



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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

Complaint no.:	906 OF 2023
Date of filing:	13.04.2023
Date of first hearing:	31.05.2023
Date of Decision:	12.08.2025

**Rajendra Prasad Aggarwal**

**D-14/1, Sector-7, Rohini,**

**Delhi, 110085**

....COMPLAINANT

VERSUS

**TDI Infrastructure Ltd.**

**10 Saheed Bhagat Singh Marg**

**Gole Market, New Delhi-110001**

....RESPONDENT

**CORAM:**

**Dr. Geeta Rathee Singh  
Chander Shekhar**

**Member  
Member**

**Date of decision:12.08.2025**

**Present:** None for complainant

Adv. Anjanpreet Singh proxy for Adv. Shubhmit Hans , I.d.  
counsel for respondent through VC

*Rathee*

**ORDER**

1. Present complaint was filed by 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 fulfill 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	Rodeo Drive Mall, Kundli, Sonipat ( commercial)
2.	RERA registered/not Registered	Un-registered
3.	Unit no.	FF-96
4.	Allotment letter	31.08.2006
5.	Agreement to sell	Not executed



6.	Unit area	500 sq. ft.( Initially) Reduced area 382 sq. ft.( as per final statement of account dated 13.07.2019)
8.	Amount paid by complainant	Rs. 15,75,000/-
9.	Offer of possession for fit out dated	02.05.2018

### **B. FACTS OF THE CASE AS STATED IN THE COMPLAINT**

3. Facts of the complaint are that complainant booked a shop in respondent project namely "Rodeo Drive Mall", located at Kundli, Sonipat in the year 2006 by paying an amount of Rs.4,50,000/- .Vide allotment letter on 13.08.2006 a shop no. FF-96, admeasuring 500 sq. feet had been allotted to the complainant. The sale consideration of the said commercial shop was fixed at Rs.22,50,000/-
4. That the respondent as of the present date, has failed to obtain the occupancy certificate for the project despite the lapse of more than 17 years from date of booking that is violation of section 11(4)(b) of the RE(R&D) Act 2016.
5. That respondent offered possession for fit out to the complainant vide letter dated 02.05.2018 and informed the complainant that the unit in question is ready for possession and occupation certificate would be received by the respondent in short time. The respondent also made demand of further payments to the complainant to take the possession after clearing all due. However, possession letter was not valid as same



was issued without obtaining occupation certificate.

6. That respondent has intentionally and illegally not mentioned any specific date or year for the delivery of possession of the unit in allotment letter or in offer of possession for fit-out. Further the agreement had not been executed between the parties that shows the malafide intents of the respondent since inception.
7. That the complainant received another offer of possession for fit outs vide letter dated 13.07.2019, wherein the respondent in arbitrary and discriminatory manner reduced the area of the shop from 500 Sq. ft. to 382.2 sq. ft. without any prior declaration and intimation to the complainant.
8. That the respondent raised arbitrary demands vide letters dated 24.05.2018 and 19.02.2019 wherein the respondent charged huge amount as delayed interest on amount outstanding against the unit in question however did not consider delay in handing over possession of unit. Moreover the size of the unit is mentioned as 500 sq. ft. in both these demand letters construes that the respondent hide the decrease in size of the unit from the complainant till July 2019. It is only in final statement of account dated 13.07.2019, the area of unit in question is mentioned to have been decreased from 500 sq. ft. to 382.2 sq. ft. that shows the mala fide intents of the respondent. Respondent decreased area without proper declaration and intimation to complainant as a





result the actual size of the shop and the corresponding sale consideration need to be reassessed based on the revised area and comes out to be Rs. 17,19,900/- for 382.2 sq. ft. against which the complainant has already paid Rs. 15,75,000/-.

9. That respondent would have known about the actual size of the shop at the time of approval of layout plans. Instead of divulging this crucial fact at initial stage they misguided and kept the complainant in dark by not disclosing such vital information.
10. That complainant receiving a letter on 10.1.2020 from capital India Finance Limited (CIFL) stating that the respondent had mortgaged the Project to CIFL in October 2018 i.e. after lapse of 12 years from booking and allotment of unit in question to the complainant after receipt of Rs. 15,75,000/- against the unit in question from the complainant, the mortgage of the project is contravention of Section 11(4)(h) of the RE(R&D) Act 2016.
11. That respondent offered the complainant possession of the shop for fit-out in year 2019 willfully concealing the fact that the project is not free of encumbrances thus would have resulted in wrong-full loss to the complainant. It has been stated in the letter of capital India Finance Limited (CIFL) that a no objection certificate from them shall be required for registration of unit in complainant's name. Thus even though the respondent cannot confer a clear transfer of title for the said



shop, their offer of possession for fit-outs highlights their attempt to cheat complainant out of their hard earned money.

12. That complainant enquired about the status of the project/receipt of occupation certificate and made numerous requests to the respondent to clarify regarding the mortgage of the project to CIFL, however respondent neither gave any clarification regarding said mortgage nor confirmed the status of occupation certificate. Furthermore the respondent has been requested on numerous occasions to give clarification regarding the arbitrary demands raised by the respondent and to give reasons for levying and demanding maintenance charges before offer of physical possession of the unit and also requested to correct the basic sale price as per the reduced area of the unit, however the respondent served notice dated 02.01.2020 upon the complainant wherein respondent demanded sum of Rs. 9,49,474/- and threatened to cancel the allotment of the unit in question.

### **C. RELIEF SOUGHT**

Complainant in its complaint has sought following reliefs:

- a) To give necessary directions to the respondent to hand over the possession of the allotted unit along with delay interest till date along with the prescribed rate of interest as per the provisions of Sec. 18 and Sec. 19(4) of the RE(R&D) Act.
- b) To impose penalty upon the respondent as per the provisions of Section



61 of RE(R&D) Act for contravention of Sec. 12, 13, Sec.14 and Sec. 16 of RERA Act.

- c) To direct the respondent to provide detailed account statement against the amount collected from the complainant in lieu of interest, penalty for delayed payments under Rule 21(3)(c) of HRERA Rules, 2017.
- d) To issue directions to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Sec.69 of RERA Act,2016 to be read with HRERA Rules, 2017.
- e) To recommend criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under section 420,406 and 409 of the Indian Penal Code.
- f) To issue direction to pay the cost of litigation.
- g) Any other relief which this Hon'ble Authority deem fit and appropriate in view of the facts and circumstances of this complaint.

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

Learned counsel for the respondent filed detailed reply on 09.10.2023 pleading therein:

- 13. That respondent company vide its letter dated 27.07.2017 had applied to the Director Town and Country Planning, Haryana, Chandigarh for grant of occupation certificate of commercial project measuring 6.558





acres.

14. That the provisions of the RERA Act, 2016 are to be applied prospectively. Therefore, the present complaint is not maintainable and falls outside the purview of the provisions of the RERA Act, 2016. The RERA Act came into effect in 2016 and cannot be held to be retrospective in nature.
15. That despite repeated requests of clearing the payments and take over the possession of the unit complainant failed to perform its part of the obligations and never paid any heed to such requests of the respondent company.
16. That the complainant herein is an investor and has accordingly invested in the project of the respondent company for the sole reason of investing, earning profits and speculative gains.
17. That complainant has already been offered possession for fit outs of its unit vide letter dated 02.05.2018 and vide letter dated 13.07.2019. However, it is the complainant who has not come forward to perform its part of the obligation.
18. That present complaint is barred by limitation and hit by the principle of delay and laches, therefore, the same is not maintainable before the I.d. Authority.
19. That complainant has already been offered possession back in the year 2019 vide letter dated 15.03.2019 and the offer for fit outs was made to





the complainant vide letter dated 05.03.2018 and 27.04.2018 as well. However, it is the complainant who is not coming forward to take over the same. Therefore, no cause of action has occurred in favor of the complainant to file the captioned complaint. Accordingly, captioned complaint must be dismissed on this very ground alone.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT**

20. During oral arguments learned counsel for the complainant and respondent have reiterated arguments as mentioned in their written submissions.

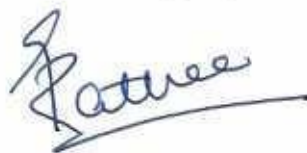
**F. ISSUES FOR ADJUDICATION**

21. Whether the complainant is entitled for physical possession of plot along with an interest on account of delay of physical possession of the plot in question.

**G. OBJECTIONS RAISED BY RESPONDENT AND FINDING OF THE AUTHORITY ON SAME**

**G.1. Objection raised by respondent that RERA Act, 2016 are to be applied prospectively**

Respondent in its reply has averred that provisions of RERA Act, 2016 are to be applied prospectively. Therefore, present complaint is not maintainable. In this regard, Authority relies upon judgement of 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, reference can be made to the case titled **M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. 2022(1)**

**R.C.R. (Civil) 357**, wherein the Hon'ble 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 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.*



As per the aforesaid ratio of law, 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 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 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.

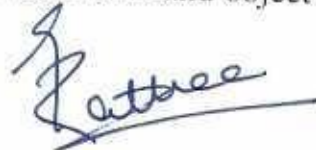
**G. 2. Objection raised by respondents that the present complaint is barred by limitation**

Respondent had raised objection regarding maintainability of the complaint on ground of that complaint is barred by limitation. In this regard the Hon'ble Apex Court in Civil Appeal no. 4367 of 2004 *titled as M.P Steel Corporation v/s Commissioner of Central Excise* has held that the Limitation Act applies only to courts and not to the tribunals.

Relevant para is reproduced herein:

*"19. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963."*

Authority observes that the Real Estate Regulation and Development Act, 2016 is a special enactment with particular aim and object covering





certain issues and violations relating to housing sector. Provisions of the Indian Limitation Act 1963, thus, would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority established under the Act is a quasi-judicial body and not Court. Therefore, in view of above objection of respondent with respect to the fact that complaint is barred by limitation is rejected

**G. 3 Objection raised by respondent stating that complainant herein is an investor and have invested in the project of the respondent company for the sole reason of investing, earning profits and speculative gains.**

Respondent has also averred that complainant is an investor and not a consumer and the RERA Act of 2016 is enacted to protect the interest of consumers of the real estate sector, thereby complainant is not entitled to file the complaint under section 31 of the Act and the complaint is liable to be dismissed. In this regard, Authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or



rules or regulations, made thereunder. Upon careful perusal of all the terms and conditions of the flat's agreement, it is revealed that the complainants are buyers and paid total price of Rs. 15,75,000/- to the promoter towards purchase of an unit in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2[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:*

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the unit application for allotment, it is crystal clear that the complainant is allottee as the subject unit was allotted to him by the promoter. The concept of investor is not defined or referred in the Act. As per the definition provided under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt Ltd, Vs. Sarvapriya Leasing (P) Ltd. And Anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that



the allottee being investor is not entitled to protection of this Act also stands rejected.

## **H. OBSERVATIONS AND DECISION OF THE AUTHORITY**

22. Proceeding on the merits of the case, it is not disputed between the parties that complainant had booked a unit in the respondent's project namely "Rodeo Drive" in the year 2006 by paying Rs. 4,50,000/-, unit no. FF-96, measuring area 500 sq. ft. was allotted to complainant vide allotment letter dated 31.08.2006.

23. As there is no builder buyer agreement, exact due date for handing over possession cannot be ascertained. In such circumstances, Authority places reliance upon judgement of Hon'ble Supreme Court titled as **M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr, 2018 STPL 4215 SC**, where the Hon'ble Apex Court had made the following observation:

*"15. Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014."*

Therefore, in view of above observation made by Hon'ble Supreme court





3 years is taken to be reasonable time to handover possession to allottee. Thus, respondent should have offered possession to the allottee latest within 3 years of the allotment (31.08.2006), i.e. latest by 31.08.2009. With Regard to handing over possession respondent has submitted that it had offered possession to complainant twice i.e. vide offer of possession for fit outs dated 02.05.2018 and 13.07.2019. On perusal of these two letters Authority observes that vide offer of possession for fit out dated 02.05.2018 respondent informed complainant that respondent had applied for occupation certificate and will receive occupation certificate soon and requested complainant to clear remaining dues within 30 days to take possession. Further, vide offer of possession for fit out dated 13.07.2019 respondent gave last opportunity to complainant to pay Rs.9,35,802/- to revive cancellation of unit. Except these two letters dated 02.05.2018 and 13.07.2019, respondent has not attached any cancellation letter. In absence of any cancellation letter on record, it observed that the unit allotted to complainant was never cancelled by respondent. Further, the fact that respondent subsequently sent legal notice dated 02.01.2020 to complainant to pay Rs. 9,49,474/- corroborate the same that the unit allotted to complainant was never cancelled.

24. Furthermore, respondent in its reply has admitted on affidavit that till date it has not received occupation certificate for the part in which unit allotted to complainant. Meaning thereby the offer of possession for the



unit dated 02.05.2018 and 13.07.2019 were not legally valid offer of possession. Authority observes that the allotment of shop was made on 31.08.2006 and as mentioned in proceeding para no.23 possession should have been delivered by 31.08.2009 however even on date respondent is not in the position to make a legally valid offer of possession to the complainant. In such circumstances, as per section 18(1) of RERA Act, allottee may either choose to withdraw from the project and demand refund of the amount paid or may continue with the project and seek interest on account of delay in handing over possession. In the present case complainant wish to continue with the project, therefore is entitled to interest on account of delay in handing over possession. Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date i.e. 31.08.2009 till the date on which a legally valid offer of possession is made to complainant after obtaining occupation certificate. 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;*

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".*

25. 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. 12.08.2025 is 8.90%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.9%.

26. Authority observe that complainant in its complaint has alleged that vide final statement of account dated 13.07.2019 respondent reduced area of unit from 500 sq. ft. to 382.2 sq. ft. and raise demand of Rs. 5,71,937/- on account of delayed payment. In this regard it is observed that respondent issued fit out possession letter dated 02.05.2018 however no demand of





specific amount were raised by respondent. Further, it observes that complainant made last payment on 05.10.2010. From last payment i.e. on 05.10.2010 to 02.05.2018 no demand letters/reminder letters were issued by respondent and suddenly vide final statement of account dated 13.07. 2019 respondent abruptly Rs. 9,49,474/- including Rs. 5,71,937/- on account of interest however respondent failed to disclose how this interest amount accrued. When no demands were made from 05.10.2010 to 02.05.2018. Further, there is no document on record to show that the respondent could have demand such payment at the time/stage of "fit out possession". The demands as mentioned in the letter dated 13.07.2019 such as EDC, IDC, stamp duty etc. are generally raised at the time of offer of possession. Since that stage never came due to non issuance of occupation certificate respondent could not have asked /demanded these amounts. As there is no delay in payment, interest of Rs. 5,71,937/- levied in statement of account dated 13.07.2019 is quashed and complainant is not liable to pay the same.

27. Authority has calculated the interest on the total paid amount from the deemed date of possession i.e 31.08.2009 till the date of this order i.e. 12.08.2025 at the rate of 10.9% and said amount works out to be Rs. 27,04,141/- as per detail given in the table below:



Sr. No.	Principal Amount in (Rs.)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 12.08.2025(Rs.)
1.	450000	31.08.2009	782919
2.	225000	31.08.2009	391459
3.	50000	31.08.2009	86991
4.	450000	31.08.2009	782919
5.	90000	23.02.2010	151853
6.	85000	23.02.2010	143417
7.	225000	05.10.2010	364583
	Total Principle amount Rs.= 15,75,000/-		Total= Rs. 27,04,141/-
Monthly interest= Rs. 14,110/-			

28. Complainant is also seeking cost of litigation expenses. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "**M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & Ors.**" has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the



complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

29. Ld. Counsel for the complainant has neither pressed upon nor argued relief no. C(b),(d),(e).

#### **I. DIRECTIONS OF THE AUTHORITY**

30. 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:

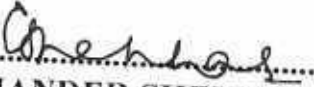
(i) Respondent is directed to pay upfront delay interest of Rs. 27,04,141/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order. Further, monthly interest of Rs.14,110/- shall be payable by the respondent to the complainant up to the date of actual handing over of the possession after obtaining occupation certificate.

31. Respondent shall make a legally valid offer possession of the plot to complainant within 30 days from the date of obtaining occupation certificate. Complainant shall accept the same within next 30 days.

A handwritten signature in black ink, appearing to read 'Jatue', is written over the text of paragraph 31.



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

  
.....  
**CHANDER SHEKHAR**  
[MEMBER]

  
.....  
**Dr. GEETA RATHEE SINGH**  
[MEMBER]

