



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1671 of 2024
Date of filing:	13.11.2024
Date of first hearing:	18.03.2025
Date of Decision:	14.10.2025

Subhash Chander Narula

SU-156, 1st floor, Pitampura,
Northwest, Delhi

....COMPLAINANT

VERSUS

TDI Infrastructure Pvt. Ltd.

11, Tolstoy Marg, Connaught Place,
New Delhi-110001

....RESPONDENT

CORAM: Dr. Geeta Rathee Singh Member

Date of decision: 14.10.2025

Present: None for Complainant
None for Respondent

Geeta Rathee

ORDER

1. Present complaint was filed on 27.12.2024 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, amount paid by 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	Park Street, located at Sonipat
2.	Unit/shop no.	GF-71
3.	Unit area	447.74 sq.ft.
4.	Builder buyer agreement	Not executed
5.	Deemed date of possession	Not mentioned
6.	Amount paid by complainant	Rs. 10,74,336/-
7.	Offer of possession	Not made



B. FACTS OF THE CASE IN COMPLAINT

3. That complainants had booked a unit/shop no. GI-71, Area 447.74 sq. ft. in the year 2006 in the respondent's commercial project named "Park Street" located at Kamaspur, Sonapat. Complainant had paid Rs. 10,74,336/- against total sale price of Rs. 17,00,000/-
4. That after lapse of almost 11 years from the date booking and from the due date of handing over of possession, respondent has failed to deliver possession of unit. Therefore, complainant is entitled to invoke Section 18 of RERA Act, 2016 and seek refund of entire amount.
5. That complainant have not condoned the delay in handing over of the possession by the respondent and entitled to compensation for the delayed period at the rate of 18% compound interest. Complainant has made representation through mail despite several visits however respondent have again made false promise over the projects.

C. RELIEF SOUGHT

Complainant in its complaint has sought following reliefs:

- i. In the event the registration has been granted to the Respondent-Promoter for the project namely, PARK STREET at Kamaspur, Sector 19, Sonapat Haryana, under RERA read with relevant Rules, it is prayed that the same may be revoked under Section 7 of the RERA for violating the provisions of the RERA.


Rathee

- ii. In exercise of powers under Section 35, direct the Respondent-Promoter to place on record all statutory approvals and sanctions of the project.
- iii. In exercise of powers under Section 35 OF RERA AND RULE 21 OF HRE(R&D) RULES, 2017, to provide complete details of EDC/IDC and statutory dues paid to the Competent Authority and pending demand if any;
- iv. To compensate the Petitioners for the delay in completion of the project and refund the entire amount of Rs.10,74,336/- along with interest @ 18% compound interest from the date of respective installments/realization of the sale consideration by the Respondent-Promoter.
- v. The Complainant may be allowed with costs and litigation expenses of Rs. 1,00,000/-
- vi. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT


Learned counsel for the respondent filed reply on 18.07.2025 pleading therein:

6. That the provisions of the RERA Act 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.
7. That complainant is barred by limitation as the complainant was entitled to approach this Id. Authority within 3 years from the date of expiry of the



reminder letter sent by the respondent company dated 03.07.2015 however the complainant did not take any action and kept sleeping upon it.

8. The complainant herein is an investor and has accordingly invested in the project of the respondent company for the sole reason of investing and earning profits and speculative gains. The property has been bought by the complainant for the sole purpose of earning profits and speculative gains and therefore the captioned complaint is liable to be dismissed in toto.
9. That it is worthwhile to mention here that the respondent company had on numerous occasions requested the complainant to visit the office of the respondent company to execute the builder buyer agreement however, complainant failed to do the same. In the absence of such builder buyer agreement, no enforceable legal relationship was established, and as such, the complainant is not entitled to claim possession at such belated stage.
10. That the respondent company had sent various reminder letters dated 29.06.2017, 08.09.2017 and 06.11.2017 to the complainant to clear the dues. However, the complainant failed to make the payments in time and neglected its obligation to pay the outstanding amount to the respondent company.
11. That there has been default on the part of the complainant in making payments towards the booking made in the said project of the respondent company. The delay caused in handing over the possession is not solely attributed to the respondent company. It is also submitted that the handing


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over of possession has always been tentative and subject to force majeure conditions.

12. That the respondent company has already placed on record its position by way of an Affidavit of Shri Ved Prakash, filed in suo motu complaint no. 1580 of 2023, wherein it is unequivocally affirmed that internal development works in the "Park Street" commercial project (measuring 8.306 acres) have not been carried out, and that the project remains stalled due to financial and statutory constraints.

E. ARGUMENT OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

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

F. ISSUES FOR ADJUDICATION

14. Whether the complainant is entitled to refund of the amount deposited by him along with interest in terms of Section 18 of Act of 2016?

G. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT.

15. Respondent has submitted that provisions of 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.

This issue of applicability of provisions of RERA Act and its effect on



agreement entered into before RERA Act, 2016 coming into force has already been decided upon by the Authority in the complainant no. 113 of 2018 titled as **Madhu Sareen v/s BPTP Ltd decided on 16.07.2018**. Relevant part of the order is being reproduced below: -

The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller

Further, reference is also made to 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


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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.

- 16 **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 Rs10,74,336/- 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) Lts. 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.

17. 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 OF THE AUTHORITY

18. Proceeding on the merits, it is not disputed between the parties that complainant had booked a unit/shop no. GI-71 in the year 2006 in the respondent's project namely 'Park Street' located at Sonipat by paying Rs.4,50,000/-. Complainant had paid Rs10, 74,336/- towards the said unit /shop till august 2010. Complainant is aggrieved by the fact that even after so many years neither builder buyer agreement has been executed nor possession has been offered to complainant.
19. On the other hand respondent in its reply has averred that he had requested complainant numerous times to visit its office to execute the builder buyer agreement however complainant never come forward to execute the same. Here, Authority observes that no documents have been place on records to substantiate that the complainant was ever called upon to execute the builder buyer agreement. Thus, making mere statement does suffice that respondent made efforts to execute builder buyer agreement.
20. Admittedly, no builder buyer agreement has been executed between parties. Therefore, there is no stipulated date of possession. In order to



determine a reasonable due date for handing over possession, Authority places reliance upon judgment of Hon'ble Supreme Court titled as **M/s Fortune Infrastructure & Anr, 2018 STPL 4215 SC**, where the Hon'ble Apex Court had held the following:

"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."

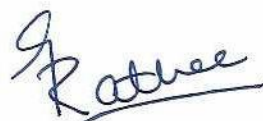
In view of the ratio of law laid down by Hon'ble Supreme Court, in absence of specific clause with respect to handing over possession, 3 years is taken to be reasonable time to handover possession to allottee. In present case to allotment letter was issued on 20.02.2007 therefore, deemed date for handing over possession works out to be 20.02.2010. However possession has not been offered till date.

21. Respondent in its reply has taken a defence that offer of possession was subject to force majeure conditions. With regard to force majeure conditions Authority observes that no document has been placed on record by respondent to prove/show whether any force majeure conditions occurred till the deemed date of offer of possession or not. Hence, respondent cannot


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be granted benefit of any grace period for delay caused.

22. Respondent has taken another defence that complainant defaulted in making payments. Respondent further submitted that it had sent numerous reminder letters to complainant to pay the amount however, complainant defaulted in making payments. Perusal of record reveals that respondent had issued reminder letter 08.09.2014, pre cancellation notice dated 07.11.2014 and final notice prior to cancellation letter dated 29.11.2014 to complainant. Subsequent to final notice prior to cancellation letter dated 29.11.2014, respondent again issued reminder letters dated 29.06.2017, 08.09.2017 and 06.11.2017 to complainant. In this regard it is observed that complainant was obligated to pay respondent for the unit till deemed date of possession i.e. 20.02.2010. Subsequent to deemed date of possession i.e. 20.02.2010 complainant was not obligated to pay to respondent. Complainant had already paid Rs. 10,74,336/- till august 2010. Therefore, complainant is not found in default of making timely payments.
23. As per para 19 of this order possession should have been offered by 20.02.2010 however till date possession has not been offered. Respondent itself submitted that project has been abandoned by it, therefore, it is in no position to handover possession in near future. In view of aforesaid observations it is established that respondent failed to fulfill its obligation i.e. to handover possession within stipulated time as provided in the agreement for sale. 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 wish to withdraw from the project and seeking refund along with interest on paid amount.

24. The issue related to relief to seek refund by an allottee has been dealt with and decided by the Hon'ble Supreme Court in judgement of 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 wherein it has been 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.”

25. This 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 along with interest at prescribed rate in favor of complainant. 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;

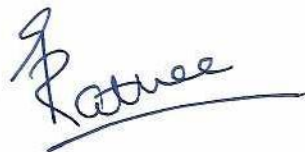
Rule 15 of IIRERA Rules, 2017 provides for prescribed rate of interest which is as under:



"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".

26. 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 14.10.2025 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.85%.
27. Authority directs respondent to refund to the complainant the paid amount of Rs. 10,74,336/- 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 calculated at the rate of 10.85 % till the date of this order and total amount works out to Rs.31,65,731 /- as per detail given in the table below:



Sr.No.	Principal Amount in (Rs.)	Date of payment	Interest Accrued till 14.10.2025(Rs.)
1.	450000	17-05-2006	948543/-
2.	188029	06-04-2007	378232/-
3.	213000	19-08-2008	396741/-
4.	212354	13-08-2010	349835/-
5.	10953	13-08-2010	18044/-
	Total Principle amount = Rs.10,74,336/-		Interest = Rs. 20,91,395/-
	Total amount to be refunded by respondent to complainant = Rs.31,65,731 /-		

28. Complainant is also seeking expenses of Rs. 1,00,000/- for cost and litigation expenses. In this regard 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 complaint in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

29. As for relief i, ii and iii of relief clause c, same are not part of the pleading.

Hence these reliefs are not allowed.


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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 refund the entire amount of Rs.31,65,731/- to the complainant. It is clarified interest shall be paid up till the time period as provided u/s 2(z) of RERA Act, 2016

(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.

31. **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]