HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**183 of 2022**
Date of filing:	**28.02.2022**
Date of first hearing:	**05.04.2022**
Date of Decision:	**14.10.2025**

Naresh Arya
D 298, Ground Floor, Tagore Garden Extension
West Delhi 110027

COMPLAINANT

VERSUS

TDI Infrastructure Ltd.
Vandana Building, 11 Tolstoy Marg
Connaught Place, New Delhi

RESPONDENT No. 1

M/S Cannes Property Management Services Pvt. Ltd.
Mahindra Towers, 2A, Bhikaji Cama Place
2nd Floor, New Delhi

Respondent no. 2

CORAM: **Dr. Geeta Rathee Singh** **Member**

Date of decision: 14.10.2025

Present: Adv. Arjun Kundra, Ld. counsel for complainant
None for respondent

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ORDER (DR. GEETA RATHEE SINGH-MEMBER)

1. Present complaint was filed on 28.02.2022 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 Heights" located at Kundli Sonepat
2.	RERA registered/not registered	Un -registered
3.	Unit no.	T-8/0601
4.	Unit area	1080 sq. ft.(initially)
5.	Revised area	1285.2000 sq. ft.

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6.	Date of apartment buyer agreement	02.07.2011
7.	Deemed date of possession	02.01.2014 (as per clause 30) **Clause 30** *"if the possession of the Apartment is s 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. 23,99,220/- (as per apartment buyer agreement)
9.	Amount paid by complainant	Rs. 35,58,457/- (as per Statement of account dated 28.01.2022)
10.	Offer for fit out possession along with final statement of account	06.03.2018
11.	NOC for handing over possession	16.04.2018
12.	Possession certificate	04.08.2018
13.	Occupation certificate	Not received

B. FACTS OF THE CASE AS STATED IN COMPLAINT

1. Facts of complaint are that by paying Rs. 2,50,000/- on 12.10.2010 complainant booked a unit in respondent's project namely 'Tuscan Heights' Tuscan City, Kundli, Sonipat . Apartment buyer agreement was executed between complainant and respondent on 02.07.2011 for the unit/apartment no. T-8/0601 admeasuring area 1080 sq. ft.

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Complainant had paid Rs. 35,54,521/- against total sale price of Rs. 23,99,220/-

2. That the complainant was represented by the respondent no.1 that total sale consideration of the unit i.e. . Rs.23,99,220/- was inclusive of basic sale price , EDC and IDC charges. Complainant had chosen a construction linked payment plan which was to make sure that the payments were only demanded by the respondent no.1 in confirmation with the construction taking place on the site. Majority of the payments were collected by the respondent no.1 by 2015 itself although the project is not complete even until today.
3. As per clause 30 of apartment buyer agreement respondent no.1was obligated to deliver the possession of the apartment to the complainant within 30 months from the day the date of execution of agreement i. e. by 02.01.2014, however it has failed to do so. Further, no intimation with respect to the reasons for the delay in the completion of the project were ever intimated by the respondent no.1 to the complainant.
4. Respondent offered possession to complainant vide letter dated 06.03.2018.Through this letter dated 06.03.2018 respondent no.1 informed the complainant that the unit was "ready for possession". The respondent no.1 further confirmed that an International School, Mall, club, hospital and other amenities are also functional.

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5. That the complainant was further required to make the payment of the entire sale consideration to the respondent no.1 in order to take the possession of the unit. The complainant herein cleared the demand raised by the respondent no.1 and received no objection certificate dated 16.04.2018.
6. Complainant was made to sign the possession certificate by respondent as a pre-condition to taking the possession. Thus, being under immense pressure and coercion from the respondent no.1, complainant executed the possession certificate to the respondent on 04.08.2018 although the possession of the unit was yet to be delivered and construction on the site was still going on and is in process even today. There are no amenities in the project as promised and even today, the malls, club house, and other amenities as promised turned out to be blatant lies.
7. That the offer of possession dated 06.03.2018 is illegal and unsustainable. Despite lapse of more than 8 years from the date of the promised deemed possession, project has not received the completion or occupancy certificate. Complainant is being harassed by the maintenance agency of the respondent no.1 company to make the payment of the maintenance charges.
8. Complainant is in receipt of the demand dated 12.01.2022 from a company named, Cannes Property Management Services Pvt. Ltd

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demanding a sum of Rs.69,299/- from the complainant. Complainant is aggrieved as the possession of the unit has not been delivered to the complainant and thus no maintenance charges could have been demanded. Further, the complainant has no privity of contract with the respondent no.2 as he has not signed any agreement with it. Respondent no.2 is raising the demand for the maintenance from 06.03.2018 until 31.03.2022 which is clearly unreasonable as the actual possession can only be offered upon the completion of the unit. Since the project is incomplete no amount of maintenance charges could have been demanded by the respondent no.2.

9. Complainant has vehemently denied the offer of possession dated 06.03.2018 and the demand letter dated 12.01.2022. Complainant deposited abovementioned amount of Rs. 69,299/- on 01.02.2022 under protest, email dated 30.01.2022 and 03.02.2022.

10. That the agreement dated 02.07.2011 also states that without the execution of the sale/conveyance deed in favor of the purchaser the title of the unit vests only in the name of the company. Thus, any liability for the maintenance charges lies with the company only and not the complainant.

11. Further, the respondent company has raised and collected several charges which are unsustainable and illegal in nature.

12. The respondent no.1 company herein is in receipt of club charges

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however the club is not functional even today. The complainant is thus entitled to the refund of Rs 50,000/- with prescribed rate of interest from the date of payment until realization. The complainant is also entitled to the refund of Rs 11,800/- collected as miscellaneous expenses as no conveyance deed has been executed till date. Further, no explanation is forthcoming as to why this charge has been levied. The complainant is also entitled to the refund of Rs 3,32,715/- collected as EFFC(Electrical and Fire Fighting Charges) which are beyond the scope of the apartment buyer agreement dated 02.07.2011. Complainant is entitled to the refund of Rs 4,05,270/- collected on account of the alleged increase in the super area as no actual increase has occurred in the carpet area of the unit.

13. Complainant is entitled to the refund of the sum of Rs 1,50,000/- collected on account of the VPK-2 (Vehicle Parking) from the respondent with interest. The alleged parking provided by the respondent company is "open-car parking" and no place is earmarked for the complainant.

14. That respondent no. 1 has failed to deliver the possession of the apartment as promised under the agreement date 02.07.2011. Therefore respondent no.1 is liable to make the payment at prescribed rate of interest or such rate of interest as this Hon'ble

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Authority deems fit, for delay in delivering the possession of the apartment according to the apartment buyers agreement, from the promised date of possession till the execution of the conveyance deed and actual and legal delivery of the unit.

C. **RELIEF SOUGHT**

Complainant in its complaint has sought following reliefs:

i Direct the respondent no.1 to deliver immediate legal possession of the apartment bearing no. T-8/0601 admeasuring 1080 sq. ft. of the super area located at 'TUSCAN HEIGHTS' at TDI City, Kundli, Sonepat, Haryana after completion and receipt of the occupancy/completion certificate; and

ii. Direct the respondent no.1' to execute the sale/conveyance deed in favor of the complainant in respect of the apartment bearing no. T-8/0601 admeasuring 1080 sq. ft. of the super area located at 'TUSCAN HEIGHTS' at TDI City, Kundli, Sonepat, Haryana.

iii. Direct the Respondent no.1 company to make the payment of the prescribed rate of interest to the complainant from the promised date of possession being 02.01.2014 until the execution of the sale/conveyance deed and actual and legal delivery of the apartment bearing no. T-8/0601 admeasuring 1080 sq. ft. of the super area located at 'TUSCAN HEIGHTS' at TDI City, Kundli, Sonepat, Haryana;

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iv. Pass an order quashing/setting aside the demand notice dated 12.01.2022 (Annexure-C-8) issued by the respondent no.2 to the complainant as illegal, arbitrary and unsustainable;

V. Pass an order from restraining the respondent no.2 from raising any demand/maintenance charges from the complainant in respect of the apartment bearing no. T-8/0601 admeasuring 1080 sq. ft. of the super area located at TUSCAN HEIGHTS at TDI City, Kundli, Sonepat, Haryana

vi. Pass an order directing the respondent no.2 to refund an amount of Rs.69,299/- paid by the complainant under protest as demand/maintenance charges collected by it from the complainant in respect of the apartment bearing no. T-8/0601 admeasuring 1080 sq ft of the super area located at 'TUSCAN HEIGHTS' at TDI City, Kundli, Sonepat, Haryana along with prescribed rate of interest

vii. Pass an order quashing/setting aside all the terms/conditions, one-sided documents that got executed by the respondents from the complainant as illegal, arbitrary, against law and unsustainable

viii. Direct the respondent no.1 to refund to the complainant charges under the heads of vehicle parking, club charges, increased area, miscellaneous expenses, EFFC and interest free maintenance security along with prescribed rate of interest from the date of payment until realization; and

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ix. Pass any order that the Hon'ble Authority deems fit

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT No.1

Learned counsel for the respondent no.1 filed detailed reply pleading therein:

15. 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, Sonepat, Haryana.

16. 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, Sonepat, Haryana.

17. Provisions of the RERA Act, 2016 are to be applied prospectively and occupation certificate was applied by the respondent company way back in 2014, therefore, the present complaint is not maintainable and falls outside the purview of the RERA Act, 2016. The RERA Act came into effect in 2016 and cannot be held to be retrospective in nature.

18. Complainant has signed the no objection certificate dated 16.04.2018 after their full satisfaction with the unit in question. Further, It is evident that the complainant after duly inspecting their

unit cleared all the dues, signed the no objection certificate and accepted the physical possession of the unit way back in 2018. Furthermore, even the possession certificate has been issued on 04.08.2018. Therefore, now after a delay of more than 4 years from the date of accepting the possession, the complainant cannot approach this Ld. Authority.

19. 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.

20. 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.

21. 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.

22. Present complaint is barred by limitation as the complainant has been sleeping over its rights for more than 4 years.

E. REPLY SUBMITTED ON BEHALF OF RESPONDENT No.2

23. During hearing proceeding dated 04.06.2024 Mr. Shubhnit Hans ld.

counsel for respondent no.1 and 2 stated that respondent no.2 is adopting reply of respondent no.1. Nevertheless, respondent no.2 filed reply in the Authority on 30.09.2024, pleading therein:

24. That a maintenance agreement dated 23.05.2023 was executed between the complainant and respondent no. 2 i.e. Cannes Property Management Services Pvt. Ltd for the maintenance and up keeping of the unit of the complainant as well as the project of the respondent no.1.

25. That complainant has been handed over the possession of the unit o vide offer of possession letter dated 06.03.2018. Therefore, in accordance with the terms and conditions of Clause 3 the maintenance agreement dated 23.05.2023, complainant is bound to pay the maintenance charges to the respondent no.2 from the date of the handover of the possession of the unit by the developer.

F. ARGUMENTS OF COUNSEL FOR COMPLAINANT AND RESPONDENTS

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

G. OBSERVATIONS AND DECISION OF AUTHORITY

27. 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 in the respondent no.1's project namely Tuscan City (Heights), Kundli, Sonipat in the year 2010 apartment buyer's agreement dated 02.07.2011 was executed between the parties for unit no.T-8/0601 measuring 1080 sq. ft.

28. On perusal of complaint, it is observed that complainant has two main grouses against the respondent promoter, as illustrated below:

i. i. That after a delay of approximately four years respondent promoter had offered "fit out possession cum demand letter" dated 06.03.2018 and that too without obtaining occupation certificate from the competent authority.

ii. ii. That vide "offer for fit out possession cum demand letter" dated 06.03.2018 respondent raised illegal and arbitrary demands under different heads.

Aggrieved by alleged violations and contravention of the provisions of The Real Estate (Regulation & Development) Act, 2016 committed by respondent promoter, complainant is praying for relief.

29. In response to complaint, respondent no.1 promoter had filed its reply wherein it had raised preliminary objections regarding

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maintainability of complaint. Observations of the Authority on these preliminary objections are herein below:

i. That the provisions of the RERA Act, 2016 are to be applied prospectively and occupation certificate was applied by the respondent no.1 back in 2014, therefore, the present complaint is not maintainable and falls outside the purview of the RERA Act, 2016. In this regard Authority observe that respondent had applied for occupation certificate in the year 2014, which is still awaited, meaning thereby the project was an "on going project" thus all provisions of RERA Act, 2016 applied to the project of the respondent.

Authority had relied upon judgment of Hon'ble Supreme Court in **Newtech Promoters and developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021.** Relevant paragraph is herein reproduced:

> " *37. Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all "ongoing projects" that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights*

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of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority."

Further, as per recent judgement of Hon'ble Supreme court in ***Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021*** it has already been held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects. Furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder. Therefore, this Authority has complete jurisdiction to entertain the captioned complaint and objection raised by the respondent no.1 regarding maintainability of the present complaint is rejected.

ii. Respondent no.1 has further raised an objection that complainant is in peaceful possession of his unit since 04.08.2018 and has approached this Authority after a delay of 4 years, hence, complaint is barred by limitation.

In this regard, it is observed that as per clause 30 of apartment buyer agreement, respondent no.1was to handover the possession of the unit to allottee within 30 months from the date of execution of agreement. Apartment buyer's agreement was executed inter-se the complainant and respondent no.1 on 02.07.2011, as per which possession was to be handed over to complainant by 02.01.2014. However, admittedly possession certificate was issued to the complainant on 04.08.2018 i.e., after a delay of more than 4 years from deemed date of possession and subsequent to RERA Act, 2016 coming into force. Hence, respondent no.1 has failed to fulfill its obligations to hand over the possession of the booked unit in its project within time stipulated in agreement for sale. Respondent no.1has neither paid delay possession interest till date nor executed conveyance deed in favor of complainant; thus, the cause of action i.e. delay payment of interest for the delayed possession is re-occurring. Authority has refered to the judgement of the **Hon'ble Apex Court in Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise** wherein it was held that "The Indian 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."*

The RERA Act, 2016 is a special enactment with particular aim and object covering certain issues and violations relating to housing sector.

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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, objection of respondent no.1 with respect to the fact that complaint is barred by limitation is rejected.

30. Now while proceeding to observe and decide complaint on merits there are two major issues to be decided:

i. Whether complainants are entitled to relief of delayed possession interest as per Section 18 (1) of The Real Estate (Regulation and Development) Act, 2016 read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 for any delay in offer of possession.

ii. Whether any amount has been charged from the allottee in contravention to terms of apartment buyer's agreement or provisions of Real Estate (Regulation and Development) Act, 2016 or Rules or Regulations made thereunder.

31. **Issue I- Whether complainant is entitled to relief of delayed possession interest as per Section 18 (1) of The Real Estate (Regulation and Development) Act, 2016.**

Complainant in his complaint has alleged that he was allotted unit no. T-8/0601 in the real estate project "TDI Tuscan Heights", Sonipat, Haryana. An apartment buyer's agreement was executed between the parties on 02.07.2011 and as per terms of apartment buyer's agreement, possession was to be handed over in a period of 30 months from date of execution of apartment buyer's agreement, thus, respondent-promoter was obligated to handover possession of the unit by 02.01.2014. However, respondent no.1 did not hand over possession as per time stipulated, also respondent no.1 has not received occupation certificate till date, therefore, complainant is seeking relief possession along with of delay possession interest till the date of handing over possession.

Respondent no.1 in its reply has denied that possession of the unit was to be handed over within a period of 30 months from date of execution of apartment buyer's agreement as per reply. Respondent no.1has averred that the same was always tentative and subject to any force majeure event. Respondent no.1 has further averred that complainant was issued possession certificate for said unit on 04.08.2018. Therefore, complainant is not entitled to any interest on account of delay in delivery of possession.

On perusal of clause-30 of the apartment buyer's agreement dated 02.07.2011, Authority observes that respondent had committed that if 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 willful neglect or default of the

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company then for every month of delay, the purchaser shall be entitled to a fixed monthly compensation/damages/penalty @ Rs.5/- per square foot of the total super area of the apartment. Meaning thereby that the respondent promoter no.1had undertaken/committed to hand over the possession of the unit in question within a period of 30 months from the date of execution of the agreement to sell, i.e. by 02.07.2014. Not only this, the respondent had also undertaken to compensate the complainant allottee in case of delay in handing over possession beyond a period of 30 months.

It is observed that respondent no.1had taken a plea that handing over of unit was subject to force majeure condition. However, there is no document placed on record by respondent to show or to prove that any force majeure condition occurred or existed during the 30 months' period from execution of agreement for sale that could have contributed to any delay in completion of construction and handing over of possession. Hence, it was an obligation on the respondent no.1to hand over the possession of the unit by 02.07.2014 and for any delay beyond that respondent after coming into force of Real Estate (Regulation & Development) Act, 2016 is liable to pay delay interest in terms of Section 18 read with Rule 15 of Haryana Real Estate (Regulation & Development) Rules, 2017.

It is a matter of fact that the possession certificate was issued in

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favor of the complainant allottee vide dated 04.08.2018 i.e. after a delay of more than four years. It is observed that the complainant in its complaint has pleaded that the offer of possession was made without obtaining a valid occupation certificate from Department of Town & Country Planning. Respondent no.1 in its reply has also admitted that it had applied for occupation certificate vide letter dated 09.05.2014 which is still awaited. Complainant alleged that actual physical possession has not been handing over to complainant. In this regard it is observed that there is no dispute regarding the fact that possession was offered and possession certificate dated 04.08.2018 was issued in favor of complainant. Complainant also signed no objection certificate on 16.08.2018. There could have been a possibility that the complainant allottee was coerced into accepting the offer of possession, however, if so was the case the complainant could have raised a protest against the said offer of possession within a reasonable time after accepting the possession certificate. However, no such communication or documents have been placed on file to prove or to show that the complainant ever protested against the offer of possession made in the year 2018. From these circumstances, it can be concluded that complainant had willingly accepted the possession of the unit in 2018. Hence, he is entitled to delay possession interest from the period 02.01.2014 i.e., deemed date of possession to 04.08.2018, i.e., date of issuance of possession certificate and actual handing over possession.

32. As per the statement of accounts dated 28.01.2022 the total amount paid by the complainant works out to Rs.35,58,457/-. As per observations recorded in para 33 of this order the amount of Rs. 11,800/- (Miscellaneous expenses), Rs. 50,000/- (Club charges), Rs. 4,53,895/-(Enhanced area) and Rs. 3,32,713.53 (EFFC) 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. 27,09,986/-. 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%. which is to be calculated from the deemed date of possession till actual handing over of possession (i.e. from 02.01.2014 to 04.08.2018).

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

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Rs.10,17,850/- as per table below. Hence, the respondent no.1 is directed to pay the complainant amount of Rs. 10,17,850/- as delay interest for the period 02.01.2014 to 04.08.2018 within 90 days of uploading of this order on the website of the Authority.

Sr. No.	**Principal Amount in (₹)**	**Deemed Date of Possession/Date of payment, whichever is later**	**Interest Accrued till 04.08.2018 in (₹)**
1.	1142889	02.01.2014	569397
2.	109946	26.07.2014	48076
3.	109946	21.05.2014	50233
4.	109946	14.10.2014	45461
5.	109946	28.10.2014	45004
6.	38000	03.11.2014	15487
7.	73786	06.12.2014	29347
8.	109946	24.02.2015	41115
9.	109946	24.03.2015	40200
10.	110383	21.07.2015	36455
11.	110383	05.11.2015	32944
12.	110516	18.01.2016	30552
13.	117460	10.01.2017	19972
14.	7001	12.05.2017	937
15.	4760	12.05.2017	637
16.	70582	23.03.2018	2832
17.	264550	10.04.2018	9201
	Principle amount Rs. 27,09,986 /-		Total Interest = Rs.10,17,850/-

33. **Issue-II Whether any amount has been charged from the allottee in contravention to terms of apartment buyer's agreement or provisions of Real Estate (Regulation and Development) Act, 2016**

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or Rules or Regulations made thereunder.

Complainant in his complaint has alleged that respondents have illegally charged from him against following heads:-

(a) Charges demanded on the pretext of increase in apartment area from 1080 Sq. feet to 1285.2 Sq. feet,

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

(c) Car parking charges Rs. 1,50,000/-, as parking provided by the respondent company is open car parking and no place is earmarked for the complainant.

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

e) Maintenance charges of Rs. 69,299/- as valid possession has not offered to complainant.

f) EFFC of Rs. 3,32,715/- which are beyond the scope of the apartment buyer agreement.

It is the case of the complainant that since all these charges/amounts were illegally and arbitrarily collected/levied upon the complainant, respondent is liable to refund the same. With regard to these aforementioned charges/amounts collected from complainant, Authority observes and directs as below:

a) Increase in Super Area

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Complainant has alleged that respondent no.1had unilaterally increased area of her apartment from initial booked area of 1080 sq. fts. to 1285.2 sq. fts. i.e., increase of about 205.2sq. fts. Complainant has further alleged that there is no change in carpet area, thus, the entire amount collected for the increased area over and above 1080 sq.ft. is liable to be returned.

Whereas, respondent no.1 has averred that the increase in area has been in accordance with law and as per approved layout plans and complainant after satisfying herself fully accepted the possession and signed the documents, therefore, now at such belated stage, complainant cannot be allowed to make such bald assertions against the respondent no.1

In order to ascertain whether the increase in area from 1080 sq. ft. to 1285.2 sq. ft. is actual or fictional, Authority vide its interim order dated 25.01.2023 had directed the respondent no.1 to file component-wise detail of the increase in super area. In compliance of the same, respondent no.1 filed comparative area statement and final statement of account on 05.04.2024. On perusal of comparative area statement 2BHK area detail as submitted by the respondent no.1, it is observed that the respondent no.1 has also loaded the shaft area of the flat, mumty area. machine room area, water tank area, stilt floor balcony and projection area ,etc.

proportionately on the flat and has charged for the same. Authority observes that all these areas components as mentioned are generally not part of the FAR and as per the policy of the Department of Town and Country Planning, only the area which is part of FAR is saleable. Area which is not part of FAR is not saleable, therefore, the same cannot be loaded and charged on the units allotted. Even for a moment, it is presumed that respondent no.1would 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 18% 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 issuance of possession certificate 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. Respondent no.1 is directed to refund any amount charged for an area over and above 1080 sq. ft. along with interest.

Sr.no	Principal amount (Rs.)	Date of payment	Interest accrued till 14.10.2025(Rs.)	Total interest

1.	4,53,895	23.03.2018	3,72,798	Rs. 8,26,693/-

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 without interest as agreed in Clause-2 of the agreement for sale.

b) Club Membership Charges

Complainant in his complaint has alleged that the respondent no.1has collected Rs.50,000/- from complainant on account of club membership however club is not functional. Respondent no.1 did not provide any documents which can prove that club is functional in 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. Respondent no.1 is directed to refund the amount of Rs.50,000/- along with interest charged on account of club membership.

Sr.no	Principal amount (Rs.)	Date of payment	Interest accrued till 14.10.2025(Rs.)	Total interest
1.	50000	24.03.2018	41,052	Rs.

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				91,052/-

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

c) **Car Parking**

It has been alleged by the complainant that an amount of ₹1,50,000/- was paid to the respondent no.1 towards the said parking; however, alleged parking space provided by the respondent company is 'open car parking' and no place is earmarked for the complainant. Therefore, he is seeking relief of refund of ₹1,50,000/- paid for parking space. As per clause 14(d) of apartment buyer agreement, complainant shall use open car parking space on the ground floor portion along with other allotees. Relevant clause is reproduced herein:-

> '*The Purchaser shall be entitled, without any ownership rights, to use the open/covered parking space for parking his/her vehicle on the ground floor portion of the said Building. This parking space shall be a common area and the Purchaser shall use the same harmoniously with other Purchasers/Occupants, without causing any inconvenience or hindrance to them*'

The agreement for sale in the present case is a pre RERA Act, 2016 agreement. Respondent had provided open car parking space as per

Ratree

agreement for sale. Therefore, complainant is not entitle to refund car parking charges.

d) 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 14.10.2025(Rs.)
1.	1350	23.03.2018	1109
2.	10450	10.04.2018	8527
	Principal amount =Rs. 11,800		Total Interest= Rs.9,636/-
Total amount to be refunded= 21,436/-			

e) Maintenance Charges

Complainant in its complaint has alleged that an amount of Rs.69,299/-

Rathee

has been charged from him on account of maintenance charges, complainant is not liable to pay the same as valid possession has not been offered to complainant. With regard to maintenance charges, it is observed that according to clause 19 of the apartment buyer agreement, the complainant has agreed to enter into a separate maintenance agreement with the maintenance agency so appointed by company. An agreement has been executed between complainant and maintenance company i.e. Cannes Property Management Pvt. Ltd. on 23.05.2023. Maintenance charges become payable after a valid offer of possession is made to the complainant. In present circumstances, the possession certificate was issued to the complainant on 04.08.2018. Therefore, complainant is liable to pay these charges from 04.08.2018.

f) Electrical and Fire fighting charges

Complainant is also claiming refund of Rs 3,32,715/- collected as EFFC (Electrical and Fire Fighting Charges). He alleged that same are beyond the scope of the apartment buyer agreement dated 02.07.2011. Respondent in its reply submitted that all charges are being charged in accordance with the agreement. It is observed that there is no clause related to electrical and fire fighting charges in apartment buyer agreement. Therefore, respondent no.1 is liable to refund the amount collected as EFFC (Electrical and Fire Fighting Charges) from complainant. As per Statement of account dated 28.01.2022 complainant had paid Rs. 3,32,713.53/- therefore interest is calculated on this amount.

Sr.no	Principal amount (Rs.)	Date of payment	Interest accrued till 14.10.2025(Rs.)
1.	278233.53	16.07.2016	279387
2.	54480	23.03.2018	44746
	Principal amount=Rs.3,32,713.53/-		Total interest=Rs. 3,24,133/-
	Total amount to be refunded= Rs. 6,56,846.53/-		

g) **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 no.1, 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.

H. DIRECTIONS OF THE AUTHORITY

34. 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 no.1 is directed to pay complainant amount of Rs. 10,17,850/- as delay interest from the period 02.01.2014 till04.08.2018.

(b) Respondent no.1 is directed to refund complainant amount of Rs. 8,26,693/- collected on account of increase in super area, refund of Rs. 91,052/- for club membership charges, refund of Rs. 6,56,846.53/- of electrical and fire fighting charges, refund of Rs. 21,436/- received by respondent no.1 on account of miscellaneous expenses. It is further clarified that respondent will remain liable to pay the interest to the complainant up till the time period provided u/s 2(za) of RERA Act,2016.

(c) Respondent no.1 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) Respondent no.1 is directed to pay cost of Rs. 5000/- payable to Authority and Rs. 2000/- payable to complainant imposed vide order dated 28.06.2022.

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

Dr. GEETA RATHEE SINGH
[MEMBER]