



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint No:	564 of 2023
Date of filing:	22.03.2023
Date of first hearing:	18.05.2023
Date of decision:	30.01.2026

Niti Foods Pvt. Ltd. through its authorised signatory Sh. Pranav Jain,
 B-662, Ground Floor,
 Weavers Colony, Ashok Vihar, Phase-IV,
 New Delhi.

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Ltd.
 Regd. Office at 9, Kasturba Gandhi Marg,
 New Delhi, 110001

....RESPONDENT(S)

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

Hearing: **12th**

Present: - **Mr. Vipin Kumar, Advocate, for the Complainant through VC.**
Mr. Shubhnit Hans, Advocate, for the Respondent.

ORDER:

The present complaint was filed on 22.03.2023 by the 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 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.	RERA registered/not registered	Un-registered.
3.	Unit No.(plot)	J-10
4.	Unit area	500 sq. yds. (418.06 sq. mts.)
5.	Date of allotment	10.04.2006
6.	Date of Builder Buyer Agreement	Not executed
7.	Due Date of Offer of Possession	Not available
8.	Possession Clause	Not available.

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9.	Total Sale Consideration	₹35,99,465/-
10.	Amount Paid by the Complainants	₹35,99,465/- As mentioned in pleadings
11.	Offer of possession	Not given.

B. FACTS OF THE COMPLAINT:

3. Facts of the present complaint are that the present complainant is a company within the meaning of the Companies Act, 2013 and the complaint is being filed by Mr. Pranav Jain, Director of the company. He is authorized to do so vide resolution dated 15.12.2022 which is annexed as Annexure C-1.

4. On 25.02.2006, Plot No. J-10 was originally booked by M/s JK Properties with the respondent, by paying the booking amount of ₹1,00,000/-. The originally booked plot was transferred to the complainant by the consent of the respondent on 10.04.2006 via a transfer document as requested by the original allottee. Endorsements confirming the transfer of plot J-10 were made by the respondent to the complainant on 18.08.2011 and 15.09.2011 against the receipt of ₹22,00,000/- from the complainant.

5. An Affidavit-cum-Undertaking was executed on 25.09.2011 by the respondent certifying that J-10, 500 sq. yds., located in TDI City, Kundli, Sonipat, had been formally granted to the complainant. According to the representations, promises and commitment of the respondent, the possession

of the plot would be handed over to the complainant within one year of the allotment letter, i.e., by September 2012. The total sale consideration of the plot was ₹35,99,465/-, against which the complainant has paid in full to the respondent, with all payments to be confirmed in the Statement of Account dated 23.01.2012, a copy of which is annexed at Annexure C-6.

6. The respondent did not provide a Builder Buyer Agreement to the complainant despite receiving full payment, they violated settled law and fair trading principles. The respondent also failed to provide the possession after the expiry of the timeframe provided to the complainant to receive his plot and failed to return the money that was paid by the complainant. The complainant repeatedly requested, both verbally and in writing, to the respondent to provide the possession of the plot. The respondent avoided responding for various reasons. Ultimately, the complainant had to send a letter of demand dated 11.10.2022 requesting the respondent to provide possession of the plot or refund the amount to the complainant in full with interest. The respondent failed to respond to the complainant's letter of demand or address their issues. The actions and inactions of the respondent constitute a clear case of inadequate service, an unfair business practice and a violation of both their contractual and statutory duties. As a result of their conduct, the complainant has suffered tremendous financial losses, emotional distress and harassment. A copy of the legal notice is annexed as

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Annexure C-7. Therefore, the complainant has approached this Authority seeking relief of possession along with delayed interest.

C. RELIEF SOUGHT: (amended vide application dated 26.02.2024)

7. The complainant in its complaint has sought the following reliefs:

- i. To revoke the registration granted to the project of the respondent namely ‘TDI City’ situated at Kundli, Sonipat, Haryana, under Section 7 of the RERA Act;
- ii. To direct the respondent under Section 35 of the RERA Act to place on record all statutory approvals and sanctions of the project.
- iii. To direct the respondent under Section 35 of the RERA Act and Rule 21 of Haryana Real Estate (Regulation and Development), Rules, 2017, to provide complete details of EDC/IDC and statutory dues paid to the Competent Authority and pending demand, if any;
- iv. To direct the respondent to handover valid and legal possession of the plot alongwith Completion Certificate and basic amenities alongwith delay interest from the agreed date of possession till the handing over of actual possession;
- v. To compensate the complainant for delay in completion of the project;
- vi. To quash any/all illegal demands raised by the respondent on account of pending installment, monthly maintenance charges, interest

on delayed payment, club charges and/or arrears of previous demands etc;

vii. To compensate the complainant for a sum of ₹10,00,000/- as damages on account of mental agony, torture and harrasment;

viii. To compensate the complainant for a sum of ₹10,00,000/- as damages on account of deficiency in service on part of respondent;

ix. To compensate the complainant for a sum of ₹10,00,000/- as escalation costs towards similar property;

x. Any other relief, this Hon'ble Authority may deem fit and appropriate.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT:

8. On receipt of notice of the complaint, the respondent has filed reply on 29.11.2024, which in brief states that the present complaint is not capable of being supported and therefore cannot be considered further, as it not only lacks any basis but is also fundamentally flawed and brought with an improper intention. 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. 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

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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.

9. The respondent has been prevented from completing the project due to non-cooperation from the landowners despite various initiatives. Legal notices were appropriately sent to the responsible landowners, however, the respondent failed to obtain the possession of the land due to reasons beyond its control.

10. By a letter dated 22.05.2019, the complainant was kept informed about the fact that the respondent is not in a position to give possession of the unit allotted due to some factors, which are beyond the control of the respondent. The complainant was also offered to accept an alternate unit but failed to avail of the said option. Currently, no alternate unit is at disposal and the respondent has indicated its willingness and readiness to refund the whole amount paid by the complainant. This was also communicated to the complainant. Granting relief of the possession would be totally unfair, unlawful and unworkable because the land in question is not under the respondent's possession and the respondent cannot be forced to hand over possession of a property which it does not have control over. The respondent has shown its willingness to return the amount collected from the

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complainant and hence, the respondent cannot be held responsible for a lack of service or an unfair trade practice.

E. REJOINDER FILED BY THE COMPLAINANT:

11. Learned counsel for the complainant has filed rejoinder wherein reiterating the facts and submissions made in the complaint. He has further submitted that the respondent company is handing over possession of the units to the other allottees and intentionally avoiding possession to the present complainant. He has attached a copy of letter dated 01.02.2021 issued by the respondent to the other allottee whose plot no. is J-3 and the complainant's plot is J-10. He has prayed to direct the respondent to hand over possession of its plot.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT:

12. During oral arguments learned counsel for the complainant as well the respondent has reiterated arguments as were submitted in the complaint, reply and rejoinder. Learned counsel for the respondent further submitted that despite the ongoing dispute with the landowners, as already mentioned in the reply the respondent made multiple attempts to resolve the matter by holding meetings with the landowners, seeking their cooperation to complete the development of the said land. However, these efforts proved unsuccessful. Consequently, the respondent was left with no option but to issue legal notices to the landowners. He has further submitted that no

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alternative plot/un-allotted plot with clear title is available in the inventory of respondent company and option left is to award refund of paid amount to the complainant.

G. ISSUES FOR ADJUDICATION

13. Whether the complainant is entitled to get possession of booked plot alongwith delay interest in terms of Section 18 of RERA Act, 2016?

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

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

(i) With regard to the plea raised by the respondent that provisions of RERA Act, 2016, are applicable with prospective effect only, therefore the same were not applicable as on 25.02.2006 when the original allottee was allotted plot no. J-10, TDI City, Kundli; it is observed that the issue regarding operation of RERA Act, 2016, whether retrospective or retroactive has already been decided by 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:-

“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."



(ii) Admittedly, the complainant in this case had purchased the booking rights qua the plot in question in the project of the respondent in the year 2011 from the original allottee. However, letter of

allotment was issued on 10.04.2006. The total paid amount by the complainant is ₹35,81,250/- as per details given in the statement of account dated 23.01.2012 and 11.09.2023 attached by the complainant and respondent respectively. Out of said paid amount, last payment of ₹1,03,750/- was made to respondent on 21.08.2006 by the complainant which implies that the respondent is in receipt of total paid amount since the year 2006 whereas the fact remains that no offer of possession of the booked plot has been made till date.

(iii) In the written statement submitted by the respondent, it has been admitted that the possession of the booked plot has not been offered till date to the complainant. With respect to status of handing over of the possession, the respondent vide letter dated 22.05.2019 has already expressed its inability to provide the possession of originally booked plot to the complainant and offered to either choose any alternate plot in same project or adjustment of entire paid amount in any other project but the complainant did not come forward to accept the said offer. No latest photographs of the site or any other sort of justification except dispute with landowners which are responsible for creating hindrance in handing over the possession of booked plot has been placed on record by the respondent. It is the stand of respondent that there is on-going dispute with landowners and multiple attempts had already been made to resolve it but all efforts went in vain. In

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continuation of it, legal notices of year 2023-2024 were sent to landowners stating therein "*We also request you to allow us to complete development of the said land, as per our right and entitlement in terms of the said collaboration agreement executed between us so as to give a complete developed shape to the township-TDI City, Kundli. Please treat this as final intimation in discharge of our obligation as undertaken by us, in terms of the said collaboration agreement dated 12.07.2005 executed between us and expect that you will also discharge your obligations accordingly*".

Except issuance of legal notices that too in the year 2023-2024 the respondent has not taken any effective steps towards the interest of allottees. Moreover, the dispute is between the respondent and landowners. No litigation or any other proceedings is pending towards said dispute which operates as stay for the affected portion of land. It has not been established by the respondent that the offer of a booked plot is not possible due to some genuine reliable circumstances.

 It is pertinent to highlight that the respondent has submitted that a letter dated 22.05.2019 was sent to the complainant regarding non-availability of booked plot and to accept possession of alternate plot but copy of letter has not been placed on record. Without any cogent proof or documentary evidence, the contention of the respondent is not acceptable. The complainant filed this complaint in

the year 2023. During all these years, the respondent remained silent and did not even bother to refund the amount received from complainant towards sale consideration of plot. Now, the respondent cannot take the benefit of its own wrong for causing delay in offering of the possession stating that the possession of a booked plot is not possible.

(iv) The complainant as well as the respondent has not specified any deemed date of possession. The Authority observes that the allotment letter for the plot in question was issued to the complainant on 10.04.2006. But Builder Buyer Agreement has not been executed till date and there is no clause pertaining to the deemed date of possession in the allotment letter. In absence of a specific clause for the deemed date of possession in the allotment letter, it cannot rightly be ascertained as to when the possession of said plot was due to be given to the complainant. In *Appeal No. 273 of 2019 titled as TDI Infrastructure Ltd Vs Manju Arya*, Hon'ble Appellate Tribunal has referred to the observation of Hon'ble Apex Court in "2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr." in which it has been observed that period of three years is reasonable time for completion of construction work and delivery of possession. In the present complaint, the plot was allotted vide allotment letter dated 10.04.2006

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by the respondent. Accordingly, taking a period of three years from the date of allotment, i.e, 10.04.2006 as a reasonable time to complete development works in the project and to handover possession to the complainant, the deemed date of possession comes to 10.04.2009. In the present situation, the respondent failed to honour its contractual obligations without any reasonable justification.

(v) The complainant is insisting upon the possession of booked plot only as alternate plot is not available with the respondent. The respondent who is in receipt of a total amount of ₹35,81,250/- since the year 2006 has not even made sincere efforts to provide at least a reasonable number of options of alternate plot to choose from. It is the respondent who has failed to develop the booked plot till date. However, no such circumstances have been specified in written statement/oral arguments which can be relied upon to convince the Authority that the physical possession of the booked plot is actually not possible. The law point is that facts not specifically pleaded are not considered and the burden of proof lies on the party making the claim. Therefore, if a party fails to specify circumstances in its written statement or oral arguments that show physical possession of a booked plot is not possible, they cannot rely on those unspecified circumstances to convince the Authority that the possession is impossible. The party would need to provide specific facts and

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evidence to demonstrate this impossibility. For reference judgement dated 16.09.2025 passed by Hon'ble Bombay High Court in ***Criminal Revision Application No.108 Of 2023 titled as "Romell Housing Llp vs Sameer Salim Shaikh"***, is relied upon, in which it is held that "*In law, oral assertions without supporting physical acts cannot displace settled possession proved by continuous conduct.*"

(vi) In the present complaint, the complainant intends to continue with the project and is seeking delayed possession charges as provided under the proviso to Section 18(1) of the Act. Though, the respondent was ready to offer an alternate plot in the year 2019 which was never actually offered by the respondent. The respondent did not take any serious steps towards allotment of any alternate plot till date. Even in the prevailing situation, the complainant has chosen to stay with the project and seek possession of the plot allotted to it and are insisting upon interest for delay in handing over possession of the plot.

(vii) The Authority observes that the respondent has severely misused its dominant position. Allotment of the plot was made on 10.04.2006, due date of possession as explained above in para 14(iv) is 10.04.2009. Now, even after the lapse of seventeen years, the respondent is not able to offer possession to the complainant and has

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not even specified the valid reason/ground for not offering the possession of the booked plot. The complainant however is interested in getting the possession of the booked plot and does not wish to withdraw from the project. In these circumstances, the provisions of Section 18 of the Act, 2016, clearly come into play by virtue of which while exercising the option of taking possession of the plot the allottee can also demand delay interest along with monthly interest and the respondent is liable to pay the same for the entire period of delay caused at the rates prescribed. For ready reference, the provisions of Section 18 is reproduced below:

Section 18 - Return of amount and compensation

“(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which

the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."

So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date of possession i.e. 10.04.2009 to the date on which a valid offer is sent to it after obtaining occupation certificate/completion certificate.

(viii) 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;

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(ix) 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. 30.01.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.80%.

(x) 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".

15. Authority has got calculated the interest on total paid amount from the deemed date of possession till the date of this order at the rate of 10.80% and said amount works out as per detail given in the table below:

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Sr. No.	Principal Amount	From Deemed date of possession or date of payment whichever is later	Interest Accrued till 30.01.2026

1.	₹31,45,000/-	10.04.2009	₹57,13,733/-
2.	₹4,36,250/-	24.08.2009	₹7,75,009/-
Total Delayed Interest			₹64,88,742/-
Monthly interest			₹32,849/-

16. Regarding relief no.i, ii, iii and vi, it is observed that the said reliefs are not pressed upon by the complainant during arguments and pleadings. Hence, no observation has been made in this regard.

17. The complainant is also seeking compensation on account of mental agony, torture, harassment caused for delay in possession, deficiency in services and cost escalation. 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.*" (supra,), has held that an allottee is entitled to claim compensation and litigation charges under Sections 12, 14, 18 and Section 19 of the RERA Act, 2016, which is to be decided by the learned Adjudicating Officer as per Section 71 and the quantum of compensation and litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72 of the Act, 2016. The Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

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I. DIRECTIONS OF THE AUTHORITY

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

- (i) Respondent is directed to pay upfront delay interest of ₹64,88,742/- as calculated above in Para 15 of this order to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order. Further, on the entire paid amount of ₹35,81,250/-, monthly interest of ₹32,849/- shall be payable by the respondent to the complainant up to the date of actual handing over of the possession after obtaining occupation certificate.
- (ii) The complainant will remain liable to pay balance consideration amount, if any, as per agreed terms and conditions of the agreement/allotment, to the respondent at the time when valid possession is offered to the complainant.
- (iii) The rate of interest chargeable from the allottee by the respondent/promoter, in case of default shall be charged at the prescribed rate, i.e., 10.80% which is the same rate of interest which the respondent/promoter shall be liable to pay to the allottee.



19. With above directions, the case is Disposed of. File be consigned to the record room after uploading of the order on the website of the Authority.


(CHANDER SHEKHAR)
MEMBER

30.01.2026
Narinder Kaur
(Law Associate)