also directed to refer to documents which proves that at the time of offer of possession there was no development at the project site and demands raised by respondent were not in consonance to construction taking place at site and terms of BBA.

To, this complainant stated that he has no written communications to this effect although he had visited site many times and found that project was not complete and development work were going on.

(ix) Hence, prima facie it appears that the offer made by respondent was a valid legal offer of possession. However, complainant had not accepted the same for reasons/objections discussed in aforesaid paragraphs of this order. With regard to objections, so raised, in said para by complainant to offer of possession made by respondent, Authority observes that complainant has failed to show how the demands raised by respondent were not in consonance to construction. Furthermore, complainant has also not placed even a single document which shows that after passing due date of possession or even after



receiving offer of possession in the year 2013, complainant has contacted the respondent and conveyed his intention to withdraw from the project on account of inordinate delay.

(x) In above situation, it is important to refer to Section 19(10) Of RERA Act, 2016, which state that complainant is also under an obligation to accept the offer of possession within two months. In case allottee does not want to continue with the project he may exercise his unqualified right to seek refund. However, the unqualified right also has to be exercised and that too within reasonable time by the allottee. It cannot be the case that when respondent after investing the received amount from complainant had duly completed the unit and offered possession of unit, then complainant after waiting for 9-10 years raises objection to offer and construction work of unit and prays for refund of paid amount. Further, Section 18(1) clearly provides that the promoter shall be liable on demand to the allottee, in case the allottees wishes to withdraw from the project, to return the amount received by him in respect of that apartment, plot or building, as the case may be, with interest. Meaning, thereby the complainant had to demand refund on lapse of deemed date of possession. In case, where allottee demands the refund, it means allottee intends to withdraw from the project.



(xi) However, in the present case, complainant even did not demanded refund when the unit was offered to her. Complainant in present case did not refused the offer of possession nor did demanded for refund of its amount within the period as provided under Section 19(10). Meaning thereby complainant choose to continue with the project and hence, no case is made out for refund of paid amount. Therefore, at this stage complainant-allottee cannot be allowed refund and prayer of complainant for passing order for refund is declined. However, this is without prejudice to other rights of allottee including possession along with delay interest and compensation as per provisions of RERA Act, 2016.

(xii) 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.

(xiii) In respect of relief clause 3 mentioned in para 13 of this order, it is clarified that said relief has neither argued nor pressed upon by the complainant's counsel at time of hearing.

25. In view of aforesaid observations, present complaint stands **Disposed of**. File be consigned to the record room after uploading of the order on the website of the Authority.


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]