



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1909 of 2023
Date of filing:	20.09.2023
Date of first hearing:	18.10.2023
Date of decision:	07.04.2025

Smt. Dropadi Devi Chachan, W/o Late Sh. Vishwa Nath Chachan,
R/o F-85, Prashant Vihar, Delhi-110085,
Since deceased through LRs namely

- a) Sh. Narendra Kumar Chachan - son,
- b) Surendra Kumar Bansal son, who also expired on 12/03/2020, leaving behind the following LRS-
 - i) Smt. Ram Dulari Bansal as widow,
 - ii) Sarita Jajodia as daughter,
 - iii.) Sangeeta Bhuwalka as daughter,
 - iv) Suman Agarwal as daughter,
 - v) Nikhil Bansal as son,
- c) Ramavtar Vishwanath Bansal - son,
- d) Vijendra Bansal - son,
- e) Upendra Kumar Chachan - son,
- f) Dharmendra Kumar Chachan - son,

g) Manoj Kumar Chachan-son.

....COMPLAINANT(S)

VERSUS

M/s TDI Infrastructure Ltd.,
(Formerly known as Intime Promoters Pvt. Ltd.)
9, Kasturba Gandhi Marg, New Delhi-110001,
A Private Limited Company, through its M.D./ Chairman

....RESPONDENT

CORAM:	Nadim Akhtar	Member
	Chander Shekhar	Member

Present: - Mr. Vikas Deep, Counsel for Complainants through VC.
Mr. Shubhnit Hans, Counsel for the respondent.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed on 20.09.2023 by the complainants 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, Kundli, Sonipat
2.	Name of the promoter	TDI Infrastructure Ltd
3.	RERA registered/not registered	Un-Registered.
4.	DTCP License no.	183-228 of 2004, 153-157 of 2004, 101-144 of 2005, 200-285 of 2002, 652-722 of 2006, 729-872 of 2006, 42-60 of 2005, 51 of 2010 and 177 of 2007.
	Part completion received for an area	927 acres
5.	Unit no.	Not available
6.	Unit area	1110 sq. ft.
7.	Date of booking by allottee	20.02.2006
8.	Date of Allotment	Not available
9.	Date of Builder Buyer agreement	Not executed.
10.	Due date of offer of possession	Not available.
11.	Possession clause in BBA	Not available.
12.	Total sale consideration	₹ 18,31,500/-
13.	Amount paid by complainant	₹ 5,50,000/-
14.	Offer of possession	Not made



B. FACTS OF THE COMPLAINT

3. Facts of the present complaint are that complainant allottee Smt. Dropadi Devi (deceased) had booked a flat by making payment of ₹3,00,000/- on 20.02.2006 as advance against present and future project for 1100 sq. ft residential flat. Copy of receipt dated 20.02.2006 is attached as Annexure C-2. Thereafter, there was no allotment from the respondent and also no demand of further payments was raised by the respondent. But without any allotment and without any demand, respondent issued a letter dated 27.11.2007 titled 'cancellation of the registration'. It clearly evidences that the flat was still not allotted despite the lapse of more than 21 months from the date of booking but still the respondent threatened to cancel the registration of flat. Copy of letter dated 27.11.2007 is annexed as Annexure C-3.
4. That now under such situation, complainant allottee Smt. Dropadi Devi (deceased) deposited the amount of ₹ 2,50,000/- with letter dated 26.12.2007 against which the receipt was issued on 31.12.2007. Letter dated 26.12.2007 and receipt dated 31.12.2007 are annexed as Annexure C-4 and C-5 respectively. Despite depositing the amount of ₹ 5,50,000/- the flat was not allotted by the respondent.



5. That thereafter on every visit of the complainants to the office of respondent, respondent had assured the complainants that the flat will be allotted but till date the respondent has not allotted the flat. The respondent even did not offer the agreement against the booking.
6. That in between complainant allottee Smt. Dropadi Devi had died on 18.02.2017 leaving behind her LRs namely;
 - a) Sh. Narendra Kumar Chachan - son,
 - b) Surendra Kumar Bansal son, who is expired on 12/03/2020, leaving behind the following LRS-
 - i) Smt. Ram Dulari Bansal as widow,
 - ii) Sarita Jajodia as daughter,
 - iii.) Sangeeta Bhuwalka as daughter,
 - iv) Suman Agarwal as daughter,
 - v) Nikhil Bansal as son,
 - c) Ramavtar Vishwanath Bansal - son,
 - d) Vijendra Bansal - son,
 - e) Upendra Kumar Chachan - son,
 - f) Dharmendra Kumar Chachan - son,
7. That all the legal heirs have mutually decided to assign all the rights in respect of the booking in favor of Dharmendra Kumar Chachan, son of deceased Dropadi Devi Chachan. There is no conflict of interest amongst the legal heirs. All the legal heirs have confirmed the same



by signing the present complaint. Hence, the legal heirs have no objection that the relief against the present booking be given in favor of Dharmendra Kumar Chachan. Copy of death certificate of Dropadi Kumar Chachan and Surendra Kumar Bansal are Annexure C-6 and C-7 respectively.

C. RELIEF SOUGHT

8. Complainants in their complaint have sought following relief:

The respondent may kindly be directed to refund the amount deposited alongwith statutory interest in **favor of Dharmendra Kumar Chachan.**

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 01.03.2024 pleading therein:

9. 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.
10. That it is pertinent to state that the allotment letter had been issued to the complainant back in year 2009 which is much prior to the commencement of the RERA Act. Therefore, the present complaint is



not maintainable as it falls outside the purview of provisions of the RERA Act.

11. 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.
12. 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.
13. 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.
14. That the complaint is barred by limitation as last payment was made by complainant way back in year 2007 and thereafter there was no communication from the complainant. That negligence is on the part of the complainant as she kept sleeping over her rights from past 16 years and did not even bother to communicate with the respondent company.



E. ARGUMENTS OF LEARNED COUNSELS OF THE COMPLAINANTS AND RESPONDENT

15. During oral arguments, Id. Counsel for complainant pressed for relief of refund stating that respondent's conduct has shaken the belief of owning the flat in its project. He further stated that respondent is enjoying their money from the last 10-12 years so amount be refunded with interest in favor of Dharmendra Kumar Chachan.

16. Learned counsel for the respondent reiterated arguments as were submitted in written statement and further stated that claim of complainant cannot be allowed at the stage when completion certificate has already been received by the respondent. He further stated that respondent is ready to offer possession of the flat to the complainant.

F. ISSUES FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

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 20.02.2006(date of booking) when the original allottee had paid an advance against present and future project for 1000-1100 sq. ft (Approx.) residential flat, 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 of the judgement is reproduced below:-

"51. Thus, it is clear that the statute is not retrospective merely because it affects existing rights or its retrospection because a part of the requisites for its action is drawn from a time antecedent to its passing, at the same time, retroactive statute means a statute which creates a new obligation on transactions or considerations already passed or destroys or impairs vested rights.

52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term "converting and existing building or a part thereof into apartments" including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.

53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be



binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."

(ii) The respondent in its reply has contended that the complainants are "speculative buyer" who have invested the money 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 complainants are an aggrieved person who have filed a complaint under Section 31 of



the RERA Act, 2016 against the promoter for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here, it is important to emphasize upon the definition of term allottee under the RERA Act of 2016, reproduced below: -

Section 2(d) of the RERA Act:

(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

(iii) Upon bare perusal of the definition of "allottee", it is clear that the transferee of an apartment, plot or building is an allottee. The mode of transfer may include issuance of booking receipts, issuance of allotment letter, exchange of development rights etc. Upon careful perusal of documents on record, it is revealed that original allottee had paid a sum of ₹3,00,000/- for purchasing a flat measuring 1100 sq. ft. in present and future project of respondent and it was agreed between the parties that *'the provisional allotment for residential flat in group housing projects in future schemes shall be made to me/us within six months of encashment of application money'*. Thereafter, the original allottee made a payment of ₹2,50,000/- on 31.12.2007. The fact that the respondent



had accepted subsequent other payments from the complainant (original applicant) apart from the initial booking amount which was paid by her and had issued receipts for the same, clearly shows that respondent had recognised the original applicant as his allottee. If argument of respondent is accepted that there was no "agreement for sale" between the parties, it would imply that respondent, who is into the business of real estate development had accepted payment and issued receipts for the same for 'nothing in return', which is impossible and hard to believe. Mere fact that an allotment letter specifying a unit no. was not issued to original allottee does not mean that he was not an allottee of the respondent. Once respondent has accepted the application form along with multiple payments from original allottee for purchase of a unit in his project and to allot a unit in present and future project, it was the obligation of respondent to allot him a unit no. within a reasonable time. Failure on his part to do so will not affect the rights of original applicant as an allottee. The definition of "agreement for sale" as provided in Section 2(c) means an agreement entered into between the promoter and the allottee. The definition is not restricted to execution of a builder buyer agreement and specially with respect to agreement entered into between the allottee and the promoter before RERA Act of 2016



coming into force. Accepting the payment towards a unit in present and future project shows there was a meeting of minds that the promoter will give possession in any present or future project developed by respondent. Furthermore, there is nothing on record to show that the allotment will be by way of any draw, first come first serve basis, or by any other mode and the original applicant was denied allotment of a specific unit after following that process. Documents available on record, clearly show that original applicant booked a plot in respondent's present and future project. Accordingly, the original allottee was an "allottee" only, not an investor. Furthermore, respondent in its written statement admits that allotment letter was issued in year 2009. But no documentary evidence has been placed on record in support of it. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as **M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. And Anr.** had also held that the concept of investors is not defined or referred to in the Act. Thus, the contention of promoter that allottees being investor are not entitled to protection of this Act also stands rejected.

(iv) Respondent has also taken objection that complaint is grossly barred by limitation. Reference in this regard is made to the



judgement of Hon'ble Apex Court Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise wherein it was held that Limitation Act does not apply to quasi-judicial bodies. Further, in this case the promoter has till date failed to fulfil their obligations because of which the cause of action is re-occurring. RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the limitation Act 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not Courts.

(v) Admittedly, complainant in this case had purchased the booking rights qua the plot in question in the project of the respondent in the year 2006 by paying an amount of ₹ 3,00,000/-. Thereafter, respondent had issued a letter dated 27.11.2007.

Contents of said letter is reproduced below for reference:-

"Sub:- Cancellation of the registration.

Regarding customer ID no. KFL-14924, which was issued against flat, measuring 1110 sq. ft booked at your end 'TDI City' at Kundli, Sonapat, Haryana.

*We are sorry to inform you that inspite of our **repeated request and reminders**, you failed to make default in the payments. We are left with no alternatives but to cancel the said registration.*

You shall be liable for all the costs and consequences pertaining to the said cancelation."



(vi) Thereafter, complainant had written a letter dated 26.12.2007 to the respondent in response to aforesaid letter dated 27.11.2007.

Contents of said letter is reproduced below for reference:-

"Subject:-Further payment

Dear Sir

I am in receipt of your letter dated 27.11.2007 about cancellation of my booking.

In this regard please note that this is the first ever communication received by me from your office after booking of a flat measuring 1110 sq. ft. I have received no letter from your office till the date for any confirmation or demands raised on me. I only received a receipt issued by you for the original amount paid by me and that is first and last communication I have received till date.

In view of above, I am enclosing herewith a cheque no. 627331 dated 20.12.2007 for Rs 2,50,000/- as discussed over phone with your office. Please acknowledge the receipt of the payment made and oblige."

(vii) Accordingly, respondent duly accepted the amount of ₹2,50,000/- from complainant (original applicant) after issuance of cancellation and issued receipt dated 31.12.2007, annexed as Annexure C-5. It is the plea of respondent that allotment letter was issued to complainant in year 2009. However no such letter has been placed on record. It is to mention here that respondent in its cancellation letter has stated that *'We are sorry to inform you that inspite of our repeated request and reminders, you failed to make default in the payments. We are left with no alternatives but to cancel the said registration.'* No such reminder or request letters



have been placed on record by the respondent to prove/substantiate his plea. Aforesaid timeline and transactions duly establish the fact respondent accepted the amount of ₹ 5,50,000/- from complainant upto year 2007 and did not bothered to issue any allotment or agreement for any unit till date. Respondent issued cancellation letter in year 2007 but itself rendered it of no relevance after accepting the amount on 31.12.2007. Respondent was duty bound to formalize the transaction of booking into allotment /agreement which has been done till date. No explanation of any sort has been provided by respondent for not acting upon allotment of flat/unit to complainant after expiry of time period of around 18 years. Respondent did not even bothered to refund the amount to complainant. As on date the complainant is not interested in pursuing the claim for possession of unit. Rather complainant is praying for refund of amount with interest.

(viii) Herein, the grievance of complainant is that respondent has not refunded him the booking/advance amount of ₹ 5,50,000/- till date. Respondent nowhere in its written as well as submissions has denied receipt of ₹ 5,50,000/- in its account from the complainant. No justification has been provided by respondent for not refunding the amount till date. Said conduct of respondent implies that



respondent is holding the money of complainant since year 2007, enjoying the benefit of it without having any intention to return it.

(ix) In respect of awarding refund in favour of Dharmendra Kumar Chachan, it is observed that Authority had already passed order dated 04.11.2024 which is reproduced below for reference:-

"On the last date of hearing, i.e. 13.05.2024, following order was passed:-

"Present complaint has been filed by 7 legal heirs of allottee-Dropadi Devi seeking relief of refund with interest in favor of only one legal heir, i.e., Dharmendra Kumar Chachan. But neither legal heir certificate nor affidavit of all legal heirs except one-Dharmendra Kumar Chachan giving up their claim of unit in question in favor of Dharmendra Kumar Chachan has been placed on record.

In these circumstances, the complainant is directed to file legal heir certificate and affidavit of all legal heirs giving up their claims in unit in question in favor of only one legal heir within next 3 weeks with an advance copy supplied to respondent.

Case is adjourned to 16.09.2024 for arguments."

As per office record, complainant has filed legal heir certificate and affidavits of legal heirs giving up their claims in favor of one legal heir, i.e., Dharmendra Kumar Chachan in registry on 13.08.2024.

Today, ld. counsel for respondent stated that he has not received copy of said documents. Ld. counsel for complainant undertakes to supply copy of documents to respondent's counsel. Further, he sought time to argue the case as he has to rush for some urgent work/place. His request is accepted.

Case is adjourned to 17.02.2025 for arguments."

Affidavits of all legal heirs giving up their claims in favour of one legal heir, i.e. Dharmendra Kumar Chachan has been placed on



record in registry on 13.08.2024. No objection of any sort has been raised to said affidavits by any of the parties. Hence, requisition of allowing refund in favour of Dharmendra Kumar Chachan stands allowed.

(x) In this case, the first step of booking alongwith one further payment was carried out between the parties but it did not conclude towards allotment of unit for the reasons/factors discussed above. Hence, Authority finds it a fit case for awarding refund of paid amount with interest in favour of Dharmendra Kumar Chachan in terms of provisions of Section 18 (1) (a) of RERA Act, 2016.

(xi) The definition of term 'interest' is defined under Section 2(z) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;



(xii) Consequently, as per website of the State Bank of India, i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 07.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

(xiii) Rule 15 of HIRERA 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".

(xiv) Thus, respondent will be liable to pay the complainant (Dharmendra Kumar Chachan) interest from the date amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainant the paid amount of ₹ 5,50,000/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 11.10% (9.10% + 2.00%) from the date amounts were paid till the actual realization



of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 11.10% till the date of this order and total amount works out to Rs 16,67,025/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 07.04.2025
1.	3,00,000/-	20.02.2006	6,37,444/-
2.	2,50,000/-	31.12.2007	4,79,581/-
3.	Total=5,50,000/-		Total= 11,17,025/-
4.	Total Payable to complainant	550000+1117025 =	16,67,025/-

H. DIRECTIONS OF THE AUTHORITY

18. 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 paid amount of ₹ 5,50,000/- with interest of ₹11,17,025/- to the Dharmendra Kumar Chachan. It is further clarified that respondent will remain liable to pay interest to the complainant (Dharmendra Kumar Chachan) 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.

19. **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]