



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

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| Complaint no.: | 2326 of 2022 |
| Date of filing: | 09.09.2022 |
| Date of first hearing: | 07.02.2023 |
| Date of decision: | 29.09.2025 |

Prem Prakash Gupta S/o Late Sh. Sarup Chand Gupta
R/o House no. 441, Sector-14, Gurugram
Haryana

....COMPLAINANT

VERSUS

1. TDI Infrastructure Limited.
through its Managing Director/Directors
Vandana Building, Upper Ground Floor
11, Tolstoy Marg, Connaught Place,
New Delhi- 110001

2. TDI Infracorp Limited.
through its Managing Director/Directors
Vandana Building, Upper Ground Floor
11, Tolstoy Marg, Connaught Place,
New Delhi- 110001

....RESPONDENT(S)

CORAM: Nadim Akhtar

Member

Present: - Mr. Deepam, Counsel for the complainant through VC.
Mr. Shubnit Hans, Counsel for the respondent no. 1 through VC.

Mr. Shivdeep, Proxy for Adv. Ajay Ghangas, Counsel for
respondent no. 2. Through VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint was filed on 09.09.2022 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 | Waterside Floor in TDI Lake Grove City, Kundli, Sonipat |
| 2. | RERA registered/not registered | Registered with registration no. 43 of 2017 |
| 3. | Unit no | WF-133/TF |
| 4. | Unit area | 1400 sq. ft. or 130.06 sq. mtrs. |



| | | |
|-----|---|---|
| 5. | Date of allotment letter | 04.09.2013 |
| 6. | Date of builder buyer agreement | 02.09.2014 |
| 7. | Due date of offer of possession (30 months) | 02.03.2017 |
| 8. | Possession clause in BBA (Clause 28) | <p>Clause 28</p> <p>.....However, if the possession of the floor 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 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 apartment.</p> |
| 9. | Total sale price | ₹ 52,99,280/- |
| 10. | Amount paid by complainant | <p>₹ 52,01,209/-</p> <p>Complainant initially claims to have paid an amount of ₹ 30,07,444/-. However vide an application dated 09.05.2024 sought amendment of paid amount on basis of typographical error from ₹ 30,07,444/- to ₹ 52,01,209/- . Final statement of account dated 02.04.2024 showing paid amount as ₹ 52,01,209/- is placed in support of it. However, dates of payments are not reflected in said statement.</p> |
| 11. | Offer of possession | Valid offer of possession has not been given till date. |
| 12. | Occupation Certificate | Not received. |



B. FACTS OF THE COMPLAINT

3. Facts of the present complaint are that complainant had booked a unit with respondent by paying ₹ 4,00,000/- on 28.08.2005 as advance against present and future project for 1400-1500 sq. ft (approx) residential flat. Allotment letter for unit no. WF-133-TF having an area measuring 1400 sq. ft in the respondent's project, namely, "Water Side Floors" in TDI Lake Grove City, Kundli, Sonipat was issued to the complainant. Copy of allotment letter is annexed as Annexure A-2.
4. Thereafter, Builder Buyer Agreement (BBA) was executed between the parties on 02.09.2014. As per clause 28 of the agreement, possession of the floor was to be made within 30 months from the date of execution of agreement, thus deemed date of delivery comes out to 02.03.2017. An amount of ₹ 52,01,209/- has been paid by the complainant against total sale price of ₹ 56,99,280/-.
5. That despite making the payments as per the schedule and demand of the respondent, the construction work was at a halt. Complainant through multiple verbal and telephonic communication on different occasions tried to connect with the respondent to know reason for the halt at the site and always got one excuse or other for the same. Said process went for long 6 years and the respondent just gave fake promises and failed to provide possession to the complainant.



6. That no construction was taking place on the site of the project and yet the respondent were still demanding the payment from the complainant which demonstrates the ill will of the respondent in cheating the hard earned money of the complainant. The complainant booked the unit with a dream that his residential property would be her dream home, the dream which the respondents crushed so mercilessly. Demand letters sent to the complainant on different dates to the complainant are annexed as Annexure A-5. Feeling aggrieved with the actions of respondent, present complaint has been filed by the complainant before this Authority.

C. RELIEFS SOUGHT

7. Complainant in his complaint has sought following reliefs:
- (a) To direct the respondent to refund the entire amount paid by the complainant i.e. ₹ 30,07,444/- (₹ 52,01,209/- amended vide application dated 09.05.2024) alongwith 18% interest from the date of respective payment till the actual realization of the entire amount.
 - (b) To direct the respondent to handover the physical possession of the floor as originally allotted to the complainant.
 - (c) To pay complainant for the torture, sufferings, harassment and embarrassment etc. caused to the complainant the reports their neglectful attitude in dealing with the complainant.



- (d) To award compensation to the complainant and penalty upon the respondent for the said unfair trade practice and deficiency in service.
 - (e) To direct the respondent to pay ₹ 5 per sq. ft per month as penalty for delaying in delivering the possession of the said flat/apartment to the complainant as agreed by both the parties in the agreement.
 - (f) Any other relief(s) which this Hon'ble Authority may deem fit and proper may also be granted in favor of the complainant and against the respondent, in view of the facts and circumstances of the present case.
8. Complainant had filed an application in registry on 09.05.2024 for impleading 'TDI INFRACORP LTD' as the respondent no. 2 in compliance of order dated 08.08.2023. Vide said application, complainant has amended the paid amount from ₹ 30,07,444/- to ₹ 52,01,209/- stating that it was typographical mistake.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

- 9. As per office record, respondent no. 1 has not filed its reply till date.
- 10. Respondent no. 2 had filed its reply on 07.02.2023 stating therein that the complainant herein is an investor and not a consumer.
- 11. That the provisions of the RERA Act, 2016 are prospective in nature and not retrospective.
- 12. That the complainant has merely alleged in the complaint about delay on part of the respondent in handing over of possession of the flat booked by the complainant. Whereas respondent has been acting in



consonance with the buyer's agreement duly executed between the complainant and the respondents and no contravention of the same can be projected on the respondent.

13. That the respondent had made huge investments in obtaining approvals and carrying on the construction and development of the project. Despite several adversities respondent has completed the construction of the project and has offered possession of the unit to the complainant on 01.06.2021. Alongwith the same, offer of fit out along and statement of account were sent to complainant.
14. That due to Covid pandemic various lockdowns were imposed and labour left to native place and after lockdown due to non-availability of the labour it was very difficult to resume the construction activity. Despite that opposite party resumed the construction activity and offered the possession to the complainant after completing construction work. That the complainant was not punctual in making timely payment of instalments and interest of ₹ 5,12,701/- is chargeable on account of delay. The outstanding amount of unit is ₹ 13,85,884/- but complainant has neither came forward to make payment of due amount and to accept possession of unit. Copy of offer of possession is mentioned to be annexed as Annexure R-1 whereas no annexure is attached with reply.



E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS

15. Vide previous order dated 28.07.2025, complainant was directed to clarify the reliefs sought as complainant has prayed for both the reliefs, i.e., refund as well as possession within 3 weeks. During oral arguments learned counsel for the complainant insisted upon refund of paid amount with interest, stating, that respondents have not yet obtained occupation certificate from the competent authority for the tower in which complainant's unit is located. Learned counsel for the respondent no. 1 referring to order dated 08.08.2023 argued that TDI Infrastructure Ltd is not a necessary party to the complaint as all the transactions including builder buyer agreement were carried out by respondent no. 2 only. He requested that complaint be dismissed qua respondent no. 1. Ld. counsel for respondent no. 2 reiterated arguments as were submitted in the written statement and further stated that possession has already been offered to the complainant, it is the complainant who has not come forward to accept it.

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 Act of 2016?



G. OBSERVATIONS AND DECISION OF THE AUTHORITY

17. 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 respect to the objection raised by the respondent no. 2 that complainant herein is an investor, it is observed that the complainant herein is an allottee/homebuyer who has made a substantial investment from his hard earned savings under the belief that the promoter/real estate developer will handover the possession of the booked unit in terms of buyer's agreement dated 02.09.2014 but his bonafide belief stood shaken when the promoter failed to handover possession of the booked unit till date without any reasonable cause. At that stage, complainant has approached this Authority for seeking refund of paid amount with interest in terms of provisions of RERA Act, 2016 being allottee of respondent-promoter. As per definition of 'allottee' provided in clause 2(d) of RERA Act, 2016, present complainant is duly covered in 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 in the project of the respondent by the respondent/promoter itself and said fact is duly revealed in builder buyer agreement dated 02.09.2014. 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.

(ii) Respondent no. 2 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.

(iii) Complainant in the present case has impleaded two respondents, i.e., TDI Infrastructure Ltd as respondent no. 1 and TDI Infracorp Ltd. as respondent no. 2. Authority vide order dated 08.08.2023 directed the complainant to implead 'TDI Infracorp Ltd', as respondent no. 2 for the reason that all the transactions pertaining to unit in question were carried out between the complainant allottee and TDI Infracorp Ltd. Further, Id. counsel for the complainant today at the time of hearing has stated that the relief of refund has to be passed against the respondent no. 2, i.e. M/s TDI Infracorp Ltd since the respondent no. 2 has solely received the payments from the complainant on account of booked floor. Considering said statement of the counsel and fact that



no relief in particular is sought against respondent no. 1, this order is passed by issuing directions against respondent no. 2 only.

(iv) Admittedly, unit in question was allotted to the complainant vide allotment letter dated 04.09.2013. Builder buyer agreement for the unit in question was executed between the parties on 02.09.2014 for a total sale consideration of ₹ 52,99,280/- against which an amount of ₹52,01,209/- has been paid by the complainant. It implies that respondent is in receipt of more than 96% amount of sale consideration whereas fact remains that no offer of possession of the booked floor has been made till date.

(v) Authority observes that the floor in question was allotted to complainant by way of executing builder buyer agreement dated 02.09.2014 and in terms of clause 28 of it, respondent was under an obligation to deliver possession within 30 months, i.e., latest by 02.03.2017. In present situation, respondent failed to honour its contractual obligations without any reasonable justification.

(vi) Respondent no. 2 vide letter/email dated 01.06.2021 had offered possession for fit-out to the complainant along with demand of ₹ 13,85,884/- but said offer of possession was issued without obtaining occupation certificate. Complainant filed present complaint seeking refund of paid amount along with interest, as the respondent no. 2 failed in its obligation to deliver possession as per the terms of



buyer's agreement. Perusal of record reveals that no copy of offer of possession has been placed on record by the respondent. Further, respondent has not placed on record status of occupation certificate and latest photographs of the unit in question. There is no documentary evidence on record which establishes the fact that construction work has been completed and unit is fit for occupying possession.

(vii) Despite making full and final payment towards booking of floor complainant has sought relief of refund of paid amount for the reason that respondent no. 2 is not in a position to deliver a valid possession of the floor. Complainant had invested his hard earned money in the project with hopes of timely delivery of possession. However, possession of floor was offered to the complainant after a delay of more than four years. Fact remains that respondent no. 2 is yet to receive occupation certificate meaning thereby that a valid possession is yet to be offered to the complainant. However, respondent has pleaded that force majeure factors like Covid-19 and lockdowns imposed in order to curb it delayed the construction work. Fact remains that deemed date of possession of unit was in the year 2017 whereas the pandemic affected the nation in year 2020. Any activity/lockdowns imposed/initiated post the deemed date of possession cannot be considered towards causing delay. Furthermore,



the act of respondent in not completing the construction and receiving of occupation certificate till date, i.e., year 2025 strengthens the belief of complainant as well as the Authority that possession of booked unit is not possible even in near future and in these circumstances, complainant cannot be forced to wait for an indefinite period in hope of getting possession of unit. Additionally, complainant has unequivocally stated that he is interested in seeking refund of the paid amount along with interest on account of inordinate delay caused in delivery of possession.

(viii) When an allottee becomes a part of the project it is with hopes that he will be able to enjoy the fruits of his hard earned money in terms of a safety and security of his own home. However, in this case due to peculiar circumstances complainant has not been able to enjoy the fruits of his investment capital as the possession of the floor in question is shrouded by a veil of uncertainty. Complainant had invested a huge amount of ₹52 Lakh with the respondent no. 2 by the year 2017/2024 to gain possession of a residential floor. However, respondent no. 2 is not in a position to offer a valid offer to the complainant since the project is yet to receive occupation certificate. Since respondent no. 2 is not in a position to offer a valid offer of possession in foreseeable future, complainant who has already waited for more than eight years does not wish to wait for a further uncertain



amount of time or a valid possession. Complainant is at liberty to exercise his rights to withdraw from the project on account of default on the part of respondent no. 2 to deliver possession and seek refund of the paid amount.

(ix) Further, Hon'ble Supreme Court in the matter of "***Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others***" in Civil Appeal no. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed



delivery of possession. The complainant wishes to withdraw from the project of the respondent, therefore, Authority finds it to be fit case for allowing refund in favour of complainant.

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

(z) "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;

18. 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. 29.09.2025 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%.

19. Rule 15 of IRERA 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 project in question did not get completed within the time stipulated as per agreement and no specific date for handing over of possession has been committed by the respondent. In these circumstances the complainant cannot be kept waiting endlessly for possession of the unit, therefore, Authority finds it to be fit case for allowing refund along with interest in favour of complainant. Thus, respondent will be liable to pay the interest to the complainant 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 ₹ 52,01,209/- 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 10.85% (8.85% + 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 at the rate of 10.85% till the date of this order as per detail given in the table below:



| Sr. No. | Principal Amount in ₹ | Date of payment | Interest Accrued till 29.09.2025 |
|---------|------------------------------|--------------------|----------------------------------|
| 1. | 5,00,000 | 08.05.2013 | 672997 |
| 2. | 5,10,282 | 01.06.2013 | 683196 |
| 3. | 5,09,710.84 | 22.08.2013 | 67007 |
| 4. | 12,87,812 | 29.08.2013 | 1690130 |
| 5. | 1,99,640 | 13.01.2014 | 253878 |
| 6. | 21,93,764.16 | 02.04.2024 | 356057 |
| 7. | Total=52,01,209/- | | Total=43,26,265/- |
| 8. | Total Payable to complainant | 5201209 + 4326265= | 95,27,474/- |

Complainant claims to have paid an amount of ₹ 52,01,209/-. Receipts of ₹30,07,444.84/- has been placed on record. For the total paid amount of ₹ 52,01,209/-, statement of account dated 02.04.2024 has been placed on record. In said statement, dates of each payment are not provided, however total claimed amount has been admitted by respondent. So, interest is being calculated for amount of ₹ 30,07,444.84/- from the date of receipts and for the remaining amount of ₹ 21,93,764.16/- interest is calculated w.e.f date of statement of account, i.e. 02.04.2024.

21. It is pertinent to mention here that complainant in its complaint has attached the original documents namely, Allotment letter, builder buyer agreement (ranging from page no. 21-46) and EDC reminders (ranging from page no. 59-79). As such, original documents are not required for adjudication of the case/dispute. Hence, complainant is at liberty to collect original documents from the office. Office will provide the same to



complainant or his counsel by keeping the photocopy of aforesaid documents in the complaint file.

H. DIRECTIONS OF THE AUTHORITY

22. 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 promoters as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent no. 2 is directed to refund the entire paid amount of ₹52,01,209/- with interest of ₹43,26,265/-. It is further clarified that respondent no. 1 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 against the respondent no.1.

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



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NADIM AKHTAR
[MEMBER]