



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	138 of 2022
Date of filing:	02.03.2022
Date of first hearing:	22.04.2022
Date of Decision:	04.11.2025

Nirmala Devi
R/o H No. 2604, ward-14, Block B
Urban Estate, Jind, Haryana

COMPLAINANT

VERSUS

TDI Infrastructure Ltd. through its director
Vandana Building, 11 Tolstoy Marg
Connaught Place, New Delhi-110001

RESPONDENT

CORAM: Dr. Geeta Rathee Singh Member

Date of decision: 04.11.2025

Present: Adv. Shiv Kumar, Ld. Counsel for Complainant through
VC
None for Respondent


ORDER (DR. GEETA RATHEE SINGH-MEMBER)

1. Present complaint was filed on 02.03.2022 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 there under, 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, 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:

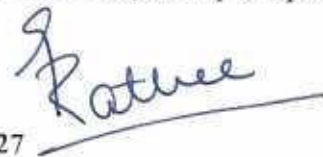
S. No.	Particulars	Details
1.	Name of the project	"Tuscan Floor" located at Kundli Sonapat
2.	RERA registered/not registered	Un-registered
3.	Unit no.	T-22/TF
4.	Unit area	1164sq. ft.(initially)
5.	Revised area	1429.2000 sq. ft.
6.	Date of apartment buyer agreement	15.04.2011
7.	Deemed date of possession	15.04.2014 (as per clause 30) Clause 30



		“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....”
8.	Total sale consideration	Rs. 24,36,926/- (as per apartment buyer agreement)
9.	Amount paid by complainant	Rs. 32,53,221/- (as per Statement of account dated 27.01.2022)
10.	Offer for fit out possession along with final statement of account	03.01.2019
11.	NOC for handing over possession	30.01.2018
12.	Possession certificate	05.06.2018
13.	Occupation certificate	Not received

B. FACTS OF THE CASE AS STATED BY COMPLAINANT

3. Facts of the complaint are that initially unit no. T-22/3rd floor was allotted to Mr. Rajat Sharma. Apartment buyers agreement was executed and signed on 15.04.2011 between Mr. Rajat Sharma and the respondent. Subsequently unit was endorsed in the name of complainant i.e. Nirmala Devi on the same day. As per apartment buyer



agreement total super measurement area of unit was 1164 Sq. ft. and basic sale price was Rs. 21,50,000/-

4. As per clause 30 of agreement respondent agreed to handed over possession of the unit within 30 months from the date of execution of agreement however respondent failed to handover possession within stipulated time.
5. Possession for fit out was offered to complainant vide letter dated 03.01.2018. Thereafter, final statement of account was issued to the complainant to clear entire outstanding amount out of total sale consideration of Rs. 33,31,863/- and increased super area from 1164 sq. ft. to 1429 sq. ft. Said increased area was unilateral without furnishing any revised plan of project, prior consent and knowledge of complainant. Complainant paid entire outstanding dues and accordingly no objection certificate was issued to the complainant on 30.01.2018.
6. At the time of execution of apartment buyer agreement super measurement area was 1164 sq.ft. out of which total carpet area was just 800 sq.ft. and respondent malafidely charged the amount on super measurement area instead of carpet area. As held in numerous judgment by Hon'ble Apex court respondent is only entitled to obtain the amount on carpet area not on super measurement area therefore respondent is liable to refund the amount of Rs. 6,72,308/-obtain from complainant on account of area above carpet area i.e. 364 sq. ft. (1164


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sq. ft. - 800 sq. Ft. = 364 Sq. Ft.)

7. Club is not functional in respondent's project. Only one club i.e. near the Kingsbury Apartment which is not exclusive for residents and used as a Hotel and Restaurant. Also complainant is not interested to avail the club facilities even now in future hence complainant is entitle to withdraw the amount of Rs. 50,000/- Complainant had paid Rs. 79,200/- on account of stamp duty for execution of conveyance deed and Rs. 11,800/- on account of miscellaneous expenses. Said amount is entitle to refund the same as flat cannot be registered in near future in view of the instruction of Hon'ble NGT as well as chief secretary, Haryana.
8. Flat is not residual condition and moreover the project is yet incomplete. The basic amenities and infrastructure has not been developed and even society is not being properly maintained. The whole project of TDI Tuscan Phase-I is without boundary wall and gated society. All the sanitary items used/fitted in the flat are of local brand instead of 'Original Hindware' as assured by the developers at the time of booking of the flat /unit however same are used bad quality products instead of genuine stainless steel.
9. Complainant is not liable to pay maintenance charges to respondent as respondent has still neither handed over the project to any maintenance agency nor any tripartite agreement has been executed in accordance


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with law prior to handing over of project and moreover the complainant did not get any notice till date for charges of maintenance due to non-completion of project and other deficiencies. Complainant sent legal notice dated 07.12.2021 to respondent.

10. Respondent has not received occupation certificate till date. Complainant requested numerous times to respondent to execute conveyance deed however same has not been executed by respondent.

C. RELIEF SOUGHT

Complainant in its complaint has sought following reliefs:

- (i) To withdraw and pay Rs.4,89,455/-(Rupees Four Lakh Eighty Nine Thousand Four Hundred Fifty Five) obtained by respondent on the ground of fictitious super measurement area to the extent of 265 sq. ft. along with requisite rate of interest thereon beyond initial agreed area of 1164 Sq. Ft.
- (ii) to pay as a claim and compensation of Rs. 5,58,720/- (Rupees Five Lakh Fifty Eight Thousand Seven Hundred Twenty Only) as an interest for delay in handing over of possession after expiry of 30 months from the execution of apartment buyer agreement as a proposed month i.e. February 2014 onwards till getting legal possession after obtaining occupation and completion certificate and execution of conveyance deed in terms of judgement of Hon'ble Apex Court;



- (iii) to pay the amount of Rs. 5,00,000/- (Rupees Five Lakhs Only) as a charges of faulty construction along with requisite rate of interest thereof
- (iv) to withdraw and pay the amount of Rs. 50,000/- as claim obtained by respondent on a charge of non-existence of club in TDI Tuscan Project along with requisite rate of interest thereof
- (v) to withdraw and pay the amount of Rs.79,200/- (Rupees Seventy Nine Thousand Two Hundred Only) obtained by respondent on a charge of stamp duty along with requisite rate of interest thereof;
- (vi) to withdraw and pay the amount of Rs. 11,800/- (Rupees Eleven Thousand Eight Hundred) as claim obtained by respondent on a charge of miscellaneous expenses such as advocates fees in advance along with requisite rate of interest thereof;
- (vii) to withdraw and pay the amount of Rs. 3,51,297/- (Rupees Three Lakh Fifty One Thousand Two Hundred Ninety Seven Only) obtained by respondent on a charge of EDC on different occasion thereof along with requisite rate of interest thereof;
- (viii) to withdraw and pay the amount Rs. 20,000/- (Rupees Twenty Thousand Only) obtained by respondent on a charge of SFC along with requisite rate of interest thereof;
- (ix) to withdraw and pay the amount Rs. 21,073/- (Rupees Twenty One Thousand Seventy Three Only) obtained by respondent on a



- charge of VAT from complainant, VAT is abolished by Government in 2014 along with requisite rate of interest thereof;
- (x) to withdraw and pay the amount Rs.6,72,308/- (Rupees Six Lakh Seventy Two Thousand Three Hundred Eight Only) obtained by respondent on a charge amount of area above carpet area i.e, 364 sq. ft. (1164 sq. ft. - 800 sq. Ft. = 364 Sq. Ft.) along with requisite rate of interest thereof;
- (xi) to defer to raise maintenance charges, if any in terms of rule 8 annexure-A of standard agreement for sale clause 11 of HIREA along with judgment passed by the Hon'ble NCDRC in complaint No.763/ 2020 prior obtaining occupation and completion certificate;
- (xii) to maintain the tower of complainant and to provide basic amenities of services immediately such as permanent electricity connection, two fully operational lifts in TF-22, water treatment plant, proper sewage disposal system/ sewage treatment plant, cleanliness and security prior obtaining occupation and completion certificate as agreed;
- (xiii) To direct immediate registration of allotted flat after completion of the tower/ project to the satisfaction of district town planner Sonipat after full and final payment in favor of complainant;
- (xiv) To provide simple interest @9% p.a. on the final


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awarded/decreed amount in favor of complainant thereof or as per prescribed rate of rule 15 of HRERA;

- (xv) Pass any other or further order/relief which this Hon'ble forum deems fit and proper in the aforesaid facts and circumstances, in favor of complainant, in the interest of justice.

D.REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply pleading therein:

11. That due to the reputation and prestige of the respondent company, the complainant had voluntarily invested in the project i.e. "Tuscan Heights" of the respondent company near TDI mall in Tuscan City, Kundli, Sonapat, Haryana.
12. Respondent company vide its letter dated 09.05.2014 had applied to the Director General of Town and Country Planning, Haryana, Chandigarh for grant of occupation certificate of group housing colony measuring 22.864 acres which was a part of the residential plotted colony covered under, inter alia, license No. 177 of 2007 falling in the revenue estate of Kundli, Sonapat, Haryana.
13. Provisions of the RERA Act, 2016 are to be applied prospectively and construction of project commenced before the existence of RERA Act, 2016 therefore, the present complaint is not maintainable and falls outside the purview of the RERA Act, 2016. The RERA Act came into


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effect in 2016 and cannot be held to be retrospective in nature.

14. Complainant has signed the no objection certificate dated 30.01.2018 after their full satisfaction with the unit in question. Further, It is evident that the complainant after their full satisfaction with unit, signed the no objection certificate. Further, possession certificate has been issued on 05.06.2018. Therefore, now after a delay of more than 4 years from the date of accepting the possession, the complainant cannot approach this I.d. Authority.
15. Handing over of the possession has always been tentative and subject to force majeure conditions as duly mentioned under clause 30 of the agreement and the complainant was aware about the same at all times. Thus, the complainant cannot be allowed to raise wrong, false and frivolous claims especially when complainant has already accepted the possession and are residing in the said unit.
16. All the demands made and area increased is consistent with the terms and conditions of the agreement executed between the parties and the complainant cannot run away from her obligations.
17. Complainant has been sleeping over its obligation to pay the outstanding amounts to the respondent company, despite repeated reminder letters sent by the respondent company to the complainant.
18. Present complaint is barred by limitation as the complainant has been sleeping over its rights for more than 5 years.



E. ARGUMENTS OF COUNSEL FOR COMPLAINANT AND RESPONDENTS

19. During oral arguments learned counsel for the complainant and respondents have reiterated arguments as mentioned in their written submissions. During hearing complainant counsel stated that unit was endorsed in the name of complainant on 15.04.2011.

F. ISSUES FOR ADJUDICATION

20. Whether the complainant is entitled to relief of delayed interest on account of delay in handing over the possession in terms of Section 18 of Act of 2016?

21. Whether the complainant is liable to pay maintenance security, club charges and VAT charges etc.

G. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT

G.a) Objection raised by respondent that construction of project commenced before the existence of RERA Act, 2016 and RERA Act, 2016 are to be applied prospectively therefore, the respondent company could not have contemplated any violations and penalties thereof, as stated in the RERA Act, 2016.

Respondent in its reply has averred that construction of project commenced before the existence of RERA Act, 2016 therefore, respondent company could not have contemplated any violations and



penalties as stated in the RERA Act, 2016. In this regard Authority observe that RERA Act came into force in the year 2016, and respondent had not received occupation certificate till date meaning thereby at the time of commencement of RERA Act, 2016 the project was an "on going project" thus all provisions of RERA Act, 2016 applied to the project of the respondent. Respondent in its reply has also averred that provisions of RERA Act, 2016 are to be applied prospectively. In present case the agreement for sale was executed prior to coming into force of RERA Act, 2016. Therefore, present complaint is not maintainable. In this regard, Authority relies upon judgment 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.



G. b) Objection raised by respondent 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 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.



H. OBSERVATIONS AND DECISION OF AUTHORITY

22. Authority has gone through the rival contentions. In light of background of the matter as raptured in this order and also arguments submitted by both parties, Authority observes that there is no dispute with respect to facts that a unit was booked by complainant had booked a unit/apartment no. T-22/TF in respondent's project namely 'Tuscan Floor', TDI City Kundli, Sonipat. Apartment buyer agreement was executed between Mr. Rajat Sharma and respondent on 15.04.2011. Complainant i.e. Nirmala Devi purchased unit from Mr. Rajat Sharma on 15.04.2011.
23. Complainant has alleged that respondent was obligated to handover the possession of unit within 30 months from date of execution of agreement however possession has not been offered to complainant within stipulated time. Whereas respondent in its reply has averred that handing over possession was subject to force majeure conditions.
24. With regard to respondent's defence that handing over possession was subject to force majeure condition, Authority observes that respondent did not provide any documents which can show/prove whether any force majeure condition occurred before due date of possession to which handing over possession got delayed. Therefore, this defence of respondent is not sustainable.
25. Admittedly, respondent issued fit out possession letter dated 03.01.2018 vide which respondent requested complainant to take possession after



clearing all dues. Subsequently possession certificate dated 05.06.2018 was issued in favor of complainant. It is matter of fact that possession was issued to complainant after lapse of four years from deemed dated of possession i.e. 15.04.2014.

26. In view of above observation it is established that respondent failed to fulfill its obligation i.e. to handover possession within stipulated time. Hence, there is an apparent violation of Section 11(4)(a) of the RERA Act, 2016. In such circumstances, provisions of Section 18 (1) comes into play, as per Section 18(1) of RERA Act, 2016 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 voluntarily took the possession of the unit and has been enjoying the property ever since. Further, there is no document placed on record to prove or show that the complainant ever protested against accepting offer of possession. Therefore, complainant is only entitled to interest on account of delay in handing over possession from the due date of possession i.e 15.04.2014 till the date of issuance of possession certificate on accepting possession i.e. 05.06.2018. Authority hereby concludes that the complainant is entitled for the delay interest at prescribed rate. The definition of term 'interest' is defined under Section 2(za) 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 IIRERA 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".

27. As per the statement of accounts dated 27.01.2022 the total amount paid by the complainant works out to Rs 32,53,221/-. As per observations recorded in para 31 of this order the amount of Rs. 11,800/-


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(Miscellaneous expenses), Rs. 75,000/- (Club charges), Rs. 6,13,537/- Enhanced area) are to be refunded to the complainant. Therefore, for the purpose of calculation of delay interest payable to the complainant on account of delay caused in delivery of possession, these aforementioned amounts are to be excluded. Thus, the total amount taken for the purpose of calculation of interest is Rs. 25,52,884/-

28. 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 04.11.2025 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e.10.85%, which is to be calculated from the deemed date of possession till date of issuance of NOC at the time of accepting possession.

29. As per calculations made by accounts branch, amount payable by respondent to the complainant on account of interest for delay in handover of possession of the unit has been worked out to Rs. 10,01,541/- as per table below. Hence, the respondent is directed to pay the complainant amount of Rs.10,01,541/- as delay interest for the period 15.04.2014 to 05.06.2018 within 90 days of uploading of this order on the website of the Authority.


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Sr. No.	Principal Amount in (₹)	Deemed Date of Possession/Date of payment, whichever is later	Interest Accrued till 05.06.2018 in (₹)
1.	222524	13.07.2015	70050
2.	2048239	15.04.2014	921205
3.	261048	28.02.2018	7605
4.	21073	04.04.2017	2681
	Principle amount Rs.25,52,884 /-		Total Interest = Rs. 10,01,541/-

30. Complainant in her complaint has also alleged that respondents have illegally charged from her against following heads:-

(a) Charges demanded on the pretext of increase in apartment area from 1164sq. feet to 1429 Sq. feet,

(b) Club membership charges (CMC) Rs. 50,000/-, whereas, club was not functional

(c) miscellaneous expenses of Rs.11,800/- as no conveyance deed has been executed till date.

d) Maintenance Security of Rs. 20,000/-

e) EDC charges of Rs. 3,51,297/-

f) Rs. 21,073/- of VAT charges

g) withdraw Rs. 79,200/- of stamp duty

With regard to these aforementioned charges/amounts collected from complainant, Authority observes and directs as below:



Increase in Super Area

Complainant has alleged that respondent had unilaterally increased area of her apartment from initial booked area of 1164 sq. fts. to 1429 sq. ft. i.e., increase of about 265.2sq. fts. without any revised plan of the project. Whereas, respondent has averred that super area of unit has always been tentative. In compliance of the same, respondent filed floor area detail. On perusal of this document it is reveals that floor area detail is not sufficient to establish the fact that how much change has taken place in super area. Even for a moment, it is presumed that respondent would endeavor to get condonation of increased area as per policy of the department, then also such condonation shall not be over and above 10%, whereas complainant has been charged for almost 22% increased area which is over and above what has been agreed in the agreement for sell and beyond the condonation limit.

Admittedly, as on date occupation certificate has yet not been obtained, therefore, the stage at which it could be ascertained whether there is any increase or decrease in the super area has not arrived. Therefore, at the time of offer of possession for fit out complainant could not have been be charged for an area beyond the area mentioned in the apartment buyer's agreement i.e.,1080 sq. ft. Complainant is seeking refund of Rs. 4,89,455/- for enhanced area



however as per statement of account dated 27.01.2022 complainant had paid Rs. 5,48,214/- Therefore, calculation is made as per Rs. 5,48,214/- also Rs. 65,323/- is also refunded to complainant charged on EDC for enhanced area.

Sr.no	Principal amount (Rs.)	Date of payment	Interest accrued till 04.11.2025(Rs.)
1.	612585	17.01.2018	518795
2.	952	28.02.2018	794
	Total principal amount= Rs.6,13,537 /-		Total interest = Rs. 5,19,589/-
Total interest refunded=11,33,126/-			

Nevertheless, in case the super area of the apartment is enhanced/increased in the occupation certificate, whenever issued by the Department of Town & Country Planning, the complainant shall be liable to pay for the increased area.

Club Membership Charges

Complainant in his complaint has alleged that the respondent has collected Rs.50,000/- from complainant on account of club membership however club is not functional. Respondent did not provide any documents which can prove that club is functional in

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respondent's project. In absence of such documents, it could not be ascertained that there is any operational club in existence for the allottees of 'Tuscan Heights', therefore, the demand on account of club membership charges is not justified and stand quashed. As per statement of account dated 27.01.2022 complainant had paid Rs. 75,000/- for club membership charges. Therefore, interest is calculated as per Rs. 75,000/- Respondent is directed to refund the amount of Rs.75,000/- along with interest charged on account of club membership.

Sr.no	Principal amount (Rs.)	Date of payment	Interest accrued till 4.11.2025(Rs.)
1.	50000	17.01.2018	42345
2.	25000	28.02.2018	20860
	Total principal amount= Rs.75,000/-		Total interest = Rs. 63,205/-
Total interest refunded= Rs.1,38,205/-			

If in future, a club comes up in the project and the complainant wish to avail its membership, complainant shall pay the membership fee as charged by the respondent promoter.



Miscellaneous charges (ME):

Complainant in its complaint has alleged that an amount of Rs.11,800/- has been charged from him on account of miscellaneous expenses. In this regard, Authority observes that in present case, the stage of execution of conveyance deed has yet not been arrived, as occupation certificate has not been issued by the competent authority. Therefore, respondent is not entitled to charge any amount of registration fees in name of miscellaneous charges years prior to the stage of execution of conveyance deed. Hence, Authority finds this component as unreasonable and directs the respondent to refund the same.

Sr.no	Principal amount (Rs.)	Date of payment	Interest accrued till 04.11.2025(Rs.)
I.	11800	17.01.2018	9993
	Principal amount =Rs. 11,800/-		Total Interest = Rs. 9,993/-
Total amount to be refunded= Rs.21,793/-			

Maintenance Security

Complainant in its complaint has alleged that an amount of Rs. 20,000/- has been charged from him on account of maintenance security, complainant is not liable to pay the same. Authority observes that it is matter of fact that complainant had taken the possession. Therefore,

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complainant is liable to pay maintenance security.

Value added Tax (VAT),

Complainant is seeking relief of Rs. 21,073/- or VAT charges. Authority is of the view that respondent has charged Value Added Tax (VAT) from the complainant. Authority is of the view that VAT charged by the respondent is a government tax, and as per clause 3 of agreement complainant itself agrees to pay VAT charges. Clause 3 of agreement reproduced herein:-

"Infrastructure Development Charges (hereinafter referred to as the "IDC"), Value Added Tax (hereinafter referred to as the "VAT"), Works Contract Tax (hereinafter referred to as the "WCT"), Service Tax levied by central government (hereinafter referred to as the "ST"), or such other taxes, levies and/or charges present as well as future along with any enhancements thereof so imposed or levied by the State, Central Government, local authority or any other competent authority. All such taxes, levies and/or charges shall be payable by the Purchaser to the Company, in addition to the basic sale price of the said Apartment"

In view of above observation and clause 3 of agreement this relief is not allowed.

EDC Charges

Complainant is seeking refund of Rs. 3,51,297/- for IDC charges. Perusal of clause 3 and 4 reveals that complainant agreed to pay the



said charges. Clause 3 and clause 4 of agreement reproduced herein respectively:-

"3. The Parties agree that the basic sale price of the Apartment shall not include the External Development charges (hereinafter referred to as "EDC"). Infrastructure Development Charges (hereinafter referred to as the "IDC"), Value Added Tax (hereinafter referred to as the "VAT"), Works Contract Tax (hereinafter referred to as the "WCT"), Service Tax levied by central government (hereinafter referred to as the "ST"), or such other taxes, levies and/or charges present as well as future along with any enhancements thereof so imposed or levied by the State, Central Government, local authority or any other competent authority. All such taxes, levies and/or charges shall be payable by the Purchaser to the Company, in addition to the basic sale price of the said Apartment."

As per construction payment plan complainant was liable to pay EDC charges at the start of first floor Respondent had applied for occupation certificate on 09.05.2014 therefore it is presumed that construction of first floor has been started. Thus in view of above observation complainant is not allowed to refund of these amounts.

Charges of faulty construction and deficiencies

Complainant in its complaint has prayed for direction to respondent to complete the deficiencies of infrastructural facilities/services and complainant is also claiming amount of Rs. 5,00,000/- on account of faulty construction. As per Section 18(3) of RERA Act, 2016 if developer fails to discharge any obligation as per agreement executed



between parties, developer will liable to pay compensation to allottee.

Relevant clause is reproduced herein:

“(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.”

In view of above observation complainant is at liberty to approach the Adjudicating Officer for seeking the relief of compensation.

Execution of Conveyance Deed

With regard to the issue of execution of conveyance deed, Authority observes that u/s 17 of the Real Estate (Regulation & Development) Act, 2016, respondent-promoter is obligated to execute a registered conveyance deed within 3 months from date of receiving occupation certificate. However, in the captioned complaint as admitted by respondent, occupation certificate has still not been issued by the competent authority, though the application for occupation certificate was made on 09.05.2014. Therefore, Authority directs respondent to execute the conveyance deed within 3 months of grant of occupation certificate.



I. DIRECTIONS OF THE AUTHORITY

31. 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:

- a. Respondent is directed to pay complainant amount of Rs. 9,99,737/- as delay interest from the period 15.04.2014 till 05.06.2018.
- b. Respondent is directed to refund complainant amount of Rs. 11,33,126/- collected on account of increase in super area, Rs. 1,38,205/- for club membership charges, Rs. 21,793/- received by respondent on account of miscellaneous expenses respectively as mentioned in para 30 of this order.
- c. Respondent is directed to get the proper sale deed registered in favor of complainant as per provision of Section 17 (1) of RERA Act, 2017 within 3 months of grant of occupation certificate.
- d. Complainant will remain liable to pay stamp duty charges.

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


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Dr. GEETA RATHEE SINGH
[MEMBER]