



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2110 of 2023
Date of filing:	20.09.2023
Date of first hearing:	18.10.2023
Date of decision:	07.04.2025

Sh. Nitin Dua and Ms. Ruchika Kashyap
Both R/o 49, State Bank Colony,
Nanak Piro Gurudwara, 2nd floor, Delhi-110009

....COMPLAINANT(S)

VERSUS

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

....RESPONDENT(S)

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 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 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	Tuscan Floors, TDI Tuscan City, Kundli, Sonipat
2.	Name of the promoter	TDI Infrastructure Ltd
3.	RERA registered/not registered	Un-Registered.
4.	DTCP License no.	177 of 2007 dated 13.04.2007.
	Licensed Area	22.864 acres
5.	Unit no.	T-3/1101
6.	Unit area	1390 SQ FT
7.	Date of booking by allottee	18.07.2011
8.	Date of Allotment	11.08.2011
9.	Date of Builder Buyer agreement	11.08.2011

10.	Due date of offer of possession-30 months	11.02.2014
11.	Possession clause in BBA	Clause 30 <i>"However, if the possession of the Apartment is delayed beyond a period of 30 months from the date of execution hereof and the reasons of delay are solely attributable to the wilful neglect or default of the Company then for every month of delay, the Purchaser shall be entitled to a fixed monthly compensation/damages/penalty quantified @ Rs.5 per square foot of the total super area of the Apartment. The Purchaser 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 Apartment."</i>
12.	Total sale consideration	₹ 30,87,885-
13.	Amount paid by complainants	₹ 45,46,285/-
14.	Offer of possession	14.04.2018
15.	Status of Occupation Certificate	Not received.

B. FACTS OF THE COMPLAINT

3. Facts of complaint are that complainants had booked a flat by making payment of ₹3,00,000/- on 18.07.2011 as advance against present and future project for 1390 sq. ft residential flat. Copy of receipt dated 18.07.2011 is attached as Annexure C-1. Thereafter, allotment letter for unit no. T-3/1101 having area of 1390 sq ft was issued by the

respondent in favor of complainants on 11.08.2011. Copy of allotment letters annexed as Annexure C-2. Following which builder buyer agreement was executed between the parties on 11.08.2011 and in terms of clause 30 of it, possession was supposed to be delivered upto 11.02.2014. Copy of builder buyer agreement is annexed as Annexure C-3.

4. That the complainants had paid the total amount of Rs 45,46,285/- until 24.03.2018 as stipulated in the statement of accounts annexed as Annexure C-4.
5. That respondent committed the illegality and offered the possession of the unit in question vide letter dated 14.04.2018, annexed as Annexure C-5, without any development and without obtaining any mandatory Occupation Certificate. As on date there is no completion, no development in respect of project in question where the unit is located. Further, the respondent have charged more amount on account of increased area of unit without giving any opportunity to measure the same. The alleged increase of the area is illegal and not sustainable.
6. That respondent is authorized to collect actual EDC to be deposited with the Govt. of Haryana. The respondent has never provided the account in respect to EDC, which was being collected by respondent from various customers and deposited by the respondent with the Govt. of Haryana. It is reasonable apprehension that the respondent is



collecting much more amount on account of EDC from the customers than the actual amount due. In this way, it is very much possible that the respondent is mis-appropriating the amount of customers including the deponent which is a criminal offence and the deponent reserves the right to file a criminal complaint against the respondent

7. That the respondent never intimated the alleged increase of area at any point of time prior to the statement of account. The respondent did not produce any relevant documents and record like change of approved plans, demand from the statutory authorities on such alleged increased area. The respondent even did not allow the complainants to measure the flat any point of time and forced such alleged and wrong increased area. Infact, there is no increase in flat area.

C. RELIEF SOUGHT

8. Complainants in their complaint have sought following reliefs:
 - i. The respondent may kindly be pay the statutory delay compensation till execution of sale deed after obtaining the Occupation Certificate; also to execute sale deed of the Unit.
 - ii. The respondent may kindly be directed to refund the amount charged illegally in excess, by declaring the area of the Unit as 1390 sq. feet , in the interest of justice.
 - iii. The respondent may kindly be raise the maintenance charges till the actual valid possession and registration of the sale deed.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 19.07.2024 pleading therein:

9. That due to the reputation of the respondent company, the complainants had voluntarily invested in the project of the respondent company namely- Tuscan floors, TDI Tuscan City at Kundli, Sonipat, Haryana.
10. 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.
11. That the agreement was executed on 11.08.2011, which is much prior from the date when the RERA Act came into existence. Accordingly, the agreement executed between the parties is binding on the buyer/allottee. Complainants are bound by the terms of the agreement and as such cannot withdraw its consent. The complainants are educated persons and have signed on each and every page of the agreement and hence, each term is binding on the complainants.



12. That complainants herein as investor, have 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.
13. 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. Further, it has been submitted that handing over of possession has always been tentative and subject to force majeure conditions and the complainants have been well aware about the same.
14. That complainants have not approached the Authority with clean hands there are still outstanding dues on part of the complainants in respect of the unit.
15. That present complaint is barred by limitation as complainants had already taken over the possession of the unit and signed the NOC way back in year 2018.

E. ARGUMENTS OF LEARNED COUNSELS FOR COMPLAINANTS AND RESPONDENT

16. During oral arguments, Id. Counsel for complainants pressed for relief of delay interest and execution of conveyance deed stating that respondent has not yet obtained Occupation Certificate till date. Further,



he objected to the increase in area stating that there is no increase in unit's area.

17. Learned counsel for the respondent reiterated arguments as were submitted in written statement and further stated that application for grant of occupation certificate is still pending with the DTCP. Moreover, respondent has already filed a fresh application for grant of occupation certificate on 17.02.2022 and it is expected to be received soon. It is the complainants who are at fault by not coming before this Authority with clean hands, possession has already been taken by the complainants in year 2018. Possession certificate has been attached by the complainants in their complaint as Annexure C-5.

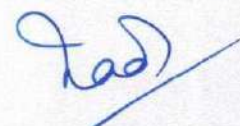
F. ISSUES FOR ADJUDICATION

18. Whether the complainants are entitled to the reliefs sought or not? If yes, the quantum thereof.

G. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT.

G.I 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.

G.II Objections raised by the respondent stating that complainants herein are investors and have invested in the project of the



Respondent Company for the sole reason of investing, earning profits and speculative gains.

The complainants herein are the allottees/homebuyers who have made a substantial investment from their 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 their bonafide belief stood shaken when the promoter failed to offer a valid possession of the booked unit till date without any reasonable cause. It is after an inordinate delay in handing over of possession that complainants have approached this Authority for seeking possession of unit alongwith delay interest in terms of provisions of RERA Act,2016 being allottees of respondent-promoter. As per definition of allottee provided in clause 2(d) of RERA Act,2016, present complainants are duly covered under it and are entitled to file present complaint for seeking the relief claimed by them. Clause 2(d) of RERA Act,2016 is reproduced for reference:-

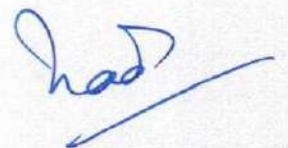
“Allottee-in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter and includes the person who subsequently acquires the said allotment through 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”.



Complainants have been allotted unit 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 11.08.2011. 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 complainants herein are investors does not hold merit and same is rejected.

G.III Objection that complaint is bared by limitation.

Respondent has also taken an 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.



H. OBSERVATIONS AND DECISION OF THE AUTHORITY

19. 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, complainants in this case 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 ₹ 45,46,285/- already stands paid to the respondent. Out of said paid amount, last payment of ₹ 3,61,000/- was made to respondent on 24.03.2018 by the complainants which implies that respondent is in receipt of total paid amount since year 2018 whereas fact remains that no valid offer duly supported with Occupation certificate of the booked unit has been given to the complainants till date.

(ii) In the written statement submitted by the respondent, it is submitted that complainants have taken possession in year 2018. 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 09.05.2014 to Department of Town and Country Planning with respect to the project in question but the same is awaited.



(iii) It is relevant to refer here that possession certificate attached as Annexure C-5 to complaint. Contents of said certificate is reproduced below for ready reference:-

" Dated 14/04/2018

POSSESSION CERTIFICATE

We, TDI Infrastructure Ltd. having our Registered Office at 9, Kasturba Gandhi Marg, New Delhi - 114001, have handed over the physical possession of Tuscan Heights Flat No. T-3/1101 situated at TDI City, Kundli to the buyer.

Mr./Mrs. NITIN DUA....S/O- MR. NARINDER KUMAR

R/O-G-3/85,2ND FLOOR, MODEL TOWN-III NORTH WEST jointly with

R/O-.....D/o.....

.....On this 14th day of APRIL 2018

POSSESSION HANDED OVER BY TDI INFRASTRUCTURE LTD.

Signed by-Rajesh Kumar

AUTHORIZED SIGNATORY

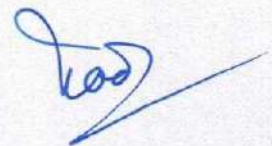
POSSESSION TAKEN OVER BY

Signed by-Nitin Dua

1ST APPLICANT

2ND APPLICANT"

(iv) During course of hearing, ld. counsel for complainants denied taking over of possession even after issuance of possession certificate. Ld. counsel for respondent objected to it



stating that possession certificate has been signed by the allottee. Herein it is important to refer to reliefs/prayer sought by the complainants:-

- a. *The respondent may kindly be pay the statutory delay compensation till execution of sale deed after obtaining the Occupation Certificate; also to execute sale deed of the Unit.*
- b. *The respondent may kindly be directed to refund the amount charged illegally in excess, by declaring the area of the Unit as 1390 sq. feet , in the interest of justice.*
- c. *The respondent may kindly be raise the maintenance charges till the actual valid possession and registration of the sale deed.*

Perusal of aforesaid reliefs/prayer clearly indicate that complainants herein have not sought possession of unit. Rather they are seeking delay interest, execution of conveyance deed, to declare increase in area as illegal and maintenance charges. There is no relief in specific for possession of unit. Infact as is gathered from the pleadings made in complaint, there is no allegation/issue in respect of not handing over of possession till date. Complainants have not been able to substantiate their claim with any other documentary evidence. So, possession



certificate is duly considered for effective adjudication. In these circumstances, it is established that possession no more is an issue in captioned complaint as same has been accepted by the complainants on 14.04.2018.

(v) Authority observes that the builder buyer agreement was executed between the parties on 11.08.2011 and as per terms of clause 30 of it, the possession was to be delivered upto 11.02.2014. Fact remains that valid offer of possession has not been offered to complainants till date for the reason that project has not received occupation certificate from the Town and Country Planning Department, Haryana which stands applied on 09.05.2014. However, complainants in the meanwhile accepted possession of the unit on 14.04.2018 without raising any objections. In present situation, respondent failed to honour its contractual obligations to deliver possession within the stipulated time, i.e., by 11.02.2014. Respondent delayed the handing over of possession of unit for around 4 years, i.e., till 14.04.2018. Complainants herein are insisting upon delay interest for the delay caused till the execution of sale deed after obtaining of Occupation Certificate. It is relevant to refer to Section 18 of RERA Act, 2016 for the issue of delay interest, which reads as under:-



"18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed".

Aforesaid provision clearly provides that interest for delay has to be provided till the handing over of possession. In this case, possession has been handed over to the complainants on 14.04.2018. Complainants till filing of present complaint has not raised any objection to the said possession. So, complainants are not entitled to any interest till execution of sale deed.

(vi) In the present complaint, complainants intends to continue with the project and are seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act.

(vii) 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;

(viii) 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%.

(ix) 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".

20. The Authority observes that the deemed date of possession in terms of builder buyer agreement is 11.02.2014. Complainants, however, had accepted the possession of unit on 14.04.2018. They do not wish to withdraw from the project. In the circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising option of taking possession of the unit the allottee can also demand, and respondent is

liable to pay, monthly interest for the entire period of delay caused at the rates prescribed. So, the Authority hereby concludes that the complainants are entitled for the delay interest from the deemed date, i.e., 11.02.2014 to the date on which complainants accepted the possession of unit, i.e. 14.04.2018.

21. Authority has got calculated the interest on total paid amount from the deemed date of possession till the date of possession certificate at the rate of 11.10% p.a. as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Deemed date of possession or date of payment whichever is later	Interest Accrued till 14.04.2018
1.	27,45,653/-	11.02.2014	1272509/-
2.	351406/-	09.09.2014	140422/-
3.	141510/-	01.12.2014	52976/-
4.	141504/-	01.07.2015	43850/-
5.	183169/-	29.08.2016	33088/-
6.	622043/-	05.03.2018	7756/-
7.	361000/-	24.03.2018	2415/-
	Total = ₹ 45,46,285/-		₹ 15,53,016/-

22. In respect of issue of increased area, it is observed that any increase in area is not valid/justified until and unless same is validated through receipt of occupation certificate. So, respondent is directed to get the area verified after receipt of Occupation Certificate.

23. It has been argued by the complainants that respondent has not executed the conveyance deed. Respondent has not denied said submission.

Ld. Counsel for respondent stated that same will be executed after receipt of Occupation Certificate. As per Section 11(4)(f) of the RERA Act, 2016, the promoter shall:

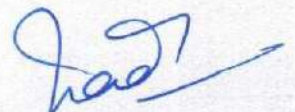
"execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act."

Further, Section 17(1) of the Act mandates that:

"The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment or building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

In light of the above-stated statutory provisions, Authority finds that respondent is duty bound to execute the conveyance deed, as statutorily required under Section 17(1) of the RERA Act, 2016. Therefore, Authority directs the respondent to execute the registered conveyance deed in favour



of the complainants-allottee in compliance with Section 11(4)(f) and Section 17(1) of the RERA Act, 2016.

24. In respect of maintenance charges, Id. Counsel for complainants have neither argued nor pressed upon this relief.

I. DIRECTIONS OF THE AUTHORITY

25. 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 pay delay interest of ₹ 15,53,016/- to the complainants towards delay already caused in handing over the possession of the unit within 90 days from the date of this order. Respondent is further directed to get conveyance deed executed in favour of complainants within 90 days of receipt of Occupation Certificate.


(ii) Respondent is directed to get the area of the unit verified after receipt of Occupation Certificate.

(ii) Complainants will remain liable to pay balance consideration amount, if any, remains recoverable towards total sale consideration of the floor, to the respondent at the time of conveyance deed.



(iii) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e, 11.10% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

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


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]

