



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

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| Complaint no.: | 478 of 2022 |
| Date of filing: | 24.03.2022 |
| Date of first hearing: | 10.05.2022 |
| Date of Decision: | 29.07.2025 |

Sanjay Goyal

Flat no.474, Veer Apartments,
Sector-13, Rohini, Delhi-110085

....COMPLAINANT

VERSUS

TDI Infrastructure Ltd.
10, Saheed Bhagat Singh marg,
New Delhi, 110001

....RESPONDENT

CORAM:

Dr. Geeta Rathee Singh
Chander Shekhar

Member
Member

Date of decision: 29.07.2025

Present: Adv. Himanshu, Ld. counsel for complainant through VC
Adv. Shubhmit Hans, Ld. counsel for respondent through VC

ORDER

1. Present complaint was filed on 24.03.2022 by 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 there under, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill 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, 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 | "Tuscan Heights" located at Kundli Sonapat |
| 2. | RERA registered/not registered | Un-registered |
| 3. | Unit no. | T-2/1204 |
| 4. | Unit area | 1390 sq. ft. (initially) |

| | | |
|-----|--|---|
| 5. | Revised area | 1654.1000 sq. ft. |
| 6. | Allotment letter | 27.07.2011 |
| 7. | Date of apartment buyer agreement | 30.07.2012 |
| 8. | Deemed date of possession | 30.01.2015 (as per clause 30) Clause 30 "if the possession of the Apartment is delayed beyond a period of 30 months from the date of execution hereof and the reasons of delay are solely attributable to the wilful neglect or default of the Company then for every month of delay, the Purchaser shall be entitled to a fixed monthly compensation/damages/penalty...." |
| 9. | Basic Sale Consideration | Rs.34,00,635/- (as per apartment buyer agreement) |
| 10. | Amount paid by complainant | Rs. 45,64,168.72/- |
| 11. | Offer for fit out possession along with final statement of account | 06.03.2018 |
| 12. | NOC for handing over possession | 16.04.2018 |
| 13. | Possession certificate | 13.07.2018 |
| 14. | Occupation certificate | Not received |

B. FACTS OF THE CASE AS STATED IN COMPLAINT

3. Facts of complaint are that complainant was allotted a unit no. T-2/1204, admeasuring area 1390 sq. ft in the respondent's project namely "Tuscan Heights" TDI City, Kundli, Sonipat vide allotment letter dated 27.04.2011.



4. Apartment buyer agreement was executed on 30.07.2012 and in terms of the said agreement, construction linked plan was opted and it was assured by the respondent that the super area measuring 1390 Sq. feet will be handed over to the allottee within a period of 30 months from the date of execution of the agreement and thus deemed date of possession was fixed for January 2015.
5. That the payments were made as per periodical demands raised by the respondent and at no point of time the payments were delayed and after the expiry of the deemed date of possession, the complainant repeatedly visited at the office of the respondent to enquire about the actual date of possession as well as status of obtaining the occupation certificate and completion certificate with respect of the project namely "TDI Tuscan Heights". However, neither any actual date of possession was conveyed, nor status of completion and occupation certificate were ever communicated to the complainant at any point of time in an adamant manner without any fear of the laws of the land.
6. Vide letter dated 06.03.2018 respondent offered fit out possession to complainant along with demand letter of Rs.9,04,944.50/- also respondent arbitrarily increased unit area from 1390 sq.ft. to 1654.1000 sq. ft. which was which was protested by the complainant vide its emails dated 12.03.2018 and 21.03.2018 respectively. After



receiving the protest letter of the complainant, the respondent had offered a flat discount of Rs. 3,61,000/- alongwith interest of Rs. 8,109.59/- under the hand written note of one Sh. Ravi Arora on behalf of respondent company at its registered office, which was duly paid by the complainant under protest vide receipt dated 24.03.2018 for a sum of Rs.5,43,945/- on account of non-existing so-called enhanced area charges as well as receipt dated 21.03.2018 for a sum of Rs. 50,000/- on account of non-existing so-called club membership charges and accordingly an email acknowledgment receipt dated 27.03.2018 was issued in favour of the complainant by the respondent. Complainant made these payments due to the threat of cancellation of unit and forfeiture of booked amount.

7. That subsequently possession of the flat was given to the complainant on dated 13.07.2018 on the spot along with final statement of account showing the final TDI A/C balance as NIL.. When the complainant measured the covered area of the flat, it was merely about only 1000 Sq. feet only, thereby crystal clear that the above said super area was increase arbitrarily to extort the complainant.
8. That the complainant had complained to the respondent from time to time regarding so many illegalities vide its emails dated 20.06.2018 and 20.12.2019 respectively, but no replies were given by the



respondent in a pre-planned manner with a scheming mind to further harass the complainant for no limits.

9. That there is no maintenance, electricity connections, water supply, allotment of paid car parking slot, sewage system, etc. in the said project and the buildings and units are in a very bad state and thus, completely unsafe and not fit for living. Further, complainant failed to get sale deed registered in favour of the complainant till date since the said date of possession dated 13.07.2018 and failed to get occupation certificate, completion certificate, and NOCs from various Government Departments till date.
10. That the complainant was forced to take possession to avoid the imposition of further interest as per letter dated 06.03.2018 and ultimately the complainant having no other options, got fit out possession of the unit in question on dated 13.07.2018 with assurances that entire grievances such as delayed compensation of interest, club charges, charges of fictitious super measurement area and completion of project along with other charges in terms of apartment buyer agreement dated 30.07.2012 will be shortly considered and accordingly fulfilled to the satisfaction of the complainant in all respects whatsoever, but all in vain and again proved to be false promises on the part of the respondent.
11. That the respondent redress his grievances by way of personal visits

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during the entire period of pandemic since 21.12.2019 to till date and requested every time to redress entire grievances as mentioned hereinabove, but the officials of the respondent always talked rudely and threatened to go, wherever the complainant wants to approach. Unfortunately, still no fruitful purposes came out, hence a legal notice of demand dated 18.01.2022 was served upon the respondent through emails dated 18.01.2022 and speed post dated 19.01.2022

C. RELIEF SOUGHT

Complainant in its complaint has sought following reliefs:

- a) This Hon'ble Authority may kindly pass an order for payment of interest @24% p.a. on account of delay in handing over of the possession from deemed date of delivery i.e. January 2015 to till actual date of receipt of possession i.e. 13.07.2018 on the total amount paid by the allottee to the tune of Rs. 51,01,212/- as per the conditions laid down in the apartment buyer agreement.
- b) This Hon'ble Authority may kindly pass an order for refund of a sum of Rs. 5,43,945/- extorted by the respondent in the name of enhancement of so-called non-existing super area as per the details mentioned at para no. 5 of the brief facts along with interest @24% p.a.
- c) This Hon'ble Authority may kindly pass an order for refund of a sum of Rs. 50,000/- extorted by the respondent in the name of so-



called club membership charges along with interest @ 24% p.a.

- d) This Hon'ble Authority may kindly pass an order for award of compensation to the tune of Rs.50,00,000/- on account of facing acute mental trauma, harassment, financial losses, loss of interest and agony in favour of the complainant and against the respondent.
- e) This Hon'ble Authority may kindly pass an order thereby directing the respondent to register a proper sale deed in favour of the complainant immediately against payment of stamp duty to the tune of Rs. 1,63,400/-
- f) This Hon'ble Authority may kindly pass an order thereby directing the respondent to maintain the basic necessities required for dignified habitation of the complainant in the property in all respects whatsoever.
- g) This Hon'ble Authority may kindly pass an order thereby directing the respondent to allot the booked parking space named as VPK-1/Covered vehicle parking for which the complainant paid a whopping sum of Rs. 1,96,000/-
- h) This Hon'ble Authority may kindly pass any other order which this Authority may deem fit and proper.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply pleading therein:



12. That due to the reputation and prestige of the respondent company, the complainant had voluntarily invested in the project i.e. "Tuscan Heights" of the respondent company near TDI mall in Tuscan City, Kundli, Sonapat, Haryana.
13. That the respondent company vide its letter dated 09.05.2014 had applied to the Director General of Town and Country Planning, Haryana, Chandigarh for grant of occupation certificate of group housing colony measuring 22.864 acres which was a part of the residential plotted colony covered under, inter alia, license No. 177 of 2007 falling in the revenue estate of Kundli, Sonapat, Haryana.
14. That the provisions of the RERA Act, 2016 are to be applied prospectively. occupation certificate was applied by the respondent company way back in 2014, therefore, the present complaint is not maintainable and falls outside the purview of the RERA Act. The RERA Act came into effect in 2016 and cannot be held to be retrospective in nature.
15. That complainant has signed the non objection certificate dated 16.04.2018 after their full satisfaction with the unit in question. Further, It is evident that the complainant after duly inspecting their unit cleared all the dues, signed the non objection certificate and accepted the physical possession of the unit way back in 2018. Furthermore, even the possession certificate has been issued on



13.07.2018. Therefore, now after a delay of more than 4 years from the date of accepting the possession, the complainant cannot approach this I.d. Authority.

16. That the handing over of the possession has always been tentative and subject to force majeure conditions as duly mentioned under clause 30 of the agreement and the complainant was aware about the same at all times. Thus, the complainant cannot be allowed to raise wrong, false and frivolous claims especially when complainant has already accepted the possession and are residing in the said unit.

17. That all the demands made and area increased is consistent with the terms and conditions of the agreement executed between the parties and the complainant cannot run away from her obligations. Further, the super area has always been tentative and the same is finally calculated after the construction of the building is complete. The complainant was aware about the said fact that the area is tentative as the same has been incorporated in clause 7 of the agreement as well as reproduced below:-

"7. In the event of any increase or decrease to the extent of 10% to the agreed area of the Apartment, due to alteration as aforesaid, the adjustment in the payments shall be made as per the basic rate as mentioned in Clause 2 above. However, if the increase or decrease is more than the extent of 10%, then it shall be the company which shall have the sole discretion to fix the rate for such an increase or decrease. Further if due to change in the layout plan of the Colony or on account of any other alterations, the Apartment gets



dislocated/omitted, then it shall be open for the Purchaser to opt for a substituted Apartment as may be offered by the Company. In case the Purchaser is not willing to opt for any substituted allocation of Apartment or in case the Apartment is omitted or the Company is unable to handover the same, the Company will be liable to refund only the amount received from the Purchaser towards the TSC for the Apartment along with a simple interest @9% p.a. which shall be calculated from the respective dates when the company has actually received the money in its account. No further compensation of any sort shall be payable by the Company."

18. That the complainant has been sleeping over its obligation to pay the outstanding amounts to the respondent company, despite repeated reminder letters sent by the respondent company to the complainant.

19. That the present complaint is barred by limitation as the complainant has been sleeping over its rights for more than 4 years.

E. ARGUMENTS OF COUNSEL FOR COMPLAINANT AND RESPONDENT

During oral arguments learned counsel for the complainant and respondent have reiterated arguments as mentioned in their written submissions.

F. OBSERVATIONS AND DECISION OF AUTHORITY

20. Authority has gone through the rival contentions. In light of background of the matter as raptured in this order and also arguments submitted by both parties, Authority observes that there is no dispute with respect to facts that a unit was booked by



complainant in the respondent's project namely Tuscan City (Heights), Kundli, Sonipat in the year 2011; unit no.T-2/1204 measuring 1390 sq. feet was allotted to complainant vide allotment letter dated 27.07.2011; apartment buyer's agreement dated 30.07.2012 was executed between the parties and complainant had paid Rs.45,64,168.72 /- as total sale consideration.

21. On perusal of complaint, it is observed that complainant have three main grouses against the respondent promoter, as illustrated below:

- i. That after a delay of approximately three years respondent promoter had offered "fit out possession cum demand letter" dated 06.03.2018 and that too without obtaining occupation certificate from the competent authority.
- ii. That vide "offer for fit out possession cum demand letter" dated 06.03.2018 respondent raised illegal and arbitrary demands under different heads.
- iii. That there still exists deficiency in services on part of respondent promoter.

Aggrieved by alleged violations and contravention of the provisions of The Real Estate (Regulation & Development) Act, 2016 committed by respondent promoter, complainants are praying for relief.



22. In response to complaint, respondent promoter had filed its reply dated 09.08.2022 wherein it had raised preliminary objections regarding maintainability of complaint. Observations of the Authority on these preliminary objections are herein below:

i. Respondent has raised an objection that provisions of The Real Estate (Regulation & Development) Act, 2016 are not applicable to the present case as the agreement to sell was executed and construction was commenced prior to coming into force of RERA Act, 2016. Respondent in its reply has averred that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and same cannot be examined under the provisions of The Real Estate (Regulation & Development) Act, 2016. In this regard, Authority observes that after coming into force of RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After the RERA Act, 2016 coming into force the terms of agreement are not re-written, the Real Estate (Regulation & Development) Act, 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding



opening of agreements executed prior to coming into force of The Real Estate (Regulation & Development) Act, 2016 was already dealt in detail by this Authority in *complaint no. 113 of 2018 titled as Madhu Sareen v/s BPTP Ltd* decided on 16.07.2018. Relevant part of the order is being reproduced below:

"The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller.

Further, reference can be made to the case titled *M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc.* 2022(1) R.C.R. (Civil) 357, wherein the Hon'ble Apex Court has held as under:-

"41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections



13, 18(1) and 19(4) are all beneficial provisions for al safeguarding the pecuniary interest of consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case."

As per the aforesaid ratio of law, the provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the rules applicable to the acts or transactions, which were in the process of the completion though the agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and Rules made there under will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

ii. Respondent has further raised an objection that complainant is in peaceful possession of his unit since 13.07.2018 and has approached this Authority after a delay of 4 years, hence, complaint is barred by limitation.

In this regard, it is observed that as per clause 30 of apartment buyer agreement, respondent was to handover the possession of the unit to



allottee within 30 months from the date of execution of agreement. Apartment buyer's agreement was executed inter-se the complainant and respondent on 30.07.2012, as per which possession was to be handed over to complainant by 30.01.2015. However, admittedly possession certificate was issued to the complainant on 13.07.2018 i.e., after a delay of more than 3 years from deemed date of possession and subsequent to RERA Act, 2016 coming into force. Hence, respondent has failed to fulfil its obligations to hand over the possession of the booked unit in its project within time stipulated in agreement for sale. Respondent has neither paid delay possession interest till date nor executed conveyance deed in favour of complainant; thus, the cause of action i.e. delay payment of interest for the delayed possession is re-occurring. Authority has referred to the judgement of the **Hon'ble Apex Court in Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise** wherein it was held that "The Indian Limitation Act' applies only to courts and not to the tribunals. Relevant para is reproduced herein:

19. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963."

The RERA Act, 2016 is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act 1963, thus, would not be applicable to



the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority established under the Act is a quasi-judicial body and not Court. Therefore, objection of respondent with respect to the fact that complaint is barred by limitation is rejected.

23. Now while proceeding to observe and decide complaint on merits there are three major issues to be decided:

- i. Whether complainants are entitled to relief of delayed possession interest as per Section 18 (1) of The Real Estate (Regulation and Development) Act, 2016 read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 for any delay in offer of possession.
- ii. Whether any amount has been charged from the allottee in contravention to terms of apartment buyer's agreement or provisions of Real Estate (Regulation and Development) Act, 2016 or Rules or Regulations made thereunder.
- iii. Whether there exists any deficiency in services

Issue I- Whether complainant is entitled to relief of delayed possession interest as per Section 18 (1) of The Real Estate (Regulation and Development) Act, 2016.

Complainant in his complaint has alleged that he was allotted unit no. T-2/1204 in the real estate project "TDI Tuscan Heights", Sonapat, Haryana. An apartment buyer's agreement was executed



between the parties on 30.07.2012 and as per terms of apartment buyer's agreement, possession was to be handed over in a period of 30 months from date of execution of apartment buyer's agreement, thus, respondent-promoter was obligated to handover possession of the unit by 30.01.2015. However, Respondent has not handed over possession as per time stipulated, also respondent has not received occupation certificate till date, therefore, complainant is seeking relief of delay possession interest till the date of receiving occupation certificate.

The respondent in its reply has denied that possession of the unit was to be handed over within a period of 30 months from date of execution of apartment buyer's agreement as per reply. Respondent has averred that the same was always tentative and subject to any force majeure event. Respondent has further averred that complainant was issued possession certificate for said unit on 13.07.2018 and since then complainant has been enjoying possession of her unit. Therefore, complainant is not entitled to any interest on account of delay in delivery of possession.

On perusal of clause-30 of the apartment buyer's agreement dated 30.07.2012, Authority observes that respondent had committed that if possession of the apartment is delayed beyond a period of 30 months from the date of execution hereof and the reasons of delay



are solely attributable to the wilful neglect or default of the company then for every month of delay, the purchaser shall be entitled to a fixed monthly compensation/damages/penalty @ Rs.5 - per square foot of the total super area of the apartment. Meaning thereby that the respondent promoter had undertaken/committed to hand over the possession of the unit in question within a period of 30 months from the date of execution of the agreement to sell, i.e. by 30.01.2015. Not only this, the respondent had also undertaken to compensate the complainant allottee in case of delay in handing over possession beyond a period of 30 months.

It is observed that respondent had taken a plea that handing over of unit was subject to force majeure condition. However, there is no document placed on record by respondent to show or to prove that any force majeure condition occurred or existed during the 30 months' period from execution of agreement for sale that could have contributed to any delay in completion of construction and handing over of possession. Hence, it was an obligation on the respondent to hand over the possession of the unit by 30.01.2015 and for any delay beyond that respondent after coming into force of Real Estate (Regulation & Development) Act, 2016 is liable to pay delay interest in terms of Section 18 read with Rule 15 of Haryana Real Estate (Regulation & Development) Rules, 2017.



It is a matter of fact that the possession certificate was issued in favour of the complainant allottee vide dated 13.07.2018 i.e. after a delay of more than three years. It is observed that the complainant in its complaint has pleaded that the offer of possession was made without obtaining a valid occupation certificate from Department of Town & Country Planning. Respondent in its reply has also admitted that it had applied for occupation certificate vide letter dated 09.05.2014. There is no dispute regarding the fact that possession was offered and possession certificate dated 13.07.2018 was issued without obtaining an occupation certificate. Nevertheless, it is also a matter of fact and admitted by the complainant that he is in peaceful possession of unit since 13.07.2018. There could have been a possibility that the complainant allottee was coerced into accepting the offer of possession, however, if so was the case the complainant could have raised a protest against the said offer of possession within a reasonable time after accepting the possession. However, no such communication or documents have been placed on file to prove or to show that the complainant ever protested against the offer of possession made in the year 2018. From these circumstances, it can be concluded that complainant had willingly accepted the possession of the unit in 2018. Hence, he is entitled to delay possession interest from the

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period 30.01.2015, i.e., deemed date of possession to 13.07.2018, i.e., date of issuance of possession certificate and actual handing over possession.

24. As per statement of account dated 23.03.2011 complainant had paid an amount of Rs. 45,64,168.72/- as total sale consideration. 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. 29.07.2025 is 8.90%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.9%, which is to be calculated from the deemed date of possession till actual handing over of possession (i.e. from 30.01.2015 to 13.07.2018).

As per calculations made by accounts branch, amount payable by respondent to the complainant on account of interest for delay in handover of possession of the unit has been worked out to Rs. 12,97,704 /- as per table below. Hence, the respondent is directed to pay the complainant amount of Rs. 12,97,704/- as delay interest for the period 30.01.2015 to 13.07.2018 within 90 days of uploading of this order on the website of the Authority.



| Sr. No. | Principal Amount in (₹) | Deemed Date of Possession/Date of payment, whichever is later | Interest Accrued till 13.07.2018 in (₹) |
|---------|-------------------------|---|---|
| 1. | 200000 | 2015-01-30 | 75315 |
| 2. | 175258 | 2015-01-30 | 65997 |
| 3. | 24742 | 2015-01-30 | 9317 |
| 4. | 285000 | 2015-01-30 | 107323 |
| 5. | 342635 | 2015-01-30 | 129027 |
| 6. | 143226 | 2015-01-30 | 53935 |
| 7. | 141587 | 2015-01-30 | 53318 |
| 8. | 141978.41 | 2015-01-30 | 53465 |
| 9. | 473.81 | 2015-01-30 | 178 |
| 10. | 141504 | 2015-01-30 | 53287 |
| 11. | 141503 | 2015-01-30 | 53286 |
| 12. | 141503 | 2015-01-30 | 53286 |
| 13. | 142100 | 2015-01-30 | 53511 |
| 14. | 140908 | 2015-01-30 | 53062 |
| 15. | 144258 | 2015-01-30 | 54324 |
| 16. | 141503.50 | 2015-01-30 | 53286 |
| 17. | 352347 | 2015-01-30 | 132684 |
| 18. | 142937 | 2015-01-30 | 53826 |
| 19. | 300000 | 2015-01-30 | 112972 |



| | | | |
|-----|---|------------|-----------------------------|
| 20. | 141661 | 2015-07-03 | 46831 |
| 21. | 28099 | 2017-04-18 | 3793 |
| 22. | 361000 | 2018-03-27 | 11751 |
| 23. | 196000 | 2017-11-18 | 13930 |
| | Principle amount Rs. 39,70,223.72 /- | | Interest Rs. 12,97,704/- |

Issue-II Whether any amount has been charged from the allottee in contravention to terms of apartment buyer's agreement or provisions of Real Estate (Regulation and Development) Act, 2016 or Rules or Regulations made thereunder.

Complainant in his complaint has alleged that respondent has illegally charged from him against following heads:-

- Charges demanded on the pretext of increase in apartment area from 1390Sq. feet to 1654.1000 Sq. feet.
- Club membership charges (CMC) Rs. 50,000/-, whereas, there is no club in existence.
- Car parking charges Rs. 1,96,000/-, whereas till date parking space not allotted

It is the case of the complainant that since all these charges/amounts were illegally and arbitrarily collected/levied upon the complainant, respondent is liable to refund the same. With regard to these



aforementioned charges/amounts collected from complainant. Authority observes and directs as below:

Increase in Super Area

Complainant has alleged that respondent had unilaterally increased area of her apartment from initial booked area of 1390 sq. ft. to 1654.1000 sq. ft. i.e., increase of about 264.100 sq. ft.. Complainant has further alleged that there is no change in location of the plot, plot number or the dimensions of the apartment, thus, the entire amount collected for the increased area over and above 1390 sq.ft. is liable to be returned.

Whereas, respondent has averred that the increase in area has been in accordance with law and as per approved layout plans and complainant after satisfying herself fully accepted the possession and signed the documents, therefore, now at such belated stage, complainant cannot be allowed to make such bald assertions against the respondent company.

In order to ascertain whether the increase in area from 1390 sq. ft. to 1654.1000 sq. ft. is actual or fictional, Authority vide its interim order dated 31.01.2023 had directed the respondent to file component-wise detail of the increase in super area. In compliance of the same, respondent filed comparative area statement and final statement of account on 29.02.2024. On perusal of comparative area



statement 3 BHK area detail as submitted by the respondent, it is observed that the respondent has also loaded the shali area of the flat, mumty area, machine room area, water tank area, stilt floor and, STP, LSS, guard room, panel room, B.W..etc. proportionately on the flat and has charged for the same. Authority observes that all these areas components as mentioned are generally not part of the FAR and as per the policy of the Department of Town and Country Planning, only the area which is part of FAR is saleable. Area which is not part of FAR is not saleable, therefore, the same cannot be loaded and charged on the units allotted. Even for a moment, it is presumed that respondent would endeavor to get condonation of increased area as per policy of the department, then also such condonation shall not be over and above 10%, whereas complainant has been charged for almost 19% increased area which is over and above what has been agreed in the agreement for sell and beyond the condonation limit.

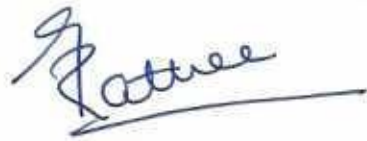
Further, perusal of clause-2 of apartment buyer's agreement reveals that it was agreed between the parties that *"the final super area of the said apartment shall be confirmed by the Company only after the construction of the said building is complete and occupation certificate granted by the competent authority."* Clause-2 further provides that *"if there shall be any increase in super area, the*



purchaser agrees and undertake to pay for the increase in super area immediately on demand by the company and if there shall be any reduction in the super area, then the refundable amount due to the purchaser shall be adjusted by the company from the final instalment as set forth in the schedule of the payment." It furthermore provides that any amount payable or refundable, as the case may be, shall be without any interest at the same rate per square meter as agreed in the apartment buyer's agreement.

Admittedly, as on date occupation certificate has yet not been obtained for the tower in question i.e. tower-2, therefore, the stage at which it could be ascertained whether there is any increase or decrease in the super area has not arrived. Therefore, at the time of issuance of possession certificate complainant could not have been be charged for an area beyond the area mentioned in the apartment buyer's agreement i.e., 1390 sq. ft. Since the agreement provides that the amount payable and refundable respondent is directed to refund any amount charged for an area over and above 1390 sq. ft. along with interest.

| Sr.no | Principal amount (Rs.) | Date of payment | Interest accrued till 29.07.2025(Rs.) | Total interest |
|-------|------------------------|-----------------|---------------------------------------|----------------|
| 1. | 543945 | 2018-03-24 | 436147 | 9,80,092/- |



Nevertheless, in case the super area of the apartment is enhanced/increased in the occupation certificate, whenever issued by the Department of Town & Country Planning, the complainant shall be liable to pay for the increased area without interest as agreed in Clause-2 of the agreement for sale.

Club Membership Charges

Complainant in his complaint has alleged that the respondent has collected Rs.50,000/- from complainant on account of club membership whereas there is no club in existence in the real estate project 'Tuscan Heights' where the unit of the complainant is located. Therefore, the amount charged from complainant on account of club membership be refunded to him. In response respondent has contended that there is a functional club situated in the project "TDI City". In this regard respondent filed an affidavit in Authority on 09.04.2024.

On perusal of record and hearing averments of the parties on this point, Authority observes that the respondent has failed to place on record any layout plan from its possession which could prove that there is only one club approved on the entire licensed area of 'TDI City' being developed vide licence no.177 of 2007. There is no possibility of such layout plan to be in the possession of a common allottee. In absence of such documents, it could not be ascertained



that there is any operational club in existence for the allottees of 'Tuscan Heights', therefore, the demand on account of club membership charges is not justified and stand quashed. Respondent is directed to refund the amount of Rs.50,000/- along with interest charged on account of club membership.

| Sr.no | Principal amount (Rs.) | Date of payment | Interest accrued till 29.07.2025(Rs.) | Total interest |
|-------|---------------------------|-----------------|--|----------------|
| 1. | 50000 | 2018-03-21 | 40136 | 90,136/- |

If in future, a club comes up in the project and the complainant wish to avail its membership, she shall pay the membership fee as charged by the respondent promoter.

Car Parking

Further, the complainant is also seeking the relief of allotment of the booked parking space. It has been alleged by the complainant that an amount of ₹1,96,000/- was paid to the respondent towards the said parking; however, despite such payment, no parking space has been allotted to the complainant till date. In this regard, Authority observes that clause 14(d) of the apartment buyer's agreement stipulates that

"The Purchaser shall be entitled, without any ownership rights, to use the open/covered parking space for parking his/her vehicle on



the ground floor portion of the said building. This parking space shall be a common area and the Purchaser shall use the same harmoniously with other Purchasers/Occupants, without causing any inconvenience or hindrance to them."

Meaning thereby that the complainant allottee is entitled to use the parking space for parking his vehicle on the ground floor/ salt portion of the said building. Respondent filed an affidavit before the Authority on 19.11.2024, wherein it was stated that: *"Once the possession is offered to the allottee and the same is accepted by him, the company will proceed further to allot the parking space to the complainant as per the space available in the current project."* In the present case, the complainant took possession of the unit on 13.07.2018. Today, during hearing I.d. counsel for complainant stated that complainant is ready and willing to forgo the claim of refund of parking space amount if respondent provides him with a proper demarcated parking space in the basement of this building.

To this I.d. counsel for respondent submitted on instruction that respondent undertakes to allot a proper demarcated/designated covered parking space to complainant in the basement of the building in which unit of complainant is situated. Considering, the statement of I.d.



counsel for respondent Authority directs respondent to demarcate and give possession of a parking space in the basement to complainant.

Issue III-Whether there exist any deficiency in services

In addition to aforesaid grievances, complainant also stated that respondent has miserably failed in providing infrastructural facilities like permanent electricity connection, sewage treatment plant, water treatment plant, lifts, maintenance of green area etc. There is acute lack/deficiency of infrastructural facilities/services. In this regard complainant is advised to approach the Adjudicating Officer for seeking the relief of compensation.

Execution of Conveyance Deed

With regard to the issue of execution of conveyance deed, Authority observes that u/s 17 of the Real Estate (Regulation & Development) Act, 2016, respondent-promoter is obligated to execute a registered conveyance deed within 3 months from date of receiving occupation certificate. However, in the captioned complaint as admitted by respondent, occupation certificate has still not been issued by the competent authority, though the application for occupation certificate was made on 09.05.2014. Therefore, Authority directs respondent to



execute the conveyance deed within 3 months of grant of occupation certificate.


25. Complainant is also seeking compensation of Rs.50,00,000/- for mental harassment, mental agony, pain suffering. 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.**" 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, complainant is advised to approach the Adjudicating Officer for seeking the relief of compensation.

I. DIRECTIONS OF THE AUTHORITY

Hence, the Authority hereby passes this order and issues 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(I) of the Act of 2016:



- (a) Respondent is directed to pay complainant amount of Rs. 12,97,704/- as delay interest from the period 30.01.2015 till 13.07.2018.
- (b) Respondent is directed to refund entire amount of Rs. 9,80,092 /- to the complainants collected for increase in super area. It is further clarified that respondent will remain liable to pay the interest to the complainant up till the time period provided u/s 2(z) of RERA Act, 2016.
- (c) Respondent is directed to refund entire amount of Rs. 90,136/- received by respondent on account of club membership charges. Respondent will remain liable to pay the interest to the complainant up till the time period provided u/s 2(z) of RERA Act, 2016
- (d) Respondent is directed to provide car parking space to complainant.
- (e) Respondent is directed to get the proper sale deed registered in favor of complainant as per provision of Section 17 (1) of RERA Act, 2017 within 3 months of grant of occupation certificate.
26. Disposed of. File be consigned to record room after uploading of order on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


Dr. GEETA RATHEE SINGH
[MEMBER]