



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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

Complaint no.:	2301 of 2022
Date of filing:	01.09.2022
Date of first hearing:	03.11.2022
Date of decision:	07.04.2025

Pawan Kumar S/o Late Sh. Roshan Lal,  
R/o Shop no. 40, first floor,  
Anaj Mandi, Sonipat, Haryana-131001

....COMPLAINANT

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**  
**Chander Shekhar**

**Member**  
**Member**

**Present: -**

Mr. Vikas Deep, Counsel for Complainant through VC.  
Mr. Shubhnit Hans, Counsel for the respondent.

**ORDER (NADIM AKHTAR - MEMBER)**

1. Present complaint has been filed on 01.09.2022 by the complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein, it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

**A. UNIT AND PROJECT RELATED DETAILS**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	TDI City, (Commercial area) 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. (SCO)	HC-4/6
6.	Unit area	204 sq. yd.
7.	Date of booking by allottee	30.06.2006
8.	Date of Allotment	10.01.2007
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	₹ 73,83,576/-
13.	Amount paid by complainant	₹ 12,50,000/-
14.	Offer of possession	Not made

### B. FACTS OF THE COMPLAINT

3. Facts of the present complaint are that complainant/allottee had booked a commercial plot by making payment of ₹12,50,000/- on 30.06.2006 as advance against present and future project for commercial area. Copy of receipt dated 30.06.2006 is attached as Annexure C-1. As per payment plan attached with advance registration form, the allotment was to be made within six months from the date of registration, i.e. upto 01.08.2006 and possession was to be given within two years. Respondent did not offer the allotment within the stipulated time mentioned in the registration form. Nor any due amount was





communicated as the development was not done as per schedule.

Copy of registration form is annexed as Annexure C-2.

4. That rest of the amount was payable in instalments which were scheduled to start after allotment of plot. As the respondent failed to allot the plot in terms of booking, hence, no amount was ever due, as the further payments were due only after allotment. That respondent did not allot the unit in terms of booking and also failed to develop the project as per schedule. Even at the time of booking and accepting the initial amount, the respondent was not having any mandatory license and was also not having the right to accept the booking amount.
5. That the complainant made various visits to the office of respondent on various occasions and every time the complainant was informed that project with commercial area/plot are not yet approved and will be launched soon. The complainant after having waited till 2012, upon visiting the respondent's office were shocked to know that his booking has been cancelled on account of non-payment of instalments and amount deposited stands forfeited with the respondent. The complainant was informed that a cancellation letter will shortly be issued but no such letter has been sent to the complainant.
6. That there is huge deficiency in services on the part of the respondent and thus, the complainant previously filed the complaint no. 1180 dated 19.10.2012 before District Consumer Disputes Redressal





Commission, North West, Delhi. That in between, the complainant had filed the complaint case no. 668/2020 with undertaking that the said complaint pending before Ld. DCDRC Delhi shall not be proceeded further, being infructuous on account of change of proposition of law on pecuniary jurisdiction. Now the complaint no. 668/2020 which was pending before this Hon'ble Authority was withdrawn vide order dated 18.05.2022 with liberty, on pretext that the consumer complaint is pending. Now, the complainant no. 1180 dated 19.10.2012 before District Consumer Commission, Delhi stands withdrawn vide order dated 08.08.2022, copy of said order has been filed in registry on 06.07.2023.

**C. RELIEF SOUGHT**

7. Complainant in his complaint has sought following relief:

The respondent may kindly be directed to refund the amount deposited with statutory interest as per Rule 15.

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

Learned counsel for the respondent filed a detailed reply on 25.03.2024 pleading therein as under:

8. 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.

9. 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.
10. 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.
11. 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.
12. That the complaint is barred by limitation and the same is not maintainable before Ld. Authority as the offer of possession for the commercial plot no. HC-4/6 has already been offered to complainant on 08.09.2017. However, it is the complainant who never came forward to accept the same. Copy of offer of possession dated 08.09.2017 is annexed as Annexure R-5. It is the complainant who is not coming forward to make payment of remaining due amount.





13. Respondent has placed on record allotment letter dated 10.01.2007 for unit no. HC-4/6 allotted in favor of complainant-allottee in registry on 01.03.2024. Similarly, offer of possession dated 08.09.2017 has been placed on record in registry on 29.10.2024.

**E. ARGUMENTS OF LEARNED COUNSELS OF THE COMPLAINANT AND RESPONDENT**

14. During oral arguments, ld. Counsel for complainant pressed for relief of refund stating that respondent's conduct has shaken the belief of owning the shop in its project. He further stated that respondent has failed to allot the unit within stipulated time and also failed to develop the project. He pressed upon refund of paid amount with interest.

15. Learned counsel for the respondent reiterated arguments as were submitted in written statement and further stated that claim of complainant cannot be allowed at this stage when completion certificate has already been received by the respondent. He further stated that respondent has already offered possession of the unit to the complainant in year 2017.

**F. ISSUES FOR ADJUDICATION**

16. Whether the complainant is entitled to refund of amount deposited by him 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 the 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 30.06.2006 (date of booking) when the complainant-allottee had paid an advance against present and future project for commercial area, 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 complainant is "speculative buyer" who has 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 complainant is an aggrieved person who has filed a complaint under Section 31 of the RERA Act, 2016 against the promoter for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here, it is important to emphasize upon the definition of term allottee under the RERA Act of 2016, reproduced below: -

*Section 2(d) of the RERA Act:*

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

(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 allottee had paid a sum of ₹12,50,000/- for purchasing a



commercial space in present and future project of respondent and it was agreed between the parties that *'your offer of allotment for a commercial plot in your future schemes shall be made to me/us within six months of my registration application made herein'*. The fact that the respondent had accepted payment of ₹12,50,000/- from the complainant and had issued receipt for the same, clearly shows that respondent had recognised the complainant as his allottee. Documents available on record, clearly show that complainant-allottee booked a commercial space in respondent's present and future project. Accordingly, the complainant was an "allottee" only, not an investor. Furthermore, respondent in its written statement admits that allotment letter was issued in year 2007 and has placed on record copy of it in registry on 01.03.2024. 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 allottee being investor is 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 ₹ 12,50,000/-. Thereafter, no demand was raised by the respondent till year 2017 and no further amount was paid by the complainant till date. As per complainant's version, respondent failed to allot the unit to complainant till date so amount be refunded to him. However, it is the stand of respondent that allotment of unit no. HC-4/6 having area of 204 sq. yds was made vide allotment letter dated 10.01.2007 and offer of possession for said unit was made to complainant on 08.09.2017. These documents were not part of





written statement filed by respondent. So, respondent has placed on record these documents in registry on 29.10.2024.

(vi) At this stage, it is important to refer detailed order dated 13.05.2024 passed by this Authority, which is as follows:-

*"On the last date of hearing, i.e., 31.05.2023, Authority had observed as follows:-*

*"Considering above submissions, Authority directs the complainant to place on record copy of order dated 08.08.2022 vide which the complaint pending before Ld. District Consumer Dispute Redressal Forum, New Delhi has been withdrawn before next date of hearing with advance copy supplied to complainant. Respondent shall file copy of allotment letter and demand/reminder letters issued to complainant along with postal receipts with advance copy supplied to complainant."*

*Complainant had filed withdrawal order dated 08.08.2022 in registry on 06.07.2023. Respondent has filed allotment letter dated 10.01.2007 on 01.07.2023.*

*Today, ld. counsel for respondent stated that possession of plot no. HC-4/4 has already been offered to complainant on 08.09.2017 after receipt of part completion certificate in Septemer, 2017 received for 573 acres out of total project of 1100 acres. It is the complainant who is at fault for not making further payment/accepting possession after making payment of Rs 12,50,000/- on 01.02.2006. Ld. counsel for complainant argued that neither allotment letter of year 2007 nor offer of possession dated 08.09.2017 is supported with postal receipt to prove the fact that complainant was in receipt of these letters. Ld. counsel for respondent sought time to place on record documentary proof of sending allotment letter and offer of possession to complainant.*

*In these circumstances, the respondent is directed to place on record the approved plan showing that the plot of complainant*





*lies in portion for which completion certificate stands received. Respondent shall also file proof of service of allotment letter and offer of possession upon complainant and demand letter, if any, raised after allotment which has not been honored by complainant. Complainant is directed to place on record documentary evidence to prove as to what efforts were being taken by complainant to get allotment/possession of plot after making payment of Rs 12,50,000/- on 01.02.2006. Said documents be filed within next 3 weeks with advance copy supplied to opposite party.*

*Case is adjourned to 16.09.2024 for arguments."*

(vii) In compliance of aforesaid directions, respondent has filed the documents in registry on 29.10.2024. Perusal of said documents reveals that copy of allotment letter and offer of possession has been filed. But it is not supported with postal receipts or any other proof of service upon complainant. Respondent has not been able to prove it on record that allotment letter and offer of possession were duly supplied/intimated to complainant. In absence of receipt of allotment letter and offer of possession, the complainant who had already paid Rs 12,50,000/- in year 2006 is waiting till date for proper formalisation of the transaction of booking amount. Respondent was duty bound to formalize the transaction of booking into allotment /agreement which has not been done till date. No explanation of any sort has been provided by respondent for not acting upon 'booking amount'





received from complainant after expiry of time period of around 19 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. Now, respondent is ready to offer the possession of unit but the conduct of respondent has shaken the belief of complainant and complainant is insisting upon refund of paid amount only with interest.

(viii) Herein, the grievance of complainant is that respondent has not refunded him the booking/advance amount of ₹ 12,50,000/- till date. Respondent nowhere in its written as well as oral submissions has denied receipt of ₹ 12,50,000/- 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 2006, enjoying the benefit of it without having any intention to return it.

(ix) In this case, the first step of booking was carried out between the parties but it did not conclude towards allotment/agreement of unit for the reasons/factors discussed above. If we look at the case from another angle, the respondent had concluded the transaction of booking into allotment letter, however same was not in





knowledge of complainant and complainant never got sure/satisfied with the fact that his booking amount is utilized for allotment of unit in his favour. Moreover, interesting fact to note in this case in that respondent after receipt of booking amount in year 2006 has not raised any amount till year 2017. No demand letter has been placed on record by the respondent and as such it is not a general real estate market trend. In these circumstances, Authority finds it a fit case for awarding refund of paid amount with interest in favour of complainant in terms of provisions of Section 18 (1) (a) of RERA Act, 2016.

(x) 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;*





(xi) 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%.

(xii) 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".*

(xii) Thus, respondent will be liable to pay the complainant interest from the date amount was paid till the actual realization of the amount. Authority directs respondent to refund to the complainant the paid amount of ₹ 12,50,000/- 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 26,06,599/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 07.04.2025
1.	12,50,000/-	30.06.2006	26,06,599/-
2.	Total= 12,50,000/-		Total= 26,06,599/-
3.	Total Payable to complainant	1250000+2606599=	38,56,599/-

#### H. DIRECTIONS OF THE AUTHORITY

17. 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 ₹12,50,000/- with interest of ₹26,06,599/- to the complainant. It is further clarified that respondent will remain liable to pay interest 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

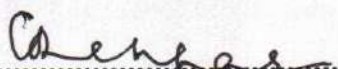




Haryana Real Estate (Regulation & Development) Rules, 2017

failing which, legal consequences would follow.

18. **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]

