HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint No:	**1811 of 2023**
Date of Filing:	**04.09.2023**
Date of First Hearing:	**17.10.2023**
Date of Decision:	**12.12.2025**

Dr. ND Attri S/o Sh. Banwari Lal
R/o H.No.181/10, Near BDO Office,
Ganaur, Sonepat-131101.

....COMPLAINANT

VERSUS

TDI Infrastructure Limited
Upper Ground Floor, Vandana Building, 11, Tolstoy Marg,
Connaught Place, New Delhi-110001.

....RESPONDENT

CORAM: **Sh. Chander Shekhar** **Member**

Hearing: **8th**

Present: - Mr. Yashpal Antil, Advocate, for the Complainant through VC.
Mr. Shubhnit Hans, Advocate, for the Respondent.

ORDER:

Present complaint has been filed on 04.09.2023 by the complainant under Section 31 of the Real Estate (Regulation &

Development) Act, 2016 (for short Act, 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act, 2016 and the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil 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, the amount paid by the complainant, date of proposed handing over of the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the Project	Park Street, Sector-19, Village-Kamsapur, Sonepat.
2.	Name of the Promoter	TDI Infrastructure Ltd.
3.	RERA Registered/Not Registered	Not registered.
4.	DTCP License Nos.	999, 1000, 1001 and 1002 of 2006 dated 16.06.2006.
5.	Licensed Area	8.31 Acres
6.	Unit No.(Shop)	GF-151
7.	Unit Area	410.81 sq. ft.
6.	Date of Allotment	20.02.2007
7.	Date of Builder Buyer Agreement	Not Executed

8.	Due Date of Offer of Possession	Not Mentioned
9.	Total Sale Consideration	₹19,51,347.50/-
10.	Amount Paid by the Complainant	₹17,66,275/-
11.	Offer of Possession	Not offered

B. FACTS OF THE COMPLAINT

3. Brief facts of the complaint are that the complainant booked a 410.81 sq. ft. commercial shop in a commercial plaza project of M/s Intime Promoters Pvt. Ltd. (later renamed M/s TDI Infrastructure Ltd.) through an application dated 12.06.2006 by paying a booking amount of ₹4,50,000/-. Copy of receipt is attached as Annexure-1. As per the application form, the total price of the shop was fixed at ₹4,500 per sq. ft., i.e. ₹19,51,347.50/- with 10% payment due at the time of excavation and the remaining amount to be paid as per the construction-linked schedule. Till date, the complainant has paid ₹17,66,275/-. Vide letter dated 11.01.2007, the respondent informed the complainant that the project would now be developed as 'TDI Park Street', an air-conditioned mall-cum-multiplex instead of an air-cooled plaza and an additional cost of ₹250 per sq. ft. for air-conditioning was added. Through another letter dated 20.02.2007, the respondent allotted Shop No. GF-151, measuring 410.81 sq. ft., in the project 'Park Street'. Despite multiple requests, the respondent did not execute any Builder Buyer

Agreement. On 04.08.2023, the complainant sent an email to the respondent asking for the statement of account and the current status of the project but the respondent did not reply to this email. Since more than sixteen years have passed and the project has still not been completed, it is clear that the project is not likely to be delivered. Therefore, the complainant is left with no option but to claim refund of the entire paid amount along with appropriate compensation and interest as provided under the law.

C. RELIEF SOUGHT

4. Complainant in his complaint has sought following reliefs:

i. To direct the respondent from creating any third-party rights over their assets during pendency of the case.

ii. To direct the respondent to refund the amount paid along with 18% interest due to delays in delivering the unit.

iii. Any other relief, the Authority finds appropriate based on the facts of the case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

5. Learned counsel for the respondent filed a detailed reply on 01.03.2024 pleading therein that due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely, Park Street, Sector-19, Village Kamaspur, Sonipat, Haryana. The said project is covered under the license nos.999 of 2006, 1000 of 2006, 1001 of 2006 and 1002 of 2006 all dated 16.06.2006.

When the respondent company commenced the construction of the said project, the RERA Act was not in existence, therefore, the respondent company could not have contemplated any violations and penalties thereof, as per the provisions of the RERA Act, 2016. Therefore, the provisions of RERA Act are to be applied prospectively. In support of its contention, a judgment passed by Hon'ble Apex Court in the matter of "*Newtech Promoters and Developers Pvt Ltd. vs. State of UP and others*" *in Civil Appeal No.6745-6749 of 2021* is referred to in which it was held that application of RERA Act is retroactive in character. Thus, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act.

6. That the respondent company has applied for grant of occupation certificate with respect to the present project and the same is still awaited. Further, it is submitted that the application for registration of the project in question has been filed and the same is pending consideration before Authority.

7. The complainant herein is an investor and accordingly invested in the project of the respondent company for the sole reason of investing, earning profits and speculative gains, therefore, the captioned complaint is liable to be dismissed in limine.

8. The respondent has admitted the payments received from the complainant and further submitted that any amount inconsistent with the statement of account issued by the respondent company is denied.

9. There has been a default on the part of the complainant in making payments towards the booking made in the said project of the company. It is further submitted that the handing over of possession has always been tentative and subject to force majeure conditions. It is submitted that despite several reminders, the complainant did not come forward for executing Builder Buyer Agreement and the complainant was well aware of the fact that the project was under construction and shall be completed in near future. At this stage, the claim of refund along with interest can not be accepted because it would stall the whole of the project. It is also submitted that no documentary proof has been annexed by the complainant to prove the allegations with respect to the booking made. Hence, he has prayed to dismiss the complaint in toto.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

10. During the course of oral arguments, learned counsel for the complainant pressed for refund of the amount deposited along with interest, submitting that there is no likelihood of the complainant obtaining possession in the near future, as the construction of the project remains incomplete as of today. He further submitted that the complainant no longer

wishes to continue with the project and is interested in refund of the amount paid along with applicable interest.

11. Learned counsel for the respondent reiterating the submissions made in the written statement, admitted that the project in which the subject shop was booked has been at a standstill for the past 3–4 years. He stated that although the basic structure of the shops has been completed, the construction is still not complete and the occupation certificate is yet to be obtained.

F. ISSUE FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

13. The Authority has carefully considered the contentions and submissions made by both the parties. In view of the factual matrix of the case as recorded hereinabove and upon perusal of the arguments advanced by both the parties, the Authority observes as follows:

(i) With regard to the plea raised by the respondent that the provisions of RERA Act, 2016 are applicable with prospective effect only and therefore the same were not applicable as on 20.02.2007 when the allottee/complainant was allotted a shop bearing No.GF-151, Park Street, Sonipat. It is observed that the issue regarding operation

of RERA Act, 2016 whether retrospective or retroactive has already been decided by the Hon'ble Supreme Court in its judgment dated 11.11.2021 passed in *Civil Appeal No. (s) 6745-6749 OF 2021 titled as Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others.* Relevant part is reproduced below for reference:-

> *"51. Thus, it is clear that the statute is not retrospective merely because it affects existing rights or its retrospection because a part of the requisites for its action is drawn from a time antecedent to its passing, at the same time, retroactive statute means a statute which creates a new obligation on transactions or considerations already passed or destroys or impairs vested rights.*
>
> *52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term "converting and existing building or a part thereof into apartments" including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.*
>
> *53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the*

applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."

Further, the same legal position was laid down by the Hon'ble Bombay High Court in "*Neel Kamal Realtors Suburban Pvt. Ltd. & Anr. Vs. Union of India and others" 2018(1) RCR (Civil) 298 (DB)*, wherein it was laid down as under: -

"122. We have already discussed that the above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting/existing

contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports. As regards Article 19(1)(g) it is settled principles that the right conferred by sub-clause (g) of Article 19 is expressed in general language and if there had been no qualifying provisions like clause (6) the right so conferred would have been an absolute one."

Thus, it is clear from the above said law that 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 even though the amendment/contract/agreement have taken place before the Act and the Rules became applicable.

(ii) The respondent in its reply has contended that the complainant is a "speculative buyer" who has invested his hard earned money in the project for monetary returns and taking undue advantage of RERA Act, 2016 as a weapon during the present down side conditions in the real estate market and therefore he is not entitled to the protection of the Act of 2016. In this regard, the Authority observes that "any aggrieved person" can file a complaint against a promoter, if the promoter contravenes the provisions of the RERA Act, 2016 or the rules or regulations. In the present case, the

complainant is an aggrieved person who has filed a complaint under Section 31 of the RERA Act, 2016 against the promoter for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here, it is important to emphasize upon the definition of term "Allottee" under the RERA Act of 2016, reproduced below: -

> *Section 2(d) of the RERA Act:*
> *(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 the above-mentioned definition of "allottee" as well as upon careful perusal of the allotment letter dated 20.02.2007, it is clear that the complainant is an "allottee" of shop bearing no. GF-151, situated in the real estate project "Park Street", Sector-19, Sonipat. The concept/definition of investor is not provided or referred to in the RERA Act, 2016. As per the definitions provided under Section 2 of the RERA Act, 2016, there will be "promoter" and "allottee" and there cannot be a party having a status of an investor. Further, the definition of "allottee" as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for

investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *"M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. And Anr."* had also held that the concept of investors not defined or referred to in the Act. Thus, the contention of the promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

(iv) Admittedly, the complainant in this case had purchased the booking rights qua the shop in question in the project of the respondent in the year 2007 for a total sale consideration of ₹19,51,347.50/- against which an amount of ₹17,66,275/- has been paid by the complainant. Out of the said paid amount, the last payment of ₹2,49,822/- was made to respondent on 20.02.2019 by the complainant which implies that the respondent is in receipt of paid amount since the year 2019 whereas the fact remains that no offer of possession of the booked shop has been made till date.

(v) In the written statement submitted by the respondent, it has been admitted that the possession of the booked shop has not been offered till date to the complainant. With respect to status of handing over of possession, it is submitted that the respondent had applied for grant of occupation certificate with respect to the project in question but the same is awaited. In regard to delay caused, it is submitted that the deemed date of possession was tentative and was subject to force majeure. Though no reason/factor attributed for causing delay in offer of possession has been specified in the written

statement. Mere writing of force majeure for causing delay in offering the possession is not sufficient to justify the delay caused.

(vi) The complainant as well as the respondent have not specified any deemed date of possession in their respective submissions. It is noted that no Builder-Buyer Agreement has been executed between the parties. In the absence of Builder Buyer Agreement, it is not possible to precisely ascertain the date on which possession of the said unit was to be delivered to the complainant. In *Appeal No. 273 of 2019, TDI Infrastructure Ltd. v. Manju Arya*, the Hon'ble Appellate Tribunal referred to the observations of the Hon'ble Supreme Court in *M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr. v. Trevor D'Lima & Ors., 2018 STPL 4215 SC*, wherein it was held that a period of three years constitutes a reasonable time for completion of construction and delivery of possession. In the present case, the complainant booked the plot on 20.02.2007 for which an allotment letter was issued on the same date. Accordingly, taking a period of three years from the date of allotment as a reasonable time for completion of development work and delivery of possession, the deemed date of possession is computed as 20.02.2010. The respondent has failed to fulfil its contractual obligations within this reasonable period and has not provided any cogent justification for the delay. Fact remains that the possession has not been offered to the complainant till date for the reason that the project is lying incomplete.

(vii) In the present situation, the respondent failed to honour its contractual obligations of offering possession within stipulated time without any reasonable justification. Respondent in its written statement has not attached any documentary evidence to prove the fact that the development works are lying complete at project site and the complainant can peacefully enjoy the physical possession of the unit in the upcoming years. On the other hand, the complainant has unequivocally stated in his complaint that he is interested in seeking refund of the paid amount along with interest on account of inordinate delay caused in delivery of possession.

(viii) Besides this, 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 has 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."

The 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.

(ix) This project did not get completed within the time stipulated as discussed in aforesaid paragraphs and possession of the booked unit is not possible even in near future. In these circumstances, the Authority finds it to be fit case for allowing refund along with interest in favor of the complainant in terms of provisions of Section 18 (1) (a) of RERA Act, 2016.

(x) 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;

(xi) Consequently, as per the 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. 12.12.2025 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%.

(xii) Rule 15 of HRERA 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".*

14. In the present case, the complainant has claimed interest at the rate of 18% per annum. However, in terms of the RERA Act, 2016, read with Rule 15 of the HRERA Rules, 2017, the rate of interest payable is SBI MCLR + 2%, which presently amounts to 10.85% per annum. It is a settled legal principle that a forum cannot grant relief beyond what has been specifically sought in the complaint. Thus, the respondent will be liable to pay the complainant interest from the date, the amounts were paid till the actual realization of the amount. The Authority directs the respondent to refund the paid amount of ₹17,66,275/- along with interest to the

complainant 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. The 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 ₹45,21,374/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 12.12.2025
1.	₹4,50,000/-	12.06.2006	₹9,52,957/-
2.	₹1,35,405/-	21.03.2007	₹2,75,394/-
3.	₹1,95,134/-	30.08.2008	₹3,66,247/-
4.	₹1,95,135/-	14.08.2010	₹3,24,833/-
5.	₹10,049/-	14.08.2010	₹16,728/-
6.	₹3,04,000/-	19.04.2014	₹3,84,602/-
7.	₹2,26,730/-	24.10.2015	₹2,49,574/-
8.	₹23,400/-	20.02.2019	₹17,306/-
9.	₹15,770/-	20.02.2019	₹11,663/-
10.	₹1,95,008/-	20.02.2019	₹1,44,225/-
11.	₹4,479/-	20.02.2019	₹3,313/-
12.	₹11,165/-	20.02.2019	₹8,257/-
	Total=₹17,66,275/-		Total=₹27,55,099/-
	Total Payable to the complainant	₹17,66,275/- + ₹27,55,099/-	₹45,21,374/-

H. DIRECTIONS OF THE AUTHORITY

15. 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/respondent 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 paid amount of ₹17,66,275/- with interest of ₹27,55,099/- (Total ₹45,21,374/-) to the complainant. It is further clarified that the respondent will remain liable to pay interest to the complainant till the actual realization of the amount.

(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.

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

(CHANDER SHEKHAR)
MEMBER

12.12.2025
Narinder Kaur
(Law Associate)