



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2935 of 2022
Date of filing:	14.11.2022
First date of hearing:	01.02.2023
Date of decision:	13.05.2025

Dalel Singh

R/o H No. 411 CHH, ward no.4
Palwal District-Faridabad
Pin Code -121102

.....COMPLAINANT

Versus

TDI Infrastructure Ltd.

Registered Office :-
Upper Ground Floor, Vandana Building 11,
Tolstoy Marg, Connaught Place
New Delhi – 110001

.....RESPONDENT

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

**Member
Member**

Date of Hearing: 13.05.2025

Present: - Adv. Chaitanya Singh, Ld. Counsel for Complainant through
Adv. Shubhnit Hans, Ld. Counsel for Respondent through VC

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ORDER

1. Present Complaint has been filed 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 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:

Sr. No	Particulars	Details
1.	Name of the project	Tuscan floors, Tuscan City, Kundli, Sonipat
2.	Name of the promoter	TDI Infrastructure Ltd.
3.	RERA registered or not	Registered (368 of 2017)
4.	Unit No.	T-47
5.	Unit Area	1434 sq. ft.
6.	Date of Booking	12.01.2011



7.	Endorsement in favour of complainant	04.11.2011
8.	Builder Buyer Agreement	Not executed
9.	Due date of possession	Not mentioned
10.	Total sale price of unit	Rs. 36,03,484/-
11.	Amount paid by the complainants	Rs. 20,51,400/-
12.	Offer of possession	No offer

B. FACTS OF THE COMPLAINT

3. Facts of the complainant are that original allottee i.e. M/S Vision International had booked a 4 BHK duplex floor in the project- Tuscan floors, TUSCAN City, Kundli, Sonipat of the respondent by making payment of Rs. 5,00,000/- on 12.01.2011. On 04.11.2011 the booking rights of the original allottee was subsequently purchased by the complainant i.e. Dalel Singh. The respondent transferred the booking in favor of the complainant and gave endorsement at the back side of the booking amount receipt of Rs. 5, 00,000/-. That on that date the complainant stepped into the shoes of the original allottee with all his rights and obligation. Accordingly unit no. T-47/Duplex having area 1434 sq. ft. was allotted to complainant. Complainant had paid Rs. 20,51,400/- against basic sale price of Rs. 36,03,484/-



4. That the complainant does not remember whether the builder buyer agreement has been executed with the respondent or not he could not trace the copy of same in his records.
5. That the respondent had committed to deliver the possession of the booked unit within period of 36 months from the date of booking which comes to March 2015 (deemed date of possession), however, the respondent had miserably failed to complete the project till today. No occupation certificate or completion certificate have been received from competent Authority till date, therefore the project in question in the present complaint is an "on going" as per Section 3(1) of the RERA Act, 2016. No offer of possession made till date even after lapse of 7 years from the deemed date of possession.
6. That the complainant had several times visited the corporate office of the respondent and written several letters and emails seeking refund of amount paid with 18% interest on account of delay in construction, however the respondent paid no heed to them and never refunded the money paid by the complainant.
7. That on 15.09.2016 the complainant sent a legal notice to the respondent seeking refund of amount with interest. The said notice was duly delivered, however the respondent never responded to the said legal notice.



8. That similar facts and issues as involved in the present case have been decided earlier by the Hon'ble HRERA Authority in complaint no. 608 OF 2021 titled "Patanjali Bedi V/s TDI Infrastructure Ltd."

C. RELIEF SOUGHT

9. Complainant in its complaint sought following reliefs :

- i) That the Respondent be directed to refund the amount of Rs. 20, 51,400/- paid by the Complainant along with an interest as per HRERA RULE 15.
- ii) To grant litigation expenses of Rs 1, 50,000/- to the complainant.
- iii) Any other relief (s) as the Hon'ble Authority may deem fit and proper in light of the facts and circumstances of the above case.

D. REPLY ON BEHALF OF RESPONDENT

Notice was served to the respondent on 15.11.2022, which got successfully delivered on 19.11.2022. The respondent through counsel Adv. Shubhnit Hans filed reply on 28.04.2023, pleading therein as under:

10. That due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely- Tuscan floors, TDI Tuscan City at Kundli, Sonipat, Haryana.
11. That when the respondent commenced the construction of the said project, the RERA Act, 2016 was not in existence, therefore, the respondent could not have contemplated any violations and penalties thereof, as per the provisions of the RERA Act, 2016. That the provisions of RERA Act are to be applied prospectively.


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12. That the law in this regard is well settled that unless the statute expressly provides retrospective application of the provisions of the statute they cannot be enforced retrospectively. In a recent judgment, the Hon'ble Supreme Court in the matter titled as **"Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others"**, in Civil Appeal Nos. 6745-6749 of 2021 has held that application of the RERA Act of 2016 is retroactive in character.
13. That complainant has not approached this Ld. Authority with clean hands and has concealed the most material facts from this Authority. It is submitted that the complainant has been a regular defaulter in making its payments to the respondent against its allotment. The said fact can be very well verified from the various reminder letters sent to the complainant by the respondent.
14. That for this reason the complainant was sent notice for cancellation/pre-cancellation of its allotment. However, the complainant chose to pay no heed to multiple requests being made by the respondent. Therefore, ultimately vide letter dated 29.03.2016, the respondent was constrained to cancel the allotment of the complainant for non-payment.
15. That captioned complaint filed by the complainant is miserably hit by the principle of delay and laches. Complainant slept over its rights for more than 10 years, therefore, at this belated state the complainants cannot be allowed to approach the Ld. Authority for any relief whatsoever.

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Accordingly, the captioned complaint filed by the complainant must be dismissed at this very ground alone. The captioned complaint is barred by limitation.

16. That complainant herein as 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 toto.

17. That respondent vide letter dated 09.05.2014 had applied to the Director General of Town and Country Planning, Haryana for grant of occupation certificate and same is awaited

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT

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

F. ISSUE FOR ADJUDICATION

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

G. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT

G. a) Objection that RERA Act, 2016 does not apply on respondent



Respondent averred that when the construction of the project commenced, RERA Act, 2016 was not in existence. Therefore, respondent could not have contemplated any violation and penalties thereof, as stated in the RERA Act, 2016. In this regard the Hon'ble Supreme Court in its judgement **Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021** it had held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects. Furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder. Therefore, this Authority has complete jurisdiction to entertain the captioned complaint and objection raised by the respondent regarding maintainability of the present complaint is rejected.

G.b) Objection raised by respondent stating that complainant herein is an investor and have invested in the project of the respondent company for the sole reason of investing, earning profits and speculative gains.

Respondent has also averred that complainant is an investor and not a consumer and the RERA Act of 2016 is enacted to protect the interest

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of consumers of the real estate sector, thereby complainant is not entitled to file the complaint under Section 31 of the Act and the complaint is liable to be dismissed. In this regard, Authority observes that the respondent is correct in stating that the RERA Act of 2016 was enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations, made thereunder. Complainant paid total price of Rs. 20,51,400/- to the respondent towards purchase of an unit in the project of the respondent. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2[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: "

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of application for allotment, it is crystal clear that the

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complainant is an allottee as the subject unit was allotted to complainant. The concept of investor is not defined or referred in the Act. As per the definition provided under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. *0006000000010557 titled as M/s Srushti Sangam Developers Pvt Ltd, Vs. Sarvapriya Leasing (P) Lts. And Anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

G. c) Objection raised by respondent that the present complaint is barred by limitation

Respondent had raised objection regarding maintainability of the complaint on ground of that complaint is barred by limitation. In this regard the Hon'ble Apex Court in Civil Appeal no. 4367 of 2004 *titled as M.P Steel Corporation v/s Commissioner of Central Excise* has held that The Indian Limitation Act, 1963 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."

Authority observes that the Real Estate Regulation and Development Act, 2016 is a special enactment with particular aim and object covering certain

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issues and violations relating to housing sector. Provisions of the Indian 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, in view of above objection of respondent with respect to the fact that complaint is barred by limitation is rejected.

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

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

18. There is no dispute with respect to the facts that the original allottee M/S Vision International booked a shop in respondent's project namely "Tuscan Floors" situated in Tuscan City, Sonipat. The said booking was later transferred by the respondent in the name of complainant by way on an endorsement on 04.11.2011, and subsequent thereupon unit no. T-47, measuring area 1434 sq. ft. was allotted to complainant in the real estate project "Tuscan City" located at Kundli, District Sonipat through original allottee. Complainant had paid a total amount of Rs. 20,51,400/- against total sale consideration of Rs. 36,03,484/-.
19. Authority observe that with regard to execution of builder buyer agreement complainant has submitted that he does not remember whether any agreement for sale was executed or not as he does not have copy of



the same in his record. Respondent at para 14 page 3 of its reply admit that a builder buyer agreement was executed on 23.03.2011 however, at para 7 page 6 of its reply respondent stated that at various instances respondent requested complainant to come forward for the execution of agreement however, complainant chose to pay no heed to such multiple requests. Authority is of view that both the parties have not submitted any document related to builder buyer agreement. Therefore, it is presumed that builder buyer agreement has not been executed between the parties.

20. As there is no builder buyer agreement thus, exact due date for handing over possession cannot be ascertained. In such circumstances, Authority places reliance upon judgement of Hon'ble Supreme Court titled as **M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr, 2018 STPL 4215 SC**, where the Hon'ble Apex Court had made the following observation:

"15. Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014."

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In view of the ratio of law laid down by Hon'ble Supreme Court, in absence of specific clause with respect to handing over possession, 3 years is taken to be reasonable time to handover possession to allottee which in the present case concludes on 12.01.2014. Further, it is matter record that the complainant stepped into the shoes of original allottee for all intent and purposes on 04.11.2011. Section 2(a) of RERA act, 2016 does not distinguish between an allottee and subsequent allottee. The term subsequent allottee has been used synonymously with the term allottee in the RERA Act, 2016. Here, complainant stepped into the shoes of original allottee before due date of possession therefore complainant will be entitle to all rights of an allottee as per RERA Act, 2016 that accrued on the due date of handing over possession i.e. from 12.01.2014

21. Respondent in its reply submitted that vide cancellation letter dated 29.03.2016, respondent cancelled the unit of complainant. However, perusal of complaint file it is reveals that even after cancellation of unit respondent sent numerous reminders to complainant i.e. on 03.06.2019, 10.06.2019, 20.06.2019, 03.08.2019, 13.08.2019, 24.09.2019, 07.10.2019. The subsequent act of issuing multiple reminders for payment subsequent to cancellation letter leaves no room for any ambiguity and makes it amply clear that even in the year 2019 complainant was an allottee in the record of the respondent, therefore his rights in the unit still subsist. Whereas, the complainant had sent legal notice to respondent on 15.09.2016 to refund the

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amount paid by complainant, however he received no response from respondent in this regard.

22. Furthermore, it is noted that respondent in its reply admit that occupation certificate of unit has not been received by respondent till date, consequently even as on date respondent is not in a position to offer a valid offer to the complainant. Since respondent is not in a position to offer a valid offer of possession in foreseeable future, complainant who already waited for more than thirteen years and does not wish to wait for a further uncertain amount of time for a valid possession, cannot be forced /compelled to wait any further for possession. Authority observes that in such cases where the promoter fails to complete or unable to hand over possession of an apartment, plot or building as the agreement for sale or as the case may be, then as per Section 18(1) of the RERA ACT, 2016 promoter shall be liable on demand to allot in case the allottee wish to withdraw from the project, return the amount received in respect of that apartment, plot or building, as the case may be, with interest. Since in the present case the respondent had failed to handover possession of the unit even after 13 years complainant is at liberty to exercise his rights to withdraw from the project on account of default on the part of respondent to deliver possession and seek refund of the paid amount. In this regard 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(s).

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6745 6749 OF 2021 had observed that in case of delay in granting possession as per agreement for sale, allottees has an unqualified right to seek refund of amount paid to the promoter along with interest. Para 25 of this judgment 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 unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including Compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

23. The aforesaid decision of the Supreme Court settles the issue regarding the right of an aggrieved allottees such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. The complainant wishes to withdraw from the project of the respondent, therefore, Authority finds it to be fit case for allowing refund in favour of complainants. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is provided under Section 2 (za) of the RERA 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;

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"

24. 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 9.1%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.1 %.

25. Thus, respondent will be liable to pay the complainants interest from the date amounts were paid till the actual realization of the amount.

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Authority directs respondent to refund to the complainant the paid amount of Rs.20,51,400/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+2 % which as on date works out to 11.1% (9.1% + 2%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 11.1% till the date of this order and total amount works out to Rs.52,42,607/-as per detail given in the table below:

Sr.no	Principal amount	Date of payment	Interest accrued till 13.05.2024
1.	13104	26.07.2011	20089
2.	625016	26.07.2011	958160
3.	500000	11.03.2011	787340
4.	17955	26.07.2011	27525
5.	353481	26.07.2011	541892
6.	500000	08.02.2011	792053
7.	41844	26.07.2011	64148
	Total Principle amount = Rs. 20,51,400/-		Interest=Rs.31,91,207/-
Total amount to be refunded by respondent to complainant= Rs.52,42,607/-			

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I. DIRECTIONS OF THE AUTHORITY

26. 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(f) of the Act of 2016:

- (i) Respondent is directed to refund the entire amount of **Rs.52,42,607/-** to the complainant. It is further clarified that respondent will remain liable to pay the interest at the prescribed rate to the complainant till the actual realization of the amount.
- (ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

27. Captioned complaint is accordingly **Disposed of.** File be consigned to record room after uploading of the order on the website of the Authority.



CHANDER SHEKHAR
[MEMBER]



DR. GEETA RATHEE SINGH
[MEMBER]