



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1114 of 2023
Date of filing:	11.05.2023
Date of first hearing:	27.07.2023
Date of Decision:	14.10.2025

Rekha Devi Sharma

H.NO. 898, Sector 17B, Iffco Colony,
Gurugram, Haryana

....COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

Mahindra Towers 2A, 2nd Floor,
Bhikaji Cama Place, New Delhi

....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 11.05.2023 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	TDI Park Street located at Sonipat
2.	RERA registered/not Registered	Un-registered
3.	Unit no.	GF-25
4.	Unit area	477.94 sq. ft.
6.	Date of builder buyer agreement	25.04.2012
7.	Possession clause	<u>Clause 1 article 4</u>



		<i>the Seller shall try to devolve the ownership of the Unit upon Purchaser within twenty four months from the date of sanctioning of the Building Plans for the said Complex, (Handing Over Period) which Handing Over Period can further be extended by another six months, which shall be treated as the Grace Period."</i>
8.	Basic sale Price	Rs.22,70,215 /-(as per clause 1 of article 4 Builder buyer agreement)
9.	Amount paid by complainant	Rs. 16,14,976 /-
10.	Offer of possession	Not made

B. FACTS OF THE CASE AS STATED IN COMPLAINT

3. That complainant booked a shop in the year 2006 by paying Rs. 4,50,000/- in respondent project 'Park Street' situated at Sonipat. Vide letter dated 11.01.2007, respondent acknowledged the booking registration made by the complainant in the project.
4. Respondent informed the complainant about constructing an air-conditioned mall cum multiplex instead of air-cooled plaza and thus, the respondent would charge an additional amount of Rs.250/- per square feet from the complainant towards air-conditioning mall.
5. Respondent issued a letter of allotment dated 20.02.2007 to the complainant for allotment of shop No. GF-25 measuring 477.94 square feet in the project 'TDI Park Street', Sonipat, Haryana. Builder buyer



agreement executed between parties on 25.04.2012. Complainant paid Rs. 16,14,976/- against total sale consideration of Rs. 22,70,215/-.

6. respondent issued letter dated 26.09.2013 and 21.01.2014 regarding the construction update at the project 'TDI Park Street'. The respondent assured that the construction activities are going on in full swing and the project would be completed on time
7. As per clause 1 of Article 4 of builder buyer agreement possession of the unit was to be offered within 24 months from the date of execution of the said agreement. However, till date possession has not been handed over to complainant.
8. That complainant has approached the respondent and pleaded for delivery of possession of her shop as per the agreement on various occasions. Respondent did not reply to her letters, emails, personal visits, telephone calls of the complainant seeking information about the status of the project and delivery of possession of her shop, thereby violating Section 19 of the Act, 2016.
9. That complainant does not intend to withdraw from the project and rather is seeking interest on the delay in possession of her shop caused due to the lapses and failures of the respondent.
10. That as per the knowledge of the complainant, respondent has failed to get the renewal of licences obtained from the Director, Town & Country Planning, Haryana, Chandigarh (DTCP) for the purpose of promotion and


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development of the said commercial project 'TDI Park Street'.

C. RELIEF SOUGHT

Complainant in its complaint has sought following reliefs:-

- i. Direct the respondent to complete the construction and development of the shop along with all facilities and amenities like water, electricity, roads, etc. immediately.
- ii. Direct the respondent to handover the legal and rightful possession of the shop to the complainant, after receiving the occupation certificate (OC) and other required approvals and permissions from the competent authorities.
- iii. Direct the respondent to provide a definite and fixed date of delivery of possession, as the complainant cannot be made to wait till eternity for enjoying the rights over the shop, with liberty to the complainant to seek appropriate remedy if the respondent fails to handover the possession on the date mentioned before the Haryana Real Estate Regulatory Authority, Panchkula.
- iv. Direct the respondent to pay interest for every month of delay in handing over the possession of the shop since 25.04.2014 to the complainant, on the amount taken from the complainant towards sale consideration and other charges for the aforesaid shop, with interest at the prescribed rate as per the Act, 2016, till the respondent hands over the legal and rightful possession of the Shop to the complainant.


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- v. Direct the respondent to pay legal expenses of Rs.1,00,000/-(Rupees One Lakh) incurred by the complainant for filing and pursuing the instant case.
- vi. Any other damages, interest and relief which the Hon'ble Authority may deem fit and proper under the circumstances of the case may kindly be passed in the favor of the complainant and against the Respondent.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed reply on 01.03.2024 pleading therein:

- 11 That the application for registration of the project in question has been filed and the same is pending consideration before the Ld. Authority. Respondent has also submitted that it had applied for grant of occupation certificate with respect to the present project and the same is awaited.
- 12 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. Be that as it may, the RERA Act came into effect in 2016 and cannot be held to be retrospective in nature.
- 13. That the complainant had invested in the said project of the respondent company for the sole reason of investing and earning profits and speculative gains. Since the property has been bought by the complainant for earning profits and speculative gains, the complaint is therefore liable to be



dismissed.

14. 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 over of possession has always been tentative and subject to force majeure conditions.
15. That numerous reminder letters had been sent to the complainant to pay the outstanding dues to the respondent company or else the complainant would entail interest on the delayed payment. However, despite various reminders the complainant failed to come forward and perform its part of the obligations.

**E. ORAL SUBMISSION MADE BY LEARNED COUNSEL FOR
COMPLAINANT AND RESPONDENT**

During hearing proceeding learned counsel for the complainant and respondent reiterated arguments as mentioned in their written submissions. Ld. counsel for complainant during hearing proceeding stated that despite delay in handing over possession, complainant does not want to withdraw from project and wish to continue with the project only and complainant is seeking relief of delay interest along with possession. Ld. counsel for respondent stated that an application dated 08.01.2025 has been submitting therein respondent has abandoned the project and not further constructing



the project. However, respondent is ready to refund the amount to complainant.

F. ISSUES FOR ADJUDICATION

16. Whether the complainant is entitled to relief of possession of unit booked by him along with interest for delay in handing over the possession in terms of Section 18 of Act of 2016?

G. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT.

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 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 al 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.2. 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 complainant is buyer and paid total price of Rs. 16,14,976/- 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.

H. OBSERVATIONS OF THE AUTHORITY

17. Proceeding on merit, it is not disputed that complainant had booked a shop in the year 2006 in the respondent's project 'Park Street', located in



district Sonipat. Allotment letter was issued on 20.02.2007 and agreement for sale was executed between complainants and respondent on 25.04.2012 for shop no. GF-25, admeasuring area 477.94 sq. ft. in the respondent's project.

18. Complainant is aggrieved by the fact that despite having paid Rs. 16,14,976/- i.e. 71 % of the basic sale price i.e. Rs. 22,70,215/- respondent has failed to complete the unit and offer possession of the same till date.
19. Authority observes as per clause 1 of article 4 of the builder buyer agreement dated 25.04.2012 respondent had promised to handover possession of the unit in question within 24 months from date of sanctioning of the building plans for the said complex with an extended period of six months. Respondent has not provided the date of sanctioning of building plans. Thus, Authority decided to reckon the due date of possession from date of agreement for sale. Respondent in its reply has taken a defence that offer of possession was subject to force majeure conditions. In this regard perusal of clause 1 of article 4 reveals that grace period of 6 months is not subject to any pre condition. Therefore, grace period of 6 months is granted to respondent and accordingly deemed date of possession works out to be 25.10.2014
20. Further, respondent has averred that complainant has defaulted in making

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payments and numerous reminders have been sent to complainant to pay the outstanding dues. However respondent has not attached any reminder letter with its reply. Moreover, it is a matter of record that complainant had paid an amount of Rs. 16,14,976/- against the sale price of Rs. 22,70,215/- Therefore, complainant is not found in default of making timely payments.

21. Authority observes that in its reply respondent had submitted that it has applied for grant of occupation certificate and same is still awaited”, whereas vide application dated 08.01.2025, respondent submitted that it has abandoned its project ‘Park Street’ and not further constructing the same. These two statements are self-contradictory in nature and it seems respondent is trying to blow hot and cold at the same time. During hearing proceeding Authority asked ld. counsel for respondent whether respondent had filed application before DTCP for de-licensing the project to which respondent counsel answered in negative. Meaning thereby that respondent is still under obligation to complete construction of project and hand over the possession of unit to complainant.

22. It is a matter of record that possession of the unit/shop has not been offered till date. Thus, 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 wish to continue with the project and is willing to wait till the time respondent completes the project and handover the possession. 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 due date i.e. 25.10.2014 till the date on which a legally valid offer of possession is made to 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 HRERA Rules, 2017 provides for prescribed rate of interest which is as under:


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"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".

23. 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. 14.10.2025 is 08.85 %. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%.

24. Authority has calculated the interest on the total paid amount from the deemed date of possession or date of payment whichever is later till the date of this order i.e. 14.10.2025 at the rate of 10.85 % and said amount works out to be Rs. 19,24,113/- 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 14.10.2025(Rs.)
1.	16,14,976/-	25.10.2014	19,24,113/-
	Total Principle amount = Rs.16,14,976 /-		Total interest= Rs. 19,24,113/-



25. Complainant is also seeking relief of direction to respondent to complete the construction and development of the shop along with all facilities and amenities like water, electricity, roads, etc. immediately. In this regard complainant is advised to approach the Adjudicating Officer for seeking the relief of compensation.

26. Complainant is also seeking litigation expenses of Rs. 1,00,000/-. 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.

I. DIRECTIONS OF THE AUTHORITY

27. 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.19,24,113/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order. Further, monthly interest shall be payable by the respondent to the complainant up to the date of actual handing over of the possession after obtaining occupation certificate.
 - (ii) Respondent shall make a legally valid offer possession of the unit to complainant within 30 days from the date of obtaining occupation certificate. Complainant shall accept the same within next 30 days.
 - (iii) Complainant will remain liable to pay balance consideration amount, if any, to the respondent at the time of offer of possession. In case of any default in payment complainant shall too pay interest as per Section 19(7) of the RERA Act, 2016. However, respondent shall not charge anything that is not a part for agreement for sale.
28. **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]