



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

Complaint no.:	1827 of 2023
Date of filing:	22.08.2023
First date of hearing:	26.09.2023
Date of decision:	13.05.2025

1. Indu Bhushan,  
D/o Sh. Bharat Bhushan Bhagat  
2. Rakesh Singh  
S/o Sh. Baldev Singh  
R/o 386, Ground Floor, IP colony  
Sector- 30-33, Faridabad,  
Haryana, 121003

.....COMPLAINANT

Versus

Iris Plaza Pvt. Ltd.  
Terra Group, Plot no. 190.  
Ground floor, Udyog Vihar.  
Phase-4, Near Airtel Building  
NH-8, Gurugram Haryana,

.....RESPONDENT

*Rakesh*

**CORAM: Dr. Geeta Rathee Singh**  
**Chander Shekhar**

**Member**  
**Member**

**Present:** - Adv. Akshat Mittal, Counsel for the Complainant.  
Adv. Neeraj Goel, Counsel for the respondent.

**ORDER**

1. Present complaint is filed by the complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, 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.

**2. UNIT AND PROJECT RELATED DETAILS**

S.No.	Particulars	Details
1.	Name of the project	"Terra Lavinium", Sector 75, Faridabad nearby Delhi-Agra-Highway.
2.	RERA registered/not registered	HRERA-PKL-FBD-8-2018 dated 21.05.2018
3.	DTCP License no.	79 of 2017





4.	Licensed area	5.925 acres
5.	Unit no.	F-1005, Tower F, 10 <sup>th</sup> floor
6.	Unit area	640.684 sq. ft.
7.	Date of allotment	04.01.2020
8.	Date of builder buyer agreement	19.06.2020
9.	Due date of offer of possession (48 months)	<b>17.02.2022</b> as per clause 3.1 of the BBA it was stated that the developer proposes to offer possession of the said apartment to the allottee within a period of 4 years (48 Months) from the date of approval of building plans and or grant of environmental clearance, (herein after referred to as "Commencement Date", whichever is later.
10.	Total sale consideration	₹26,12,736/-
11.	Amount paid by complainants	₹27,49,909/-
12.	Occupation Certificate	Not received

3. Facts of complaint are that complainant had booked a flat in the project namely 'Terra Lavinium', Sector 75, Faridabad near Delhi-Agra-Highway of the respondent. Complainant was allotted unit bearing no. F-1005 at Tower F, 10<sup>th</sup> floor having area 640.684 sq. ft on 04.01.2020. Thereafter, builder buyer agreement for the said unit was executed between the parties on 19.06.2020. As per clause 3.1, possession was



supposed to be delivered upto 17.02.2022. Complainant had paid an amount of Rs 27,49,909/- against the total sale consideration of Rs 26,12,736/-.

4. That it is important to mention that the respondents have clearly violated the provisions as enumerated under Section 13 of The Act by demanding and accepting a sum of more than 10% of the total cost of the apartment in question without first entering into a proper written agreement and registration of the same.
5. That the builder buyer's agreement executed between the parties qua the unit in question i.e. unit F-1005, Tower F, 10th Floor, was executed on 19.06.2020, and it was assured to the complainant that the possession of the unit in question would be handed over as soon as possible and latest within 4 years of the date of approval of building plans or grant of environment clearance. Environment clearance was granted to the respondent on 13.02.2018, and the building plans were approved on 18.02.2018 (as also mentioned in the agreement itself in Clause C). As such, the due date of possession in the instant matter would be 4 years w.e.f. 18.02.2018, i.e. 17.02.2022, which has long been elapsed, and the project in question is massively delayed.
6. That as such, it is submitted that the respondent have failed to deliver possession of the unit in question even after almost 5 years of the booking of the initial unit and after more than 43 months till date w.e.f the





allotment dated 04.01.2020 qua the unit in question, and more than 1 and a half years of the due date of possession (17.02.2022), and the delay is continuing. It is submitted that the complainants have shown utmost patience and have been diligently waiting in hope of a quick possession an resolution of the grievances, but all in vain.

7. That it is extremely pertinent to mention that as per the certificate by the architect dated 04.04.2023 only 63.17% of civil and infrastructure work is completed.
8. That it is most humbly submitted that the complainant would have all the rights to withdraw from the project and to seek refund of the amount paid qua the unit in question, in accordance with the provisions of the Real Estate (Regulation and development) Act 2016.
9. That however, it is extremely pertinent to mention that as the respondent company became aware of the fact that the complainant is taking legal recourse, the respondent very cunningly issued a letter dated 03.01.2023 titled 'Offer of Possession-Proforma Invoice', having subject 'Offer of Possession for fit out. It is submitted that the said letter was cunningly issued without completion of the unit in question and without obtaining the occupation certificate qua the unit in question. Said letter of offer of possession also contain exorbitant payment demands under illegal heads such as external electrification charges, bulk supply electricity charges, fire fighting charges etc.



**RELIEFS SOUGHT**

10. Complainants in their complaint have sought following reliefs:

(i) To direct the respondent to refund the entire deposited amount of Rs. 27,49,909/- which has been deposited against the property in question so booked by the complainants along with interest as prescribed, on the amounts from the respective dates of deposit till its actual realization/ refund according to Section 18(1) Real Estate (Regulation and Development) Act 2016 read with Rule 15 & 16 of Haryana Real Estate (Regulation & Development) Rules.

(ii) To direct the respondent to pay an adequate compensatory interest on the entire deposited amount of Rs. 27,49,909/- for delayed offer of possession, as deemed fit by the authority.

(iii) To direct the respondent to pay a sum of Rs. 15,00,000/- on account of grievance and frustration caused to the complainants by the miserable attitude of the respondent and deficiency in service and for causing mental agony cause to complainants along with interest from the date of filing the present complaints till its realization.

(iv) The registration granted to the Respondent for the project namely, "Terra Lavinium" being situated in Revenue Estate of Village Badoli, Sector 75, Faridabad, Haryana, under RERA read with relevant Rules





may kindly be revoked under Section 7 of the RERA for violating the provisions of The Act.

(v) Penalty under section 61 may kindly be imposed upon the respondent for violation of the provisions of the Act, 2016.

(vi) The complainant may be allowed with costs and litigation expenses of Rs. 1,50,000/-.

(vii) Any other relief/direction which the Hon'ble Authority deems fit and appropriate in the facts & circumstances of the instant complaint.

**REPLY ON BEHALF OF RESPONDENT**

Learned counsel for the respondent filed detailed reply on 06.09.2024 pleading therein:

11. That, License bearing No. 79/2017 dated 04.10.2017 was granted to respondent by DTCP for setting up of an Affordable group housing colony for an area measuring 5.925 acres falling in the, Sector-75, Faridabad, Haryana.
12. That it is important to mention herein that the present project is being developed under the Affordable Housing Policy, 2013. It is pertinent to mention herein that as per clause 1 (iv) of the Affordable Housing Policy, 2013 the projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental

*[Handwritten Signature]*

clearance, whichever is later. On 03.04.2018, the building plan for the given project was approved by the competent authority and thus in view of clause 1(iv) of the policy the completion date of the project would be 04.04.2022. Therefore, the present complaint is premature and liable to be dismissed.

13. It is further submitted that the complainant has booked the unit no. F-1005 on 10<sup>th</sup> floor of Terra Lavinium Residency Project and has agreed to pay Rs. 26,12,736/- as basic cost for the unit booked calculated on super area basis and further agreed to pay other charges as per policy of the Respondents as applicable to the building like EDC, IDC, Sinking Fund, Labour Cess, fire-fighting, external electrification, allied Charges and other dues and taxes. The complainant has signed and agreed to abide by the builder buyer agreement. The complainant has opted for fixed payment plan and had not made any payment on due time. The payments had been delayed by 1 year.
14. That the completion dates of project namely "Terra Lavinium" affordable residential project is 03.10.2022 as per its registration no. HRERA-FBD-8-2018 however this Hon'ble Authority granted additional 9 months' for covid period to all the developers to complete the development work therefore completion date is 02/06/2023 as per the Act.
15. That more so the bans to construction activity imposed by the NGT from time to time and lastly in the months of October - November, 2019 have





further lead to delay in completion of the project which are per se beyond the control of respondent.

16. That further it is stated that respondent has already applied for occupation certificate to Department of Town and country Planning, Haryana. Further, respondent has not offered possession and has rather offered fit outs possession which is different from offer of possession. It is pertinent to note here that since the possession is not offered to the complainant before getting occupation certificate, Hence there is no cause or occasion to file the present complaint. That apparently, the complaint filed by the complainant is abuse and misused of the Process and is liable to be dismissed.

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

17. Ld. Counsel for the complainant submitted that in the present case complainant was allotted flat no. F-1005, 10<sup>th</sup> floor, Tower F in the respondent's project "Terra Lavinium" on 04.01.2020. Builder buyer agreement was executed between the parties on 19.06.2020. As per clause 3.1 of the builder buyer agreement deemed date of possession was 17.02.2022. Complainant has paid an amount of Rs. 27,49,909/- out of the total sales consideration of Rs. 26,12,736/-. Receipts of the paid amount has been annexed as Annexure C/3 colly from page 30 to 38.



Respondent has failed to give possession of the booked unit till date so now the complainant is pressing for relief of refund along with interest.

Ld. counsel for the respondent submitted that deemed date of possession in the captioned complaint is 4 years from the date of approval of building plans. The construction pace of the project got affected due to spread of covid-19 in the year 2020. Further, respondent has completed the project and has also applied for occupation certificate in the competent Authority but the same has not been received till date.

**ISSUE FOR ADJUDICATION**

18. Whether the complainants in the present complaint are entitled to refund of the amount deposited by them along with interest in terms of Section 18 of RERA Act of 2016?

**OBSERVATIONS AND DECISION OF AUTHORITY**

19. The Authority has gone through documents on file and heard oral arguments of Id. Counsel for both parties. In light of the background of the matter, Authority observes that complainants booked unit in the project "Terra Lavinum" located at Sector 75, Faridabad being developed by the respondent/promoter namely; Iris Plaza Pvt. Ltd and complainants were allotted unit no. F-1005, 10<sup>th</sup> floor, in the said project at Sector-75, Faridabad, Haryana. The builder buyer agreement was executed between the parties on 19.06.2020. Complainants had paid a sum of ₹27,49,909-

*[Signature]*



against the total sale consideration price of ₹ 26,12,736 /- .As per clause 3.1 of the agreement, respondent/developer was under an obligation to hand over the possession to the complainant within 48 months from the date of approval of building plans or grant of environment clearance whichever is later. Respondent admittedly received approval of building plans on 03.04.2018, meaning thereby that as per possession clause, a period of 4 years is to be taken from 03.04.2018 and therefore, date of handing over of possession comes to 04.04.2022. However, respondent in its reply has taken a different stand with respect to deemed date of possession. Respondent has averred that the completion dates of project namely "Terra Lavinium" as per registration certificate is 03.10.2022. Further, Authority had granted additional 9 months' for covid period to all the developers to complete the development work therefore completion date works out to 02.06.2023.

20. Authority observes that a period of 4 years is a reasonable time to complete development works in the project and handover possession to the allottee, however, respondent failed to hand over possession to the complainants. After paying their hand earned money, legitimate expectations of the complainant(s) would be that possession of the unit will be delivered within a reasonable period of time. However, respondent has failed to fulfill its obligations as promised to the complainant(s).



21. Respondent in his reply has submitted that the completion date of the project is now 03.10.2022 as per registration certificate 02.06.2023 after adding 9 months extension of covid period. In this regard, Authority is of the view that date of completion in the registration certificate is declared unilaterally by the builder while registering the project before the Authority. The time period for handing over the possession to the allottee is committed by the builder as per the relevant clause of builder buyer's agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly which in the present case is 4 years (03.04.2018) from the date of approval of building plan. The due date for possession as per the agreement remains unchanged and the promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the builder buyer's agreement and is liable for the delayed possession charges as provided in proviso to section 18(1) of the Real Estate (Regulation and Development) Act, 2016. Further respondent has taken the payments from the complainant during the Covid hardship period. Therefore, Authority observes that when the respondents have received the payments between the extension period i.e, between 25.03.2020-24.09.2020 and in the period ranging from 01.04.2021 – 30.06.2021 then respondent cannot be allowed to claim it as force majeure period.





22. Nevertheless it is an admitted fact that respondent has not received the occupation certificate and valid offer of possession has not been made to the complainant till date. In such circumstances, complainant cannot be forced to wait endlessly for possession of his booked unit.
23. 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*

*Ratna*

*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. The complainants wishes to withdraw from the project of the respondent, therefore, Authority finds it fit cases for allowing refund in favour of complainant.

24. From the above discussions, it is amply proved on record that the respondent has not fulfilled its obligations cast upon them under RERA Act, 2016 and the complainant(s) under section 18 of the Real Estate (Regulation and Development) Act, 2016 are entitled for refund of deposited amount along with interest at the prescribed rate from the date the amounts were paid till the actual realization of the amount.
25. 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;*

26. 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".*

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., 13.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

27. Accordingly, Authority allows refund of paid amount along with interest 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. Authority has



got calculated the total amounts along with interest as per detail given in the table below: Authority has got calculated the total amounts along with interest and monthly interest as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till date of order in ₹
1.	3,42,922/-	6/21/2019	2,16,074/-
2.	3,42,922/-	1/21/2020	2,02,315/-
3.	3,92,184/-	9/9/2018	96,795/-
4.	3,29,858/-	1/25/2019	1,27,884/-
5.	3,42,922/-	7/3/2020	1,85,213/-
6.	1,30,500/-	6/30/2021	1,47,460/-
7.	1,82,755/-	6/21/2019	2,16,074/-
8.	3,42,924/-	1/21/2020	2,02,315/-
9.	3,42,922/-	9/9/2018	96,795/-
	27,49,909/-		15,31,461/-

28. Further, the complainant is seeking compensation on account of mental agony, harassment caused to the complainants 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

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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 complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

29. Relief no. (iv) and (v) are neither part of the pleadings nor pressed by Id. Counsel for complainant, thus not granted.

**DIRECTIONS OF THE AUTHORITY**

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

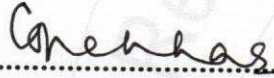
- (i) Respondent is directed to refund the amount to the complainants as specified in the table provided in para 27 of this order. It is further clarified that respondent will remain

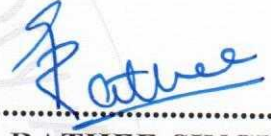


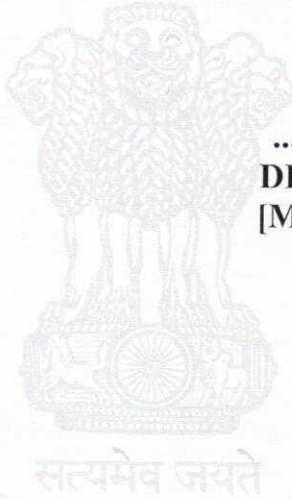
liable to pay the interest to the complainants till the actual realization of the amount.

- (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 be initiated against the respondent.

**Disposed off.** Both files be consigned to the record room after uploading of the orders on the website of the Authority.

  
CHANDER SHEKHAR  
[MEMBER]

  
DR. GEETA RATHEE SINGH  
[MEMBER]



Haryana Real Estate Regulatory Authority  
Panchkula