



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>495 of 2022</b>
<b>Date of filing:</b>	<b>28.03.2022</b>
<b>Date of first hearing:</b>	<b>11.05.2022</b>
<b>Date of decision:</b>	<b>10.02.2025</b>

M/s Pixel Impex Pvt Ltd through its Director  
Pradeep Kumar Agrawal, having its office at  
2H, Judges Court Road,  
Kolkata-27

....COMPLAINANT

VERSUS

M/s TDI Infrastructure Limited,  
through its Managing Director.  
15 Building Tolstoy Marg, Connaught Place,  
New Delhi- 110001

....RESPONDENT

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

**Present: -**                      Mr. Rajiv Kataria, Counsel for the Complainant through  
                                         VC.  
                                         Mr. Shubhnit Hans, Counsel for the respondent through  
                                         VC.

**ORDER (NADIM AKHTAR - MEMBER)**

1. Present complaint has been filed on 28.03.2022 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 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, Commercial Plots, Kundli, Sonipat
2.	Name of the promoter	TDI Infrastructure Ltd
3.	RERA registered/not registered	Un-Registered.
4.	DTCP License no.	License no.- 183-228 of 2004, 153-157 of 2004, 101-144 of 2005, 42-60 of 2005, 200-285 of 2005, 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. (Commercial Plot)	I.C-2/42
6.	Unit area	204 sq. yds.
7.	Date of booking by original allottee	17.01.2007
8.	Date of transfer in favor of complainant	08.05.2009
9.	Date of Allotment	28.07.2008
10.	Date of Builder Buyer agreement	Not executed.
11.	Due date of offer of possession	Not available.
12.	Possession clause in BBA	Not available.
13.	Total sale consideration	₹ 55,78,176/-
14.	Amount paid by complainant	₹ 50,95,716/-
15.	Offer of possession	19.04.2017
16.	Occupation/Completion Certificate	18.11.2013

## B. FACTS OF THE COMPLAINT

3. Facts of the present complaint are that the original allottee named Sh. Puneet Mehra had booked a commercial plot in the project of the respondent, namely; TDI City situated at Kundli, Sonipat by making payment of ₹1,00,000/- on 17.01.2007. Copy of receipt dated 17.01.2007 is attached as Annexure C-6. Thereafter, allotment rights were purchased by the second allottee namely Sh. Jasbir Singh Chadha in the year 2007 (no date in specific has been mentioned for said





purchase, second payment receipt dated 26.05.2007 at page 24 of complaint issued in favor of Jasbir Singh Chadha implies that transaction took place in May,2007). Following which allotment of commercial plot bearing no. LC-2/42 having an area of 204 sq. yds was issued by the respondent against the booking of unit. Then, the present complainant bought allotment rights of unit in question from the second allottee on 08.05.2009. Copy of allotment letter wherein date of transfer has been duly specified is annexed as Annexure C-3.

4. Complainant had paid an amount of ₹50,95,716/- against total sale consideration of ₹ 55,78,176/- but respondent has failed to handover possession of the unit.
5. That the respondent inspite of receiving money since 2007-2009 neither handed over the possession nor got Builder Buyer Agreement (BBA) executed till date. Respondent has misappropriated the fund which was paid to him against developed plot but till date no development has taken place at the site. Hence, it is a clear case of cheating by the respondent.
6. That complainant approached police at Barakhamba Road, New Delhi but police never helped the complainant and refused to register any case against the respondent, since police was hand in glove with respondent therefore, complainant was compelled to file a complaint alongwith application under Section 156 (3) Cr. P.C, as a result of



which FIR no. 113 dated 23.07.2017 was registered in P.S Barakhamba Road, New Delhi under Sections 420, 406, 34 IPC against respondent. However, police never took any action against the respondent. Copy of said FIR is attached as Annexure C-1.

7. That the project of respondent was an on-going project at the time of coming into force of RERA Act, 2016. Occupation certificate has not been granted to the respondent. Respondent has failed to provide sanctioned plans, specifications approved by the competent authority and nothing has been displayed at the spot.
8. That earlier in the year 2018, complainant had filed a complaint before this Hon'ble Authority bearing no. 1042 of 2018 but before any final order could be passed in said case, this Hon'ble Authority dismissed the present complaint on account of default in appearance vide order dated 11.02.2020 by giving liberty to the petitioner to file afresh petition. Hence, the present afresh complaint is being filed before the Hon'ble Authority.

**C. RELIEFS SOUGHT:-**

9. Complainant in his complaint has sought following reliefs:
  - i. A direction to the respondent to refund the total sale consideration i.e. Rs 50,95,716/- received by respondent from the applicant for the allotment of Block no. LC-2/42, TDI City, Kundli Sonipat, Haryana alongwith an interest @18% per annum on the amount paid by the



applicant from Jan,2007 till realization of the amount, may kindly be issued.

ii. A direction to the respondent to pay Rs 5,00,000/- as part of damages to the applicant on account of mental agony, torture and harassment, may kindly be issued.

iii. A direction to the respondent to pay Rs 5,00,000/- as compensation to the applicant as part of deficiency of service on part of respondent; may kindly be issued.

iv. A direction to the respondent to refund of all legal cost of Rs 1,00,000/- incurred by the applicant including cost related to this Application; may kindly be issued.

v. Issue of such other appropriate order as this Hon'ble Authority may deem fit and proper in the facts and circumstances of the case and in the interest of Justice, Equity and Good Conscience.

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

Learned counsel for the respondent filed a detailed reply on 10.05.2022 pleading therein:

10. That due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely-TDI City, Commercial 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.

11. That the application for registration of the remaining portion of the project in question has been filed and the same is pending for consideration before Ld. Authority.
12. That the completion certificate for the area in which plot of the complainant falls has already been received on 18.11.2013. Copy of same is annexed as Annexure R-3.
13. That the present complaint is not maintainable in view of the recent law laid down by Hon'ble Supreme Court in Newtech Promoters and Developers Pvt Ltd vs State of U.P in Civil Appeal no. 6745-6749 of 2021, does not have the power to adjudicate matters wherein project is completed before the enactment of RERA Act,2016.
14. That the respondent commenced the construction of the project in question, the RERA Act was not into existence, therefore respondent could not have contemplated any violation and penalties thereof as stated in RERA Act.
15. That complainant herein as an investor has accordingly invested in the project of the Respondent Company for the sole reason of investing, earning profits and speculative gains, therefore, the captioned complaint is liable to be dismissed in limine.



16. That possession has already been offered to the complainant vide letter dated 19.04.2017 raising therein demand for outstanding amount. It is the complainant who has been sleeping over its obligation to pay the outstanding amount despite repeated reminders issued to him. Copy of reminders is attached as Annexure R-5 (colly). Complainant had concealed the fact that a letter dated 03.05.2017 was written by him in response to the offer of possession raising doubts about the property in question. Said letter was duly responded vide letter dated 12.05.2017. Copy of letters are annexed as Annexure R-6.

17. That the complaint is barred by limitation.

**E. ARGUMENTS OF LEARNED COUNSELS FOR COMPLAINANT AND RESPONDENT:-**

18. During oral arguments, ld. Counsel for complainant relied upon the report of Local Commissioner and pressed upon refund of paid amount stating that no development work has been carried out at site by respondent till date. He argued that completion certificate has not been obtained by the respondent as the completion certificate submitted by respondent involves different Khasra no. Complainant who has already waited for so many years does not wish to wait endlessly for delivery of possession of commercial flat and insists upon refund of paid amount with interest.





19. Learned counsel for the respondent reiterated the arguments as were submitted in written statement and further stated that claim of complainant cannot be allowed at the stage when completion certificate stands received in year 2013. He further relied upon affidavit filed in compliance of order dated 02.09.2024 showing that allottee of adjacent plots have already got the conveyance deed executed. It is only because the majority of allottees have not constructed the plots so the grass/unwanted plants have grown on land. Moreover, respondent has already offered the valid possession to the complainant that too in the year 2017 itself.

**F. ISSUES FOR ADJUDICATION**

20. Whether the complainant is entitled to refund of amount deposited by him along with interest in terms of Section 18 of Act of 2016?

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

21. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both 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 28.07.2008 when the complainant was allotted commercial plot no. LC-2/42, 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) 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.





(iii) 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;*

(iv) In view of the above-mentioned definition of “allottee” as well as upon careful perusal of allotment letter dated 28.07.2008, it is clear



that complainant is an "allottee" as plot bearing no. LC 2/42 in the real estate project "TDI, City, Kundli", Sonipat was allotted to him 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 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.

(v) Admittedly, complainant had purchased the commercial plot in the project of the respondent in the year 2009 from the original allottee against which an amount of ₹50,95,716/- has been paid to the respondent. Out of said paid amount, last payment of ₹ 4,82,460/- was made to respondent on 28.01.2010 which implies that respondent is in receipt of total paid amount since year 2010 whereas



fact remains that offer of possession supported with Part Completion Certificate dated 18.11.2013 was made to the complainant on 19.04.2017.

(vi) Authority observes that the plot in question was booked in the year 2007 by the original allottee. Allotment letter dated 28.07.2008 was issued in favour of original allottee. Thereafter, allotment rights of the unit were purchased by complainant on 08.05.2009. But 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, the allotment letter for unit in question was issued on 28.07.2008 by the respondent which was further endorsed in favour of complainant on 08.05.2009, accordingly, taking a period of 3 years from the date of allotment, i.e, 28.07.2008 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 28.07.2011. As a matter of fact, the complainant has stepped into shoes of original allottee before the deemed date of possession.

(vii) It is pertinent to mention here that in order to evaluate the exact position at site during conflicting statement/versions of both parties, the Authority vide order dated 12.10.2022 had appointed local commissioner. Relevant part of said order is reproduced below for reference:-

*“After hearing both the parties, Authority observes that as per the submission of learned counsel for the respondent the project in question is complete and completion certificate for the area of the project has been received in the year 2013 itself. Further, possession has been offered to the complainant on 19.04.2017. Whereas learned counsel for the complainant insists on the fact that the site of project is undeveloped and construction of the project is stalled. Both parties are giving conflicting statement with regard to the status of the project and the plot in question. In such a scenario, on request of learned counsel for the complainant, Authority orders to appoint a Local Commissioner to ascertain status of construction/completion of plot and to evaluate the existing condition of the project. Local Commissioner shall inspect the site in question in presence of both parties. He shall inform both parties in advance, the date of site inspection. Parties are directed to remain present on the site on the date of inspection. Since, Local*



*Commissioner is being appointed on request of learned counsel for the complainant, therefore, complainant is directed to pay 50% of cost of local commissioner, rest 50% of local commissioner fee shall be paid by the respondent company. Local Commissioner shall file his report regarding existing condition of the project and status of the plot before the next date of hearing.*

*Adjourned to 14.12.2022 awaiting report of local commissioner."*

(viii) Accordingly, local commissioner visited the site on 08.07.2023 and report has been submitted in registry on 21.11.2023. Report of local commissioner is reproduced below for reference:-

*"The said visit was conducted on 08.07.2023. The status of the site is as follows:-*

- 1. The said plot no. LC-2/42 is fully covered with vegetation. However, on looking deeply services like sewerage, drain etc. were present at site.*
- 2. The plot was supposed to be provided with Metalled area for parking, roads in front, back and side, paving, entry and exit etc. Out of which only paving exists and rest all the facilities are not there.*
- 3. On the right hand side of the plot, 12.0 mtr. The road is present but was submerged in water and needs rectification.*
- 4. The approach roads are in very bad condition. The shortest route available is not complete or used, hence one has to approach the plot through long connected roads.*
- 5. Parking, entry and exit are nowhere to be found.*
- 6. Back side 3.0 mtr. Service area & 12 mtr. Road are also filled with vegetation.*

*To summarize, basic amenities are far-sighted and one cannot use the space and the site shall be considered in a category of underdeveloped condition."*





(ix) It is the stand of the respondent that vegetation has grown over a time period of 3-4 years which is quite natural in Indian climatic conditions. If any allottee will not accept possession and will not carry out the construction work on plot, the problem of non-maintenance of plot in terms of vegetation/unwanted crop will continue. Further, respondent has placed on record sale deed of similarly situated plot no. LC-2/30 in registry on 19.11.2024.

(x) Factual position of the case is that possession was offered by the respondent to the complainant on 19.04.2017 alongwith demand of Rs 6,54,091/-. In reply to it, complainant raised objections to said offer vide letter dated 03.05.2017 annexed as Annexure-6 of reply. It is relevant to refer the contents of said letter which is as follows:-

*“Dear Sir,*

*We have received your letter dated 19.04.2017, alongwith a demand of Rs.6,54,091.93 and by the said letter, the possession of the commercial plot No. LC-2/42 has been offered.*

*This letter in itself is a ploy by you to avoid any criminal or civil action against you by making such a false offer at this juncture. Infact, the site has been visited by us and our representatives, it has been found that site has not been developed as yet. Moreover, it has come to our notice that regarding the completion of the project, the department is to issue an occupation certificate, but no said certificate has been obtained by you and the possession is being offered without development and without getting the property and necessary permissions from the concerned authorities.*

*That the letter seems to be a ploy to further collect money from the applicant and also to see that you may not be dragged in the court of law.*





*In case, all the formalities are complete and the development at the site has been done, we are ready to take the possession of the said plot subject to the condition that you please pay the interest on the amount paid by us for the purchase of the plot for the period beyond three years of its booking, which was originally promised by you at the time of booking of the plot. Therefore, please after calculation of the interest @ 18%, which is being charged by you for delayed payment, from the period beyond three years from the date of booking of the plot may also be paid to us alongwith the possession of fully developed plot with the necessary permissions from the concerned departments.*

*It is, therefore, requested that the action may be done at your end without any delay, so that the matter could be resolved amicably otherwise as you must have come to know that we have already approached the police authorities for cheating having beer committed at your end against us. Thanking you."*

(xi) 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 development works at site are not complete. In support, he relied upon report of local commissioner. No other document substantiating this claim has been placed on record by complainant. It is relevant to state here that part completion certificate for the plot in question was received by respondent on 18.11.2013. Report of local commissioner can be relied upon but it cannot be used to overcome/ignore the part completion certificate issued by the competent authority. Moreover,



the report of local commissioner has clearly established that services like sewerage and drain are available at site. Admittedly, complainant during the period of deemed date of possession, i.e, 2011- offer of possession, i.e, 2017 and even in year 2017 has written only one letter referred in aforesaid para whercin complainant still expressed his wish to continue with possession. Receipt of part completion certificate dated 18.11.2013 duly establish the fact that development works are available at site and allottee can peacefully enjoy possession of his unit. Facts emerging out of aforesaid position are that the offer of possession dated 19.04.2017 duly supported with part completion certificate dated 18.11.2013 was a legally valid offer of possession nonetheless complainant objected to it by way of letter dated 03.05.2017 which in essence was for possession of unit. Said letter was duly replied by the respondent on 12.05.2017 stating that *'This is with reference to your letter dated 03.05.2017 regarding your commercial plot number LC-2/42 in TDI City, Kundli, Sonipat. We would like to state that the development at sight with all basic amenities like road, water, sewerage and electricity are completes in all respect. All the documents are available in DTPC office and also in our office and same can be inspected with prior appointment. We would further like to state that there are some pending dues against the said plot including EDC, IDC, Service charges, IFMS and*





*miscellaneous charges. It is hereby requested that the same may be cleared at the earliest to avoid the penalty charges and take the possession of the plot and get the conveyance deed executed as soon as possible. This correspondence is being issued to reassure you of our commitment to the completion of the project and ensuring the satisfaction of our customers'.* Thereafter, complainant remained silent till filing of present complaint on 28.03.2022. To be conclusive, the complainant never took any step/made effort for seeking refund of paid amount after expiry of deemed date of possession nor even after offer of possession dated 19.04.2017. Since, complainant did not convey his intention to withdraw from the project after paying an amount of Rs 50,95,716/- upto year 2017 to respondent, which shows that complainant wished to continue with the project. Respondent had completed the development works in project which is evident from receipt of part completion certificate dated 18.11.2013. After completion of all formalities and approvals, now the complainant rather than taking the possession had filed a case before Authority on 28.03.2022 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 19.04.2017 and thereafter, he was silent for the years 2017-2022, i.e., for good number of 5





years and chosen to file this complaint seeking refund of paid amount stating that the respondent failed to complete the development works. Cause of action, if any arose to complainant was at the time when deemed date of possession got expired or after offer of possession dated 19.04.2017 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.*

(xii) 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, 28.07.2011 or offer of possession dated 19.04.2017 till filing of the captioned complaint, i.e, on 28.03.2022. 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.

To, this complainant has relied upon report of Local Commissioner and letter dated 03.05.2017 (letter attached by respondent in its reply). In essence, both of these documents have been discussed at length in the aforesaid paragraphs.

(xiii) 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 development work are not



completed. Moreover, complainant has raised an objection that part completion certificate dated 18.11.2013 involves different Khasra no. than the plot in question. In this regard, it is observed that complainant was having liberty to challenge the part completion certificate or its related query before the competent authority, which has not been done till date by him. 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 2017, complainant has contacted the respondent and conveyed his intention to withdraw from the project on account of inordinate delay and lack of development works.

(xiv) 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 of





possession and development works at site 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. It is pertinent to mention here that the preamble of RERA Act,2016 duly mentions the duty of promotion of real estate sector in addition to regulation of transaction of real estate sector. Interest of allottees have to be safeguarded vis-à-vis promotion of real estate section in an efficient and transparent manner. Builders cannot be penalized in the cases where they had carried out the development works and had obtained approvals/sanctions from competent authority. Balanced view is required to maintain the duties casted upon Authority by RERA Act,2016. Hence, efforts made by builder/respondent cannot be completely ignored while granting/adjudicating reliefs sought by complainant-allottee.

(xv) However, in the present case, complainant even did not demand refund when the unit was offered to him. Complainant




in present case did not refuse the offer of possession (rather pressed for delay interest and completion of development works) 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.

(xvi) 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.

22. 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]