



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	TDI City, Kundli , Sonipat
2.	Name of the promoter	TDI Infrastructure Ltd
3.	RERA registered/not registered	Not registered.
4.	DTCP License no.	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.(residential plot)	E-120A



6.	Unit area	250 Sq. yards
7.	Date of allotment	25.04.2006
8.	Date of builder buyer agreement	Not executed.
9.	Due date of offer of possession	Not available.
10.	Possession clause in BBA	Not available.
11.	Total sale consideration (Annexure C-7 at page no. 38 of complaint)	₹ 19,75,750/-
12.	Amount paid by complainant	₹ 16,03,750/-
13.	Offer of possession	Not offered till date.

### B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

3. Facts of the present complaint are that the original allottee Sh. Vikas Jain had booked a plot in the future project of the respondent by paying Rs 5,87,500/- on 25.02.2006. In support, booking receipt is attached as Annexure C-4. Following which plot no. B-120A having an area of 250 sq yards in the project 'TDI City, Kundli, Sonipat' was allotted in favour of complainant vide allotment letter dated 25.04.2006. No specific date has been mentioned pertaining to transfer of the allotment rights of plot from original allottee to present complainant.





4. That thereafter, complainant had paid the amount of Rs. 16,03,750/- against the total sale consideration of Rs 19,75,750/-. Copy of revised statement of account has been annexed as Annexure C-7. That after receiving substantial amount from the complainant against the said residential plot in question and after continuous persistence and follow up by the complainant, respondent miserably failed to even execute the Plot Buyer Agreement with the complainant. Conduct of non-delivery of plot in question by the respondent after lapse of 17 years suggest that there is absolutely no intent of respondent to fulfill contractual obligations.
5. That since there were no efforts by the respondent to handover actual physical possession of the plot even after lapse of more than 17 years, complainant was left with no alternative option but to approach this Hon'ble Authority.

### **C. RELIEF SOUGHT**

6. Complainant in her present complaint have sought following reliefs:
- i. Direct the respondent to refund amount of Rs 16,03,750/- paid by the complainant to respondent towards residential plot no. B-120-A measuring 250 sq. yds in TDI City, Kundli, Haryana since October 2008.

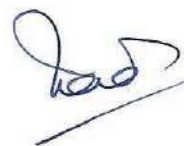


- ii. To direct the respondent to pay Rs 10,00,000/- as part of damages to the complainant on account of mental agony, torture and harassment.
- iii. To direct the respondent to pay Rs 10,00,000/- as part of damages to the complainant as part of deficiency of service on your part.
- iv. To direct the respondent to refund all legal cost of Rs 1,00,000/- incurred by complainant including cost related to this notice.
- v. Grant any other relief as this Hon'ble Forum may deem fit in the peculiar facts and circumstances of the present complaint.

#### **D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**


Learned counsel for the respondent filed a detailed reply on 19.07.2024 pleading therein:

7. That due to the reputation of the respondent company, complainant had voluntarily invested in the project of the respondent company namely-TDI City, Residential plots at 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.
8. That when the respondent company commenced the construction of the said project, 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.

9. That the project was completed way back before the RERA Act came into force and even the possession was offered by the respondent before the enactment of RERA Act, the complainants cannot approach I.d. Authority for adjudication of her grievances. The said project does not fall under the ambit of RERA. 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.
10. 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.
11. That vide letter dated 15.11.2017 respondent had already offered an alternative plot to the complainant for the reason that actual plot booked by complainant could not be completed/constructed by the respondent due to some unforeseen circumstances. It is the complainant who is not coming forward to take over the same. Copy of letter is annexed as Annexure R-5.





12. That the present complaint is barred by Limitation as last payment was made by the complainant in year 2009.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT**

13. During oral arguments learned counsel for the complainant insisted upon refund of paid amount with interest stating that possession has been delayed by the respondent for around 17 years. He admitted that offer of alternative unit was made by respondent on 15.11.2017, however said offer was not acceptable to complainant. Complainant is not interested in alternate plot and is seeking refund only. He requested that relief of refund amount along with interest be awarded. Learned counsel for the respondent reiterated arguments as were submitted in written statement. He further stated that alternate plots are not available with respondent for allotment to the complainant.

**F. ISSUES FOR ADJUDICATION**

14. Whether the complainant is entitled to refund of amount deposited by her alongwith interest in terms of Section 18 of Act of 2016?

**G. OBSERVATIONS AND DECISION OF THE AUTHORITY**

15. 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 were not applicable as on 25.04.2006 when the complainant was allotted plot no. B-120A, 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 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 “speculative buyer” who has invested 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 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 allotment letter dated 25.04.2006, it is clear that complainant is an "allottee" as plot bearing no. E-120A in the real estate project "TDI, City, Kundli", Sonipat was allotted to her by the respondent promoter. 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 is not defined or referred to in the Act. Thus, the contention of promoter that allottee being investor is 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) Admittedly, complainant in this case had purchased the booking rights qua the plot in question in the project of the respondent in the year 2006 for a total sale consideration of ₹ 19,75,750/- against which an amount of ₹ 16,03,750/- has been paid by the complainant. Out of said paid amount, last payment of Rs 5,16,250/- was made to respondent on 26.09.2008 by the complainant which implies that respondent is in receipt of total paid amount since year 2008, whereas fact remains that no offer of possession of the booked plot has been made till date even after delay of 17 years from receipt of paid amount.

(vi) In the written statement submitted by the respondent, it has been admitted that due to unforeseen circumstances, possession of the plot booked by the complainant could not be delivered and therefore, respondent had given an option to the complainant to take possession of an alternative unit in the same project which was ready for delivery of possession. However, as stated by the complainant, in said letter respondent had failed to mention any specifications in regard to the alternative plot in question thus raising doubts in the mind of complainant in regard to the genuineness of the offer and thus complainant chose not to accept to the offer of alternate plot.



(vii) Authority observes that the plot in question was booked in the year 2006 by the original allottee. Further, allotment letter dated 25.04.2006 was issued in favour of complainant. It is pertinent to mention here that complainant has not specified any date of endorsement or agreement to sell on which she purchased the unit from original allottee. So, date of allotment letter is taken as date of purchase/endorsement of unit by complainant. Fact herein is that no builder buyer agreement got executed between the complainant/original allottee and respondent. In absence of execution of builder buyer agreement and no 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 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, allotment letter was issued on 25.04.2006 by the respondent, accordingly, taking a period of 3 years from the date of allotment, i.e. 25.04.2006 as a reasonable time to complete development works in



the project and handover possession to the allottee-complainant, the deemed date of possession comes to **25.04.2009**. As a matter of fact, the complainant has stepped into shoes of original allottee before the deemed date of possession.

(viii) In present situation, respondent failed to honour its obligation pertaining to delivery of possession of plot without any reasonable justification. Thereafter, vide letter annexed as Annexure R-5 to reply, respondent apprised the complainant that due to some unforeseen circumstances possession of the booked plot could not be offered without explaining as to what the circumstances had been. Although respondent offered the complainant with an option for an alternative plot, the same could not be considered a genuine offer since respondent failed to provide any details of the alternative plot available for possession and the proper adjustment of the already paid amount along with the interest for delay caused in offering possession. Complainant could not have accepted such a deficient proposition from the respondent considering the intentional default on the part of respondent towards originally booked plot. Complainant has unequivocally stated in her complaint that she is interested in seeking refund of the paid amount along with interest on account of inordinate delay caused in delivery of possession.





(ix) 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.

(x) This project did not get completed within the time stipulated as discussed above in para (vii) and possession of the booked plot is not possible due to some unforeseen circumstances as stated by respondent in his written statement. Possession of alternative unit is not possible as there is alternate plot available with respondent nor the offer of alternate plot is acceptable to complainant. In these circumstances, Authority finds it to be fit case for allowing refund along with interest in favor of complainant.

(xi) 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;



(xii) 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. 27.01.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

(xiii) 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".*

16. Thus, respondent will be liable to pay the complainant interest from the dates when the amounts were paid till the actual realization of the amount. Authority directs the respondent to refund the paid amount of Rs 16,03,750/- along with interest 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 amounts were paid till the actual realization of the amount to the complainant. Authority has got calculated the total amount along with interest calculated at the rate of





11.10% till the date of this order, total amount works out to Rs 32,01,600/- as per detail given in the table below:

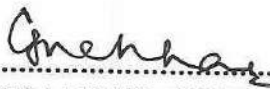
Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 27.01.2025
1.	5,87,500/-	25.02.2006	12,34,928/-
2.	2,50,000/-	15.07.2006	5,14,858/-
3.	2,50,000/-	15.07.2006	5,14,858/-
4.	5,16,250/-	26.09.2008	9,36,956/-
5.	Total=16,03,750/-		Total= 32,01,600/-
6.	Total Payable to complainant	1603750 + 3201600=	48,05,350/-

17. The complainant is seeking compensation on account of mental agony and cost of litigation. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "M/s Newtech Promoters and Developers 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 free to approach the Adjudicating Officer for seeking the relief of compensation and litigation expenses.



## H. DIRECTIONS OF THE AUTHORITY

18. 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(I) of the Act of 2016:
- (i) Respondent is directed to refund the entire paid amount of ₹ 16,03,750/- with interest of ₹32,01,600/- to the complainant. 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 by this Authority in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which, legal consequences would follow.
19. **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]