



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint No.:	1001 of 2023
Date of Filing:	24.05.2023
Date of First Hearing:	10.08.2023
Date of Decision:	20.02.2026

Anup Rana S/o Sh. Ram Krishan Rana,
R/o H-3/177, Vikas Puri,
New Delhi – 110018.

....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: 10th

Present: - Ms. Kajol Kumar, Advocate, Proxy for Mr. Hitendra Kr
Nahata, Advocate, for the Complainant through VC.
Mr. Shubhnit Hans, Counsel for the Respondent.

ORDER:

The present complaint has been filed on 24.05.2023 by the complainant under Section 31 of the Real Estate (Regulation & Development)

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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 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 the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the Project	TDI City, Kundli , Sonipat
2.	Name of the Promoter	TDI Infrastructure Ltd.
3.	RERA Registered/Not Registered	Not registered.
4.	DTCP License No.	183-228 of 2004, 153-157 of 2004, 101-144 of 2005, 200-285 of 2005, 652-722 of 2006, 729-872 of 2006, 42-60 of 2005, 51 of 2010 and 177 of 2007.
5.	Licensed Area	927 Acres Approx.
6.	Unit/Plot No.	465 Block-F
7.	Unit/Plot Area	500 Sq. yards
8.	Date of Booking	24.12.2005
9.	Date of Allotment	07.01.2006

10.	Date of Builder Buyer Agreement	Undated Agreement is executed and attached at Page no.65 of complaint
11.	Due date of Offer of Possession	Not mentioned
12.	Possession clause in BBA	Not available
13.	Total Sale Consideration	₹23,95,000/-
14.	Amount paid by the Complainant	₹21,95,000/-
15.	Offer of Possession	17.07.2010

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

3. Facts of the present complaint are that the complainant booked a residential plot measuring approximately 500 square yards in the respondent's proposed project "TDI City" by submitting an Advance Booking Form dated 24.12.2005 along with the payment plan (Annexure C-3). On the same day, the complainant paid ₹16,50,000/- (90% of the total sale consideration of ₹20,00,000/-) through cheque drawn on State Bank of India. The respondent acknowledged the payment vide receipt dated 27.12.2005 (Annexure C-4 Colly). Thereafter, the respondent offered allotment vide letter dated 04.01.2006 and formally allotted Plot No. 465, Block-F, in "TDI City", Kundli, Sonipat, Haryana, through Allotment Letter dated 07.01.2006 (Annexures C-5 and C-6).

4. The respondent issued a demand letter dated 10.02.2006 demanding a total sum of ₹5,45,000/-. The said demand included ₹1,50,000/- towards the balance sale consideration and ₹3,95,000/- towards EDC charges.

The amount of ₹2,00,000/- was stated to be payable at the time of handing over possession of the plot. A copy of the demand letter dated 10.02.2006 along with its annexure is annexed herewith as Annexure C-7. The complainant paid the demanded amount of ₹5,45,000/- vide Cheque No. 636901 dated 28.02.2006. The said payment was duly acknowledged by the respondent vide letter dated 06.10.2006 and is also reflected in the respondent's letter dated 15.09.2007 and Statement of Account dated 17.07.2010. After this payment, no amount remained due from the complainant except ₹2,00,000/-, which was payable at the time of handing over actual possession of the plot. Copies of letters dated 04.01.2006, 06.10.2006, 15.09.2007 and Statement of Account dated 17.07.2010 are annexed as Annexure C-8 (Colly).

5. The respondent issued an illegal and unreasonable demand notice dated 27.06.2009 demanding ₹4,47,061/- towards EDC charges, despite earlier assurance that no further amount would be demanded except the remaining principal amount. Thereafter, the respondent again raised a demand of ₹4,40,107/- towards EDC charges vide letter dated 03.02.2010. Copies of the demand letters dated 27.06.2009 and 03.02.2010 are annexed herewith as Annexure C-9 (Colly).

6. The respondent offered possession of Plot No. F-465 vide possession letter dated 17.07.2010, subject to clearance of alleged pending dues raised under various charges. A copy of the possession letter dated 17.07.2010 is annexed herewith as Annexure C-10. Thereafter, vide letter

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dated 20.09.2010, the respondent again raised an illegal demand towards EDC charges, despite the same having already been paid by the complainant and threatened cancellation of allotment if the demand was not paid by 10.10.2010. The respondent also issued a Statement of Account dated 20.09.2010 showing alleged dues exceeding ₹10,00,000/-. Copies of the letter dated 20.09.2010 and Statement of Account dated 20.09.2010 are annexed herewith as Annexure C-11. The complainant vide legal notice dated 09.11.2010, objected to the respondent's illegal demands and called upon the respondent to furnish proof of deposit of EDC charges with HUDA, as the complainant apprehended that the amount collected may not have been deposited with the concerned authority. The Complainant also clarified that he was not liable to pay any further amount except the principal amount, if any, payable at the time of possession. A copy of the legal notice dated 09.11.2010 is annexed herewith as Annexure C-12. As per the respondent's own letter dated 06.10.2006, the outstanding amount against the complainant was shown as zero. Despite this, the respondent continued to harass the complainant by raising illegal and unjustified demands.

7. The complainant consistently objected to the illegal demands raised by the respondent. The complainant also filed Consumer Complaint No. Crh 1041 of 2011 on 18.11.2011 before the Consumer Disputes Redressal Forum-VI, District New Delhi, alleging misconduct on the part of the respondent. However, the said complaint was returned on 12.01.2018 on the

ground of lack of territorial jurisdiction, with liberty to file the same before the appropriate forum. A copy of the final order dated 12.01.2018 in CC No. 1041 of 2011 is annexed herewith as Annexure C-13. During the proceedings in Consumer Complaint No. 1041 of 2011, the respondent filed a copy of a Plot Buyer's Agreement. The said agreement was undated and had never been supplied to the complainant despite specific demand. The complainant came to know at that stage that the said document appears to be the same draft agreement on which his signatures were earlier obtained and that certain particulars in the blank spaces were subsequently filled in by the respondent. A copy of the undated Plot Buyer's Agreement is annexed herewith as Annexure C-14.

8. Even since the date of booking in the year of 2005 and the payment of amount of ₹21,95,000/- including EDC Charges to the tune of ₹3,95,000/- and 90% of the Total Sale Price of the plot in question, the respondent is neither ready to execute sale deed nor it is ready to give possession to the complainant and in apposite, the respondent keeps on sending notices and demand letters to the complainant for various charges. In view of the judgment dated 19.03.2013 passed by the Hon'ble Punjab & Haryana High Court in CWP No. 5835 of 2013 titled *Balwan Singh vs. State of Haryana*, read with Order/Circular dated 07.11.2013 issued by the Director General, Town & Country Planning, Haryana, the respondent is not entitled to raise or recover EDC charges from the complainant. A copy of the said Circular dated

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07.11.2013 is annexed herewith as Annexure C-15. Thereafter, when the respondent failed to recover EDC charges, it started raising demands towards Common Area Maintenance (CAM) charges through its agent, M/s Cannes Property Management Services Pvt. Ltd. The respondent issued a demand dated 01.04.2014 for ₹16,932/- for the period April 2014 to March 2015 at the rate of ₹2.50/- per square yard for 502.33 square yards. Subsequently, another demand dated 01.07.2014 was issued for ₹49,110.71/- along with interest of ₹13,536/-. Copies of the demand letters dated 01.04.2014 and 01.07.2014 are annexed herewith as Annexure C-16 (Colly).

9. The respondent, through its agent M/s Cannes Property Management Services Pvt. Ltd., issued a letter dated 10.03.2023 along with a KYC form to the complainant. Thereafter, the respondent served a legal notice dated 23.03.2023 raising fresh and illegal demands of ₹2,11,622/- as alleged principal dues, ₹1,70,578/- as interest and ₹3,82,200/- towards Common Area Maintenance Charges (CAMC). Copies of the letter dated 10.03.2023 and legal notice dated 23.03.2023 are annexed herewith as Annexure C-17 (Colly). The respondent has not obtained a completion certificate till date and the project has not been fully developed as agreed. Despite this, the respondent is levying CAM charges even before handing over possession and without providing basic amenities or obtaining necessary statutory approvals. Further, the condition of the project is also evident from the case titled *Dr. (Mrs.) Manorama Sharma & Anr. v. TDI Infrastructure Ltd. & Ors.*, OA No.

155/2020, filed before the Hon'ble National Green Tribunal, Principal Bench, New Delhi and the Order dated 15.07.2022 passed therein. Copies of the written submissions dated 16.04.2022 filed on behalf of the applicant/plot buyer along with supporting documents and the Order dated 15.07.2022 are collectively annexed herewith as Annexure C-19 (Colly). In view of the above facts and circumstances, the respondent is not entitled to demand any amount from the complainant, including ₹2,11,622/- as alleged principal dues, ₹1,70,578/- as interest, ₹3,82,200/- towards CAMC, or any amount in the name of EDC, which has already been paid. On the contrary, the respondent is liable either to hand over possession of the plot with applicable delay compensation in accordance with law or to refund the entire amount of ₹21,95,000/- paid by the complainant along with interest @18% per annum from the respective dates of payment till realization. Further, the respondent is also liable for violation of Section 3 of the Real Estate (Regulation and Development) Act, 2016 for non-registration of the project and its registration, if any, is liable to be revoked under Section 7 of the said Act in view of the violations committed. Since there were no efforts by the respondent to handover actual physical possession of the plot even after the lapse of more than 17 years, the complainant was left with no alternative option but to approach this Hon'ble Authority.

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C. RELIEF SOUGHT

10. Complainant in his complaint has sought following reliefs:
- i. To direct the respondent to refund the amount of ₹21,95,000/- paid by the complainant towards residential plot no. F-465 measuring 500 sq. yds in TDI City, Kundli, Haryana.
 - ii. To direct the respondent to deliver the de facto possession of the plot allotted to the complainant after obtaining and furnishing all necessary statutory approvals, completion certificate and NOCs from the concerned authorities along with delay compensation and applicable interest, in accordance with law..
 - iii. To direct the respondent to withdraw the illegal demand of ₹2,11,622/- as alleged principal dues and ₹1,70,578/- as interest thereon, along with outstanding CAM charges of ₹3,82,200/- and the invoice of ₹2,11,622/- towards CAM charges for the period 01.04.2022 to 31.03.2023 calculated at the rate of ₹3.50/- per square yard as raised through legal notice dated 23.03.2023.
 - iv. Grant any other relief as this Hon'ble Forum may deem fit in the peculiar facts and circumstances of the present complaint.

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D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

11. Upon receipt of notice, learned counsel for the respondent filed a detailed reply on 28.11.2023 stating that the complainant had voluntarily invested in the respondent's project, namely "TDI City", at Kundli, Sonipat,

Haryana, considering the reputation of the respondent company. It was further stated that part completion certificates for the township project measuring approximately 927 acres approx. were obtained on 23.01.2008, 18.11.2013 and 22.09.2017.

12. The respondent has stated that when the construction of the project commenced, the Real Estate (Regulation and Development) Act, 2016 was not in force and therefore the respondent could not have anticipated any liability or penalties under the said Act. It is further pleaded that the provisions of the RERA Act, 2016 impose stricter penalties on developers than those provided under the terms and conditions of the allotment executed between the parties. The project was completed way back before the RERA Act came into force and even the possession was offered by the respondent before the enactment of RERA Act. Hence, the complainant cannot approach Ld. Authority for adjudication of his grievances. The said project does not fall under the ambit of RERA. It is a settled principle of law that unless a statute expressly provides for retrospective operation, its provisions cannot ordinarily be applied retrospectively. However, the Hon'ble Supreme Court in *Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh & Ors.*, Civil Appeal Nos. 6745-6749 of 2021, has held that the provisions of the Real Estate (Regulation and Development) Act, 2016 are retroactive in nature and apply to ongoing projects. The provisions of RERA Act are to be applied

prospectively, therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act.

13. The respondent had already offered possession of the allotted plot to the complainant vide letter dated 17.07.2010 for fit-outs, subject to clearance of alleged outstanding dues. The respondent contended that it was the complainant who failed to come forward to take possession and clear the dues and that the present complaint has been filed only to pressurize the respondent company. The respondent has submitted that the complainant has not placed on record any documentary evidence to substantiate the allegations regarding the booking in the project. It is further pleaded that there was default on the part of the complainant in making timely payments and the delay in handing over possession cannot be solely attributed to the respondent. The respondent also issued a Pre-Cancellation Letter dated 26.09.2010 along with a statement of account, calling upon the complainant to clear the alleged outstanding dues. A copy of the Pre-Cancellation Letter dated 26.09.2010 is annexed as Annexure R-4.

14. The respondent has contended that the present complaint is barred by limitation and is not maintainable before this learned Authority. It is further submitted that the complaint is an afterthought, as the last payment was allegedly made by the complainant in the year 2010. It is submitted that the respondent does not deny receipt of payments made by the complainant. However, any amount inconsistent with the Statement of Account issued by the

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respondent is specifically denied. A copy of the Statement of Account of the complainant is annexed herewith and marked as Annexure R-5. Despite reminders issued by the respondent company, the complainant failed to clear the alleged outstanding dues. A copy of the reminder letter sent by the respondent company is annexed herewith and marked as Annexure R-6.

15. The respondent has denied issuing any unreasonable or illegal demand towards EDC charges, including the amounts of ₹4,47,061/- demanded on 27.06.2009 and ₹4,40,107/- demanded on 03.02.2010. It is further submitted that all demands raised by the respondent were strictly in accordance with the terms and conditions of the agreement executed between the parties. It is submitted that all the demands raised by the respondent company were in accordance with the terms and conditions of the agreement executed between the complainant and the respondent. The respondent has denied that the complainant issued any legal notice dated 09.11.2010 objecting to the alleged illegal demands or seeking proof of deposit of EDC charges with HUDA. It is further denied that the complainant had clarified in the said notice that no further amount was payable except the principal amount, if any. The respondent submits that it never received any such legal notice from the complainant and the contents thereof are specifically denied. The respondent has denied the allegations regarding non-supply of the Plot Buyer Agreement and alleged filling of blank spaces after obtaining signatures. It is submitted that the complainant has made false and baseless allegations without any proof.

The respondent further stated that the complainant is a well-educated person who had signed each page of the Plot Buyer Agreement after understanding its contents. It is alleged that the complainant is attempting to mislead this learned Authority by making incorrect averments and he is put to strict proof of the same.

16. It is submitted that the respondent had already offered possession of the plot to the complainant for fit-outs in the year 2010. However, the complainant did not come forward to take possession or clear the alleged outstanding dues despite issuance of several reminders. The respondent has denied that CAM charges were raised after failing to recover EDC charges. It is submitted that the demands dated 01.04.2014 and 01.07.2014 towards Common Area Maintenance (CAM) charges were lawful and valid. It is further stated that CAM charges are collected by M/s Cannes Property Management Services Pvt. Ltd., which is a separate legal entity and not by the respondent company. The respondent has no role in the day-to-day functioning of the said Management Services Company. The respondent has denied the allegations regarding issuance of letter dated 10.03.2023 with KYC form and the Legal Notice dated 23.03.2023 raising illegal demands.

17. The respondent has denied that it has failed to obtain the completion certificate or that the project has not been developed as agreed. It

is also denied that Common Area Maintenance (CAM) charges are being levied prior to possession, without statutory approvals, or without providing basic amenities. It is submitted that the possession for fit-outs was offered in 2010 and there has been no delay on the part of the respondent. The delay, if any, is attributed to the complainant's failure to clear alleged dues and complete formalities. The respondent asserts that strict compliance with the payment schedule and project completion are interdependent. It is further stated that the respondent has received Part Completion Certificate(s), the project is complete with basic amenities and all necessary permissions and clearances have been obtained from the competent authorities. The respondent contends that the complainant is making false and generalized allegations without personal knowledge of the actual status of the project.

18. The respondent submitted that it has not violated any provisions of the Act or the Rules framed thereunder. The reliefs sought by the complainant are denied as being not maintainable and the present complaint is liable to be dismissed.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

19. During oral arguments, learned counsel for the complainant insisted upon refund of paid amount with interest stating that the complainant booked Plot No. F-465 in the respondent's project "TDI City", Kundli in

December 2005 and paid a total sum of ₹21,95,000/-, including 90% of the sale consideration and ₹3,95,000/- towards EDC charges, leaving only ₹2,00,000/- payable at the time of possession as acknowledged by the respondent in its own records. Despite receiving substantial payment, the respondent unlawfully raised repeated and arbitrary demands towards EDC and later CAM charges even though such charges had already been paid and possession was never lawfully offered with completion certificate or basic amenities. The so-called possession was made conditional upon illegal dues and the respondent has neither executed the sale deed nor handed over actual physical possession for more than 17 years, which amounts to deficiency in service and unfair trade practice. The undated Plot Buyer's Agreement relied upon by the respondent is not legally enforceable. The continued demands, including the recent notice claiming principal, interest and CAM charges, are illegal and unsustainable in law. Accordingly, the complainant is entitled to a refund of ₹21,95,000/- along with interest and the respondent is not entitled to recover any further amount from the complainant.

20. Learned counsel for the respondent reiterated arguments as were submitted in the written statement. He further argued that the possession was offered to the complainant in the year 2010 subject to clearance of outstanding dues, but the complainant failed to make timely payments and did not come forward to take possession despite reminders and issuance of a pre-cancellation notice. All demands raised towards EDC and CAM charges are stated to be

strictly in accordance with the terms of the Plot Buyer Agreement, which the complainant had signed after understanding its contents. The respondent denies receipt of any legal notice from the complainant and refutes allegations of illegal demands, manipulation of documents, non-supply of agreement, or deficiency in service. It is further submitted that CAM charges were raised by a separate management entity and were lawful. He further stated that alternate plots are not available with the respondent for allotment to the complainant.

F. ISSUES FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

22. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:

(i) Insofar as the objection raised by the respondent that the provisions of the Real Estate (Regulation and Development) Act, 2016 are applicable only prospectively and were therefore not in force on 07.01.2006, when Plot No. F-465 in TDI City, Kundli was allotted to the complainant, it is observed that the issue regarding the nature and applicability of the RERA Act, whether retrospective or retroactive, has already been conclusively settled by the Hon'ble Supreme Court in its judgment dated 11.11.2021 passed in Newtech Promoters and

Developers Pvt. Ltd. v. State of Uttar Pradesh & Ors., Civil Appeal

Nos. 6745–6749 of 2021. 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

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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."

(ii) The respondent has also raised an objection that the present complaint is barred by limitation. In this regard, the Authority is of the considered view that the law of limitation does not apply to complaints filed under the provisions of the RERA Act, 2016. The RERA Act is a special enactment and does not prescribe any specific period of limitation for filing a complaint before the Authority. In terms of Section 29(2) of the Limitation Act, 1963, the provisions of the Limitation Act apply only insofar as they are not expressly excluded by a special or local law. Therefore, in the absence of any prescribed limitation period under the RERA Act, the Limitation Act has no direct applicability. For ready reference, Section 29 of the Limitation Act, 1963, is reproduced below:

Section 29 - Limitation Act, 1963

29. Savings— (1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any

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special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend.

Even, section 18(2) of RERA Act, 2016, brings the complaint out of the purview of Limitation Act, 1963.

Further, the Hon'ble Apex Court, in *Consolidated Engg. Enterprises v. Irrigation Department, (2008) 7 SCC 169*, has held that the provisions of the Limitation Act, 1963, are not applicable to quasi-judicial authorities or tribunals unless specifically provided for in the statute governing such bodies. A similar view has been reiterated by the Hon'ble Supreme Court in *M.P. Steel Corporation v. Commissioner of Central Excise, (2015) 7 SCC 58*, wherein it was observed that the Limitation Act would not apply to proceedings before quasi-judicial forums created under special enactments.

Notwithstanding anything stated hereinabove, even assuming that the law of limitation were applicable to quasi-judicial proceedings, which otherwise is not the case, it would still have no

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bearing in the present case, as the project remains incomplete till date. Consequently, the cause of action continues to subsist and the complainant's claim for refund along with interest remains live and enforceable until the project is completed or the matter is finally adjudicated.

(iii) The factual matrix of the case is that the complainant booked Plot No. F-465 in the project "TDI City", Kundli in December 2005 and paid a total amount of ₹21,95,000/-, which included 90% of the sale consideration and ₹3,95,000/- towards EDC charges, leaving only ₹2,00,000/- payable at the time of possession. The respondent has not disputed receipt of the aforesaid amount. However, it has alleged that certain outstanding dues remained payable by the complainant in terms of the Plot Buyer Agreement. The respondent claims to have offered possession vide letter dated 17.07.2010 subject to clearance of alleged outstanding dues whereas the complainant contended that such offer was conditional and not a valid offer of lawful possession in the absence of completion certificate and basic amenities. The record reflects that repeated demands were raised by the respondent towards EDC charges and subsequently towards CAM charges, which have been specifically disputed by the complainant as being illegal and arbitrary. The respondent has relied upon the terms and conditions of

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the Plot Buyer Agreement to justify the said demands, while the complainant has questioned the validity and enforceability of the said agreement. The respondent has denied receipt of the alleged legal notice issued by the complainant and has refuted the allegations of illegal demands, manipulation of documents and deficiency in service. The respondent has further contended that CAM charges were raised by a separate management entity and that the project stands completed with necessary approvals whereas the complainant has alleged non-delivery of lawful possession and absence of statutory compliances. Despite the lapse of a considerable period since booking, actual physical possession of the plot has not been handed over to the complainant. The respondent has also stated that no alternate plot is available for allotment to the complainant. Accordingly, the primary issues that arise for consideration are whether the respondent made a valid offer of possession in accordance with law, whether the demands raised towards EDC and CAM charges are legally sustainable and whether the complainant is entitled to refund along with interest as per law.

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(iv) The complainant as well as the respondent have not specified any deemed date of possession in their respective submissions. It is noted that the undated Plot Buyer Agreement has been executed

between the parties. In the absence of these vital documents, it is not possible to precisely ascertain the date on which possession of the said plot 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 was allotted the plot on 07.01.2006. 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 07.01.2009. The respondent has failed to fulfil its contractual obligations within this reasonable period and has not provided any cogent justification for the delay.

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(v) Further, the respondent, in its pleadings, has asserted that a pre-cancellation notice dated 20.09.2010 was issued to the complainant and the plot therefore stands cancelled. In this regard, the Authority observes that as per the terms of the allotment, Plot Buyer Agreement and observations made above at Para 22(iv), the

respondent was obligated to hand over the possession of the plot on or before 07.01.2009. Admittedly, fitout offer of possession was made on 17.07.2010 after a delay of almost one and half year and that too without receiving occupation certificate. Hence, no valid offer of possession was made within the stipulated period. Instead, the respondent purported to cancel the allotment only on 20.09.2010 that too without refunding any portion of the amount deposited by the complainant. As per the terms and conditions governing cancellation, in the event of cancellation of the allotment, the respondent was under a contractual obligation to refund the amount deposited by the complainant, after deducting 10% of the earnest money, simultaneously and without undue delay at the time of such cancellation. However, no evidence has been placed on record to show that any refund was ever made to the complainant. In the absence of compliance with the contractual terms relating to cancellation, the respondent cannot be permitted to contend that the plot stands validly cancelled or that the complainant is disentitled from seeking refund. Accordingly, the contention of the respondent in this regard is untenable, devoid of merit and is hereby rejected.

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(vi) Further, the Hon'ble Apex Court in *Fortune Infrastructure (now known as Hicon Infrastructure) & Anr. v. Trevor D'Lima & Ors., (2018) STPL 4215 SC* has observed that a promoter cannot

indefinitely delay possession or evade liability by relying on technicalities and that a reasonable period of three years from the date of allotment is an acceptable timeframe for completion and delivery of possession. In the present case, the respondent failed to honour its contractual obligations of offering possession within stipulated time without any reasonable justification. The respondent in its written statement has not attached any documentary evidence to prove the fact that the development works are lying complete at the project site and the complainant can peacefully enjoy the physical possession of the plot in the upcoming years. The respondent has also failed to produce any acknowledgment or proof of refund of the complainant's deposited amount nor any credible record of communication subsequent to the alleged cancellation. 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. Accordingly, the Authority holds that the contractual relationship between the parties continues to subsist and the respondent's objection to the maintainability of the complaint is hereby rejected.

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(vii) 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.”

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.

CP 23. Keeping in view the aforesaid observations, it is transpired that the project in question has not been completed within the time stipulated and the possession of the booked plot is not possible even in the near future. In these circumstances, the Authority finds this case to be a fit case for allowing

refund along with interest in favour of the complainant in terms of the provisions of Section 18(1)(a) of the RERA Act, 2016.

24. 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;

25. 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. 20.02.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.80%.

CSH
26. 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",

27. Thus, the respondent will be liable to pay the interest to the complainant from the date the amounts were paid till the actual realization of the amounts. The Authority directs the respondent to refund the paid amount of ₹21,95,000/- 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 10.80% (8.80% + 2.00%) from the date the 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 10.80% till the date of this order and total amount works out to ₹69,67,123/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 20.02.2026
1.	₹16,50,000/-	24.12.2005	₹35,95,246/-
2.	₹5,45,000/-	28.02.2006	₹11,76,877/-
	Total=₹21,95,000/-		Total=₹47,72,123/-
	Total Payable to the Complainant	₹21,95,000/- + ₹47,72,123/- = ₹69,67,123/-	

H. DIRECTIONS OF THE AUTHORITY

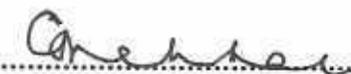
28. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter/respondent as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) The respondent is directed to refund the entire paid amount of ₹21,95,000/- with interest of ₹47,72,123/- (total ₹69,67,123/-) 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.

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

20.02.2026
Narinder Kaur
(Law Associate)


(CHANDER SHEKHAR)
MEMBER