



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	849 of 2022
Date of filing:	26.05.2022
Date of first hearing:	02.08.2022
Date of decision:	21.04.2025

Raj Kumar S/o Sh. Balbir Singh
R/o 15B, Village Tajpur Tihar Khurd,
Sonipat, Haryana.

....COMPLAINANT

VERSUS

TDI Infrastructure Limited.
Vandana Building, Upper Ground Floor
11, Tolstoy Marg, Connaught Place,
New Delhi- 110001

....RESPONDENT

CORAM: Nadim Akhtar
Chander Shekhar

Member
Member

Present: - None for the complainant
None for the respondent

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint was filed on 26.05.2022 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 complainants, 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	"Espania Floors", Main NH-1, Kamaspur, Sonipat
2.	RERA registered/not registered	HRERA-PKL-SNP-161-2019 dated 15.11.2019
3.	DTCP License no.	1065-1068 of 2006
	Licensed area	12.54 acres
4.	Unit no.	EF-67 (Duplex)
5.	Unit area	1224 sq. ft. or 113.71 sq. mtrs
6.	Date of booking	18.10.2011
7.	Date of builder buyer agreement	09.02.2012



8.	Due date of offer of possession (30 months)	09.08.2014
9.	Possession clause Clause 28	"Clause 28However, if the possession of the floor is delayed beyond the stipulated 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 thereafter for every month of delay, the buyer shall be entitled to a fixed monthly compensation/ damages/ penalty quantified @ Rs.5 per square foot of the total super area of the floor. The Buyer agrees that he shall neither claim nor be entitled for any further sums on account of such delay in handing over the possession of the floor."
10.	Total sale consideration	₹ 33,91,539/-
11.	Amount paid by complainant	₹ 32,68,273/-
12.	Occupation Certificate	Not received till date.

B. FACTS OF THE COMPLAINT

3. Facts of the present complaint are that original allottee had booked a floor in the project namely; 'Espania Floors', Main NH-1, Kamaspur, Sonipat, of the respondent by paying ₹ 4,00,000/- on 18.10.2011. Thereafter, Builder Buyer Agreement (BBA) for unit no. EF-67-Duplex having an area of 1224 sq. ft. was executed between the

original allottee and respondent on 09.02.2012. As per clause 28 of it, possession was supposed to be delivered upto 09.08.2014. Complainant had paid an amount of ₹ 32,68,273/- against the total sale consideration of ₹ 33,91,539/-. Complainant had purchased the allotment right of unit vide endorsement dated 26.12.2014.

4. That respondent has not handed over the possession till date. Complainant feeling cheated and duped by the delay in handing over of possession, filed a complaint before this Authority seeking possession of unit vide complaint no. 3044 of 2019 and the same was granted by the Authority vide order dated 07.12.2021. Execution in respect of said order is pending before this Authority. Now to the utter surprise of the present complainant, the respondent vide letter dated 21.02.2022 has raised an illegal demand of ₹ 9,15,502.01/- in lieu of some enhancement in area of said unit whereas in reality no such enhancement is there. By now the complainant had almost made the total cost of the floor, but possession has not been delivered to the complainant. Therefore, complainant is left with no other option but to approach this Authority. Hence the present complaint has been filed.

C. RELIEFS SOUGHT

5. Complainant in his complaint has sought following reliefs:



- i. Allow the present complaint in favor of complainant and against the respondent.
- ii. Direct the respondents to withdraw the demand notice dated 21.02.2022 vide which the complainant was asked to pay an amount of ₹ 9,15,502.01/- being illegal and against the applicable rules and regulations.
- iii. To quash the impugned demand notice an amount of ₹ 9,15,502.01/- dated 21.02.2022 being illegal and served to the complainant without any notice or intimation to the complainant in this regard.
- iv. To set aside above said impugned demand notice an amount of ₹ 9,15,502.01/- dated 21.02.2022 being illegal and said enhanced area without there being any enhancement area of the said unit in reality.
- v. To set aside the impugned demand an amount of ₹ 9,15,502.01/- dated 21.02.2022 being illegal and against the settled law in case titled as Vivek Kadyan.
- vi. Pass any such order or orders as are deemed fit and proper in the facts and circumstances of the present case and in the interest of justice.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 17.10.2022 pleading therein as under:



6. That due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely- Espania Floor, NH-1, Kamaspur, Sonipat, Haryana. Said project is registered with the Ld. Authority.
7. That when the respondent Company commenced the construction of the said project, the RERA Act was not in existence, therefore, the respondent Company 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. Therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act.
8. That the builder buyer agreement between the complainant and respondent has been executed on 09.02.2012 which is much prior from the date when the RERA Act, 2016 came into existence. Therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act.
9. That the respondent had applied for grant of occupation certificate vide its letter dated 12.09.2016. Due to some unforeseen circumstances, the department had not granted the Occupation Certificate and accordingly, respondent company had applied the Occupation Certificate afresh vide letter dated 17.02.2022. Copy of



letter dated 17.02.2022 is annexed as Annexure R-2. It is the endeavor of respondent to obtain the same at earliest.

10. That complainant herein is an investor and accordingly invested in the project of the Respondent Company for the sole reason of earning profits and speculative gains, therefore, the captioned complaint is liable to be dismissed in limine.
11. That possession has already been offered to the complainant on 21.02.2022. However, it is the complainant who is not coming forward to clear the pending dues and take over the possession of the unit.

E. ARGUMENTS OF LEARNED COUNSELS FOR COMPLAINANT AND RESPONDENT

12. It is pertinent to mention here that no one appeared on behalf of both the parties on the date fixed for arguments. As such the Real Estate (Regulation and Development) Act, 2016, is a beneficial legislation aimed at providing speedy and efficacious redressal to grievances of allottees and other stakeholders. In furtherance of this objective, the proceedings before the Authority have been made summary in nature. Such expeditious adjudication is achievable only if the parties involved, both the complainant and the respondent, submit their pleadings in a time-bound manner. Today is 12th hearing of this case, complaint and reply are on record so case is decided on merits and on the basis of documents available on the file.



F. ISSUES FOR ADJUDICATION

13. Whether the complainant is entitled to get the reliefs sought or not?

G. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT.

G.I Objection regarding execution of BBA prior to the coming into force of RERA Act,2016.

One of the averments of respondent is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act,2016. Accordingly, respondent has argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the same cannot be examined under the provisions of RERA Act. In this regard, Authority observes that after coming into force the 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 RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 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 RERA 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, as per recent judgement of Hon'ble Supreme court in **Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021**, it has already been 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.II Objections raised by the respondent stating that complainant herein is an investor and has invested in the project of the Respondent Company for the sole reason of investing, earning profits and speculative gains.

The complainant herein is the allottee/homebuyer who has made a substantial investment from his hard earned savings under the belief that the promoter/real estate developer will handover possession of the booked unit within 3-4 years of allotment but his bonafide belief stood shaken when the promoter failed to offer a valid possession of the booked unit till date without any reasonable cause. As per definition of allottee provided in clause 2(d) of RERA Act,2016, present complainant is duly covered under it and is entitled to file present complaint for seeking the relief claimed by him. Clause 2(d) of RERA Act,2016 is reproduced for reference:-

“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”.



Complainant has been allotted floor/duplex in the project of respondent by the respondent/promoter itself and said fact is duly admitted by the respondent in the builder buyer agreement dated 09.02.2012. Also, the definition of allottee as provided under Section 2 (d) does not distinguish between an allottee who has been allotted a unit for consumption/self utilization or investment purpose. So, the plea of respondent to dismiss the complaint on the ground that complainant herein is investor does not hold merit and same is rejected.

G.III Objection regarding retrospective application of provisions of RERA Act,2016.

Respondent in its reply has raised an objection that the provisions of RERA Act, 2016 cannot be applied retrospectively. Reference can be made to the case titled M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. (supra), wherein the Hon 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 safeguarding the pecuniary interest of the 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.

45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest."

"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

ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."

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 contract/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 the Rules made thereunder 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.

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

14. 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) Admittedly, original allottee had purchased the booking rights qua the floor in question in the project of the respondent in the year 2011 against which an amount of ₹ 32,68,273/- already stands paid to the respondent. Out of said paid amount, last payment of ₹ 29,311/- was made to

respondent on 20.04.2017 by the complainant which implies that respondent is in receipt of total paid amount since year 2017 whereas fact remains that no valid offer of possession duly supported with Occupation Certificate of the booked unit has been given to the complainant till date.

(ii) It is pertinent to mention here that complainant initially had filed complaint for relief of possession alongwith delay interest vide complaint no. 3044/2019. Captioned complaint was disposed of by this Authority vide its order dated 07.12.2021, granting relief of payment of delay interest amounting to ₹ 19,30,607/- and further monthly interest @ ₹ 22,068/- to be paid to complainant by the respondent from date of order till the date receipt of Completion Certificate. Relevant part of order dated 07.12.2021 is reproduced below for reference:

"5. Since complainant wishes to wait for delivery of possession till offer of possession after obtaining of Occupation Certificate by the respondent, therefore, he shall be entitled to a further amount of delay interest till a legally valid possession is offered after obtaining Occupation Certificate from department concerned. As per calculations made by Accounts Branch, the amount payable by respondent to the complainant on account of interest for delay in handover of possession of the unit up to the

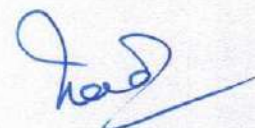


date of passing of this order has been worked out to Rs. 19,30,607/-. The Authority orders that upfront payment of Rs. 19,30,607/- will be made to complainant on account of delay caused in offering possession within 90 days and further monthly interest @ Rs. 22068/- will be paid to complainant by the respondent w.e.f. 07.12.2021 till the date a legally valid offer of possession is made.

Disposed off. *File be consigned to record room and order be uploaded on the website of the Authority."*

Thereafter, respondent offered possession to complainant on 21.02.2022 with demand of ₹ 9,15,502/- on ground of enhanced/increased area. As per complainant's version, there is no increase in area and hence, for seeking quashing of said demand present complaint has been filed.

(iii) In the written statement submitted by the respondent, it has been admitted that actual handover of possession of the booked unit has not been taken by the complainant. With respect to status of handing over of possession, it is submitted that the respondent had applied for grant of occupation certificate vide letter dated 17.02.2022 to Department of Town and Country Planning with respect to the project in question but the same is awaited. Now, respondent had offered possession to the complainant on 21.02.2022 alongwith demand of ₹ 9,15,502/-. In order to adjudicate upon the said demand,



detailed order dated 12.10.2023 was passed by the Authority.

Same is reproduced below for reference:-

"Ld. counsel for the complainant argued that respondent without receipt of occupation certificate had issued fit out offer of possession dated 21.02.2022 alongwith additional demand of Rs 9,15,502/-. No justification for the said additional demand as to on which account/heads amount, is charged has been provided by respondent till date except increase in area by 219 sq ft. So, present complaint has been filed seeking quashing of said offer of fit-out and demand of Rs 9,15,502/- raised with it.

Ld. proxy counsel for Adv. Shubhmit Hans, requested for an adjournment as arguing counsel is not available for arguments. His request has been accepted.

In view of aforesaid submissions, Authority directs the respondent to provide status of occupation certificate whether received or not and provide break-up of additional demand of Rs 9,15,502/- as to how said figure is arrived at and amount is charged under which different heads. Further, respondent shall also provide component wise detail of increased area of 219 sq ft if such increase has been carried out in unit of complainant with copy of approved/revised plans. Said documents be filed at least one week prior to next date of hearing with an advance copy supplied to complainant.

Case is adjourned to 14.12.2023."

(iv) Respondent had filed the documents in compliance of the order dated 12.10.2023 in registry on 27.09.2024 wherein break up of amount of ₹ 9,15,502/- and component wise detail of increased area (1499 sq. ft to 1718 sq. ft) has been provided. No



detail in respect of Occupation certificate or any copy of it has been placed on record by the respondent. Without receipt of Occupation Certificate, the offer dated 21.02.2022 made by the respondent alongwith demand of ₹ 9,15,502/- (be it on ground of increased area or any other charges) is not a valid offer of possession and as such complainant is not duty bound to accept it by making payment of outstanding dues amount. Respondent is not entitled to recover any amount without issuing a proper valid offer of possession and till that the directions passed by the Authority in complaint no. 3044 of 2019 will remain/continue particularly in respect of delay interest and monthly interest.

(v) Perusal of relief sought reveals that complainant by stating those 5 clauses in reliefs is seeking essentially only one relief- which is quashing/set-aside of demand letter of ₹ 9,15,502/-. As discussed above, the demand letter/offer of possession alongwith demand of ₹ 9,15,502/- is not valid as same is not supported with Occupation certificate. Hence, said demand/offer is illegal and is therefore quashed. Respondent is not entitled to recover an amount of ₹ 9,15,502/- from the complainant.



I. DIRECTIONS OF THE AUTHORITY

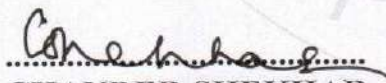
15. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to continue to abide by the directions issued vide disposal order dated 07.12.2021 passed in complaint no. 3044/2019.

(ii) Respondent is not entitled to recover the amount of ₹ 9,15,502/- from the complainant as same stands quashed.

(iii) Respondent is directed to issue valid offer of possession to the complainant after receipt of Occupation Certificate from the concerned department.

16. **Disposed of.** File be consigned to record room after uploading of order on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]