



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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

<b>Complaint no.:</b>	2228 of 2023
<b>Date of filing:</b>	28.09.2023
<b>Date of first hearing:</b>	02.11.2023
<b>Date of Decision:</b>	23.12.2025

**Jogender Singh**  
A-4/8 shivaji Apartment Sector 14,  
Rohini Delhi

## VERSUS

**TDI Infrastructure Ltd.**  
Tdi Infrastructure Ltd., 10 Shaheed Bhagat  
Singh Marg, New Delhi ....RESPONDENT No.1

**C Chandwani Properties**  
228, pocket 26, Sector 24, Rohini Delhi ....RESPONDENT No.2

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

Date of decision: 23.12.2025

Page 1 of 19

## ORDER

1. Present complaint was filed on 28.09.2023 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	“Tuscan Floor” located at Kundli Soncpat
2.	Unit no.	T-43/GF
3.	Unit area	1164 sq. ft.
4.	Date of allotment letter	08.12.2010
5.	Date of apartment buyer agreement	11.04.2011
6.	Deemed date of possession	11.10.2013 <b>Clause 30</b> <i>“if the possession of the Apartment is delayed beyond a period of 30 months</i>



		<i>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....</i>
7.	Total sale Price	Rs. 31,19,426/-
8.	Amount paid by complainant	Rs. 14,51,650/-
9.	Fit out offer of possession	04.01.2023
10.	Occupation certificate	Not received

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

3. Facts of the complaint are that on 09.07.2010, Sh. Jitender Gulati and Smt. Alka Gulati booked a residential flat/floor in the respondent's project 'Tuscan floor' located at Kundli Sonepat, Haryana, and accordingly made the very first payment of an amount of Rs. 4,00,000/- The payment had been duly acknowledged by the respondent.
4. That the respondent no.1 on 11.04.2011, executed independent floor/apartment buyer's agreement with Sh. Jitender Gulati and Alka Gulati and as per clause 30 of this agreement the respondent was obligated to complete the construction and deliver the unit within a period of 30 months from the date of execution of the agreement i.e. by 11.10.2013.
5. That complainant kept on paying all the installments as and when demanded by the respondent in accordance to the payment plan as



mentioned in Annexure-2 of the independent floor buyer's agreement

6. That the complainant purchased the unit through the respondent no. 2 i.e. M/s C. Chandwani Properties for a sum of Rs. 23,33,650/- and subsequently an allotment letter as well as buyer agreement was issued by respondent no.1 in favor of the complainant in respect of the unit and the respondent no. 2 is fully liable for his unfair act and conduct.
7. That the complainant made a number of requests to respondent no.1 through numerous mode of communication on many occasions to give possession of the unit and also arranged meetings with them to resolve the matter amicably but they showed inability /difficulty and requested for some time to resolve the matter.
8. That complaint had filed complainant before this Hon'ble Forum bearing Complaint No. RERA-PKL-1516-2020 (Adjudication). However same was dismissed for non prosecution vide order dated 10.08.2022.
9. The complainant filed an application for restoration of complaint no. RERA-PKL-1516-2020 (Adjudication) and on the said application vide order dated 14.09.2022, this Hon'ble Forum advised the complainant to file a fresh complaint in the prescribed format along with requisite fee and copies. Same will be taken into consideration by authority as per law.
10. The complainant again filed the complaint vide RERA-PKL-2702-2022



A handwritten signature in black ink, appearing to read "G. Rathee".

three times but every times the same was returned with remarks to be file in prescribed format vide letters dated 27.20.2022 & 23.12.2022, now the complaint has been filed with better particulars and as per prescribed format.

11. That till date neither the respondent no.1 gave possession of the flat/floor in question nor issued any completion certificate despite frequent visits and written representation. Respondent said that their project is still incomplete therefore respondent cannot deliver possession of unit.
12. Complainant requested numerous time to respondent either to give the possession of the unit or to refund the original amount along with interest @ 18%, however respondent are delaying the matter on one pretext or the other.
13. That it is pertinent to mention here that the allottee never became defaulter in making payments and paid Rs. 14,51,650/- till 09.04.2011.

### **C. RELIEF SOUGHT**

Complainant in its complaint has sought following reliefs:

- i. To pass an order and give necessary directions to the respondent for refund of the payment made in lieu of unit/apartment till date i.e. Rs.14,51650/- towards the principle amount along with interest w.c.f. January 2013 till the date of realization of the amount claimed herein by the complaint, in favor of the complainant and against the respondents.



- ii. Pass an order of @ Rs. 5 per sq. feet per month calculated on super built up area of unit/flat for every month of delay w.e.f. January 2013 to till date, in favour of the complainant and against the respondents.
- iii. To impose penalty upon the respondent as per the provisions of Section 60 of RE (R&D) Act for willful default committed by them.
- iv. To impose penalty upon the respondent as per the provisions of Section 61 of RE (R&D) Act for contravention of Sec.12, 13, Sec.14 and Sec. 16 of RE (R&D) Act.
- v. To direct the respondent to refund the amount collected from the complainant in lieu of interest, penalty for delayed payments under Rule 21(3)(c) of IHRERA Rules, 2017.
- vi. To issue directions to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Sec.69 of RE(R&D) Act,2016 to be read with HRERA Rules, 2017.
- vii. To recommend criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under section 420,406 and 409 of the Indian Penal Code.
- viii. To Award/allow costs of these proceeding to the complainant and against the Respondents.
- ix. Any other relief which this Hon'ble Authority deem fit and appropriate



in view of the facts and circumstances of this complaint.

- x. To direct the respondent to pay sum of Rs.5,00,000/- as harassment damages, Rs.1,00,000/- as litigation expenses or to pass an order or direction which this court deem fit.
- xi. Direct the respondent to pay the advance payment to the buyer as per buyers builder agreement in case of delay in shape of EMI will be paid by the builder

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

Learned counsel for the respondent filed reply on 21.10.2024 pleading therein:

14. That respondent company vide its letter dated 09.05.2014 had applied to the Director General of Town and Country Planning, Haryana, (DGTCP) for grant of occupation certificate in respect of the respondent's project 'Tuscan floor', located in, kundli, sonipat however till date occupation certificate has not been granted.
15. When the respondent company commenced the construction of the said project, the RERA Act,2016 was not in existence, therefore, the respondent company could not have contemplated any violations and penalties thereof, as stated in the RERA Act, 2016. 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. Be that as it may, the RERA Act came



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

16. That the respondent company has on various occasions sent multiple reminder letters to the complainant to clear its outstanding dues however complainant failed to comply with the same.
17. As per clause 30 of the apartment buyer agreement the handing over of the possession of the unit has always been tentative and is subject to force majeure conditions the delay in delivering the possession of the unit to the Complainant was caused by the unforeseen and unavoidable circumstances resulting from the global COVID-19 pandemic, which constitutes as a force majeure condition.
18. Fit out possession was offered vide letter dated 04.01.2023 to the complainant after clearing of the outstanding dues amounting to Rs. 44,37,304/-However complainant did not come forward to take possession of the unit.

#### **E. ARGUMENT OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT No.1**

During oral arguments learned counsel for the complainant and respondent reiterated arguments as mentioned in their written submissions. Despite giving numerous opportunities respondent no.2 had not filed its reply. Therefore, vide order dated 11.03.2025 Authority struck off the defence of respondent no.2



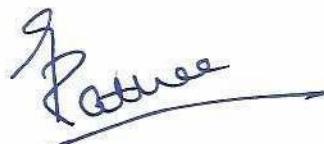
## **F. ISSUES FOR ADJUDICATION**

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

## **G. FINDINGS ON THE OBJECTION RAISED BY THE RESPONDENT No.1.**

**Objection raised by respondent no.1 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 no.1 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 all 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*



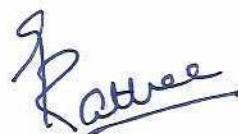
*negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case."*

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.

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

19. Proceeding on the merits of the case, it is not disputed between the parties that Mr. Jetinder Gulati and Alka Gulati had booked a unit in the respondent's project respondent's project namely "Tuscan Floor" located at Kundli, Sonipat. On 11.04.2011 Independent floor/ apartment buyer agreement was executed between Mr. Jetinder Gulati, Alka Gulati and respondent. Thereafter, complainant i.e. Jogender Singh purchased unit through respondent no. 2 C Chandwani properties(a real estate agent) and allotment letter for back date 08.12.2010 was issued to complainant by respondent no.1

20. Complainant is aggrieved by the fact that valid possession has not been



offered to complainant within stipulated time. Therefore, complainant is seeking refund of paid amount of Rs. 14,51,650/- along with interest.

21. Perusal of clause 30 of apartment buyer agreement reveals that respondent no.1 was obligated to handover the possession of unit within 30 months from date of execution of agreement i.e. by 11.10.2013.

22. It is not disputed that respondent no.1 did not offer possession by 11.10.2013, thus failing in its obligation to handover possession of the unit within stipulated time. However, respondent in its reply has averred that timely possession could not be offered due to default in making payments by complainants and force majeure conditions. Nevertheless, on 04.01.2023 it offered possession for fit out to complainants. Respondent no.1 has taken defense that complainant defaulted in making payments and alleged that it had sent numerous reminder letters to complainant to pay the amount. As per terms of agreement respondent was obligated to handover possession by 11.10.2013 meaning thereby complainant was obligated to pay till 11.10.2013. Whereas valid possession was not offered to complainant till 11.10.2013. Complainant had paid substantial amount of Rs. 14,51,650/- till 09.04.2011 against total sale consideration of Rs. 31,19,426/-



23. With regard to respondent's defence of Covid-19 Authority observes that as per terms of agreement respondent was obligated to handover the possession of unit by 11.10.2013, whereas Covid-19 outbreak hit construction activities post 22.03.2020 i.e. more than seven years after the lapse of due date of possession. Possession of the unit had already been delayed for a long period of time even before the Covid-19 halted construction. Respondent had failed to construct the project on time and deliver possession to the complainants. Therefore, as far as delay in delivery of possession of the unit in question is concerned, respondent no.1 cannot be allowed to claim benefit of Covid-19 outbreak as a force majeure condition. Further, reliance is also placed on judgement passed by Hon'ble Delhi High Court in case titled as "*M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (I) (Comm.) No. 88/2020 and I.A.S 3696-3697/2020*" dated 29.05.2020, wherein Hon'ble High Court has observed that:

*"69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March, 2020 in India. The contractor was in breach since September, 2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.*

*The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September, 2019 and is claiming the benefit of lockdown which came into*



*effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used as an excuse for non-performance of contract for which deadline was much before the outbreak itself."*

In view of the observations made by Hon'ble Delhi High Court this defence of respondent is non sustainable. Hence, possession should have been offered latest by 11.10.2013.

24. As admitted possession letter dated 04.01.2023 was fit out possession and without occupation certificate this cannot be considered valid offer of possession. In view of aforesaid observations it is established that respondent failed to fulfill its obligation i.e. to handover valid possession within stipulated time as provided in the apartment buyer agreement. 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.

25. The issue related to relief of an allottee to seek refund has 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.”*

26. 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 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".*

27. Consequently, as per website of the State Bank of India i.e.,

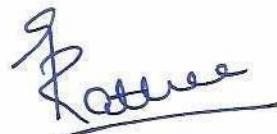
<https://sbi.co.in>, the highest marginal cost of lending rate (in short

A handwritten signature in blue ink, appearing to read "R. Attee".

MCLR) as on date i.e. 23.12.2025 is 8.80 %. Accordingly, the prescribed rate of interest will be MCLR+ 2% i.e. 10.80%. Complainant in its complaint submitted that she had paid Rs. 14,51,650/- and seeking refund for the same.

28. Hence, respondent no. 1 will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Authority directs respondent no. 1 to refund to the complainant the paid amount of Rs. 14,51,650/- 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 10.80% (8.80% + 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 10.80% till the date of this order and total amount works out to Rs. 38,30,057/- as per detail given in the table below:

Sr.No.	Principal Amount in (Rs.)	Date of payment	Interest Accrued till 23.12.2025(Rs.)
1.	250000	01.09.2010	413729
2.	300000	01.09.2010	496475
3.	31724	26.02.2011	50830
4.	183000	26.02.2011	293211
5.	286926	09.04.2011	456160
6.	400000	12.07.2010	668002



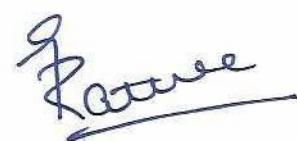
	Total Principle amount= Rs.14,51,650/-	Interest= Rs. 23,78,407/-
	Total amount to be refunded by respondent to complainant - Rs. 38,30,057/-	

29. Complainant is also seeking c Rs. 5,00,000/- for harassment damages and Rs. 1,00,000/- for 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 harassment damages and litigation expenses.

30. As for relief from clause C (ii) to (vii) and (xi) of this order it is neither a part of the pleadings nor has it been argued. Therefore, no observation is made on these reliefs.

## **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:

- (i) Respondent no.1 is directed to refund the entire amount of Rs. 38,30,057/- to the complainant. It is clarified interest shall be paid up till the time period as provided u/s 2(za) 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.

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



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