



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1650 of 2022
Date of filing:	08.08.2022
Date of first hearing:	28.09.2022
Date of Decision:	03.02.2026

Ram Mehar Malik son of Shri Moji Ram

House No. 1804, Sector 13-17,

Housing Board Colony, Panipat

....COMPLAINANT

VERSUS

TDI Infracorp India Limited

UGF Vandana Building, 11 Tolstoy Marg

Connaught Place, New Delhi

....RESPONDENT No. 1

TDI Infracorp India Limited

TDI City Panipat

....RESPONDENT No. 2

Present:

ORDER (DR. GEETA RATHEE SINGH – MEMBER)

1. Present complaint was filed by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017

for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of sale consideration, 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, Panipat
3.	Unit no.	E-262
4.	Unit area	250 sq. yards
5.	Date of plot buyer agreement	23.11.2013
6.	Due date of possession	Not mentioned
7.	Total Sale Consideration	₹20,96,500/-
8.	Amount paid by complainant	₹23,54,060/- (as per receipts)
9.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of the complaint are that complainant booked a plot in respondents project namely TDI City, Panipat through M/S S.K. Enterprises by paying ₹3,12,500/- on 06.12.2006 as advance against future project for 250 sq. yards

[Signature]

plot and in pursuance of that the respondents issued receipt No. 0072 dated 14.01.2006. Plot buyer agreement was executed on 23.11.2013 for unit/plot no. 262, Block-E, measuring area 250 sq. yards in the real estate project namely 'TDI City' located at Panipat.

4. As per plot buyer's agreement dated 23.11.2013, basic sale price of the plot is ₹7250/- per sq. yard amounting to ₹18,12,500/-. Total sale consideration for the said plot which is the aggregate of basic sale price and EDC, IDC, service tax and other charges aggregate to ₹20,96,500/-. Complainant has made the payment of ₹23,54,060/- against the total sale price of ₹20,96,500/- and the amount of ₹2,57,560/- has been paid in excess by the complainant to the respondents. On 14.08.2013 balance of the complainant was ₹1,74,387/- as per balance sheet.

5. That vide letter dated 14.05.2015, respondents had demanded ₹3,18,404/- on account of external development charges, miscellaneous expenses of ₹10,000/-, Club Membership Charges of ₹75,000/-, SEC (interest free maintenance security) of ₹20,000/-, BWC of ₹30,000/- which was wrong, illegal, arbitrary, without any proper explanation. The said letter of demand dated 14.05.2015 was challenged by the complainant before the Consumer Forum, Panipat in CC No. 125 of 2015 which was allowed vide order dated 22.06.2016. Against the said order the complainant and the respondents filed appeal and both the appeal were decided vide order dated 02.01.2018, with the liberty to file fresh complaint on the same very cause action.



6. That respondents sent a final statement of account dated 06.02.2022 vide which the late payment fee was shown ₹21,87,166/- including ₹15,96,185/- and ₹5,90,981/-.After receiving the same the complainant approached the respondents and asked to withdraw the same.

7. Respondents issued a letter dated 07.06.2022 in which respondents again raised the demand of ₹20,79,278/- to be paid on or before 18.06.2022. In response to the same the complainant visited the office of respondents on 18.06.2022. However, till date no action has been taken.

8. That despite making the payments regularly as per the promise entered between the parties, the respondents issued pre cancellation letter dated 07.06.2022. Complainant submitted that this cancellation letter is illegal, unilateral, arbitrary, null and void. Respondents have failed to handover the possession of the plot in question despite the fact that the complainant has complied with each and every word they entered into with the respondents.

C. RELIEF SOUGHT

9. Complainant in its complaint has sought following reliefs:

- i. Set aside / quash / revoke the final statement of account and the pre cancellation letter dated 07.06.2022 and the respondents be directed to hand over the possession of the plot no. E-262 along with compensation prescribed under Real Estate (Regulation and Development) Act 2016 as the respondents have failed in its obligations towards the complainant / allottee.



- ii. Compensation with regard to the delayed possession should also be awarded to the complainant.
- iii. Further the excess payment of ₹2,57,560/- may kindly be refunded to the complainant along with interest.
- iv. The penal clauses be invoked against the erring respondents.
- v. Any other relief which this Hon'ble Authority deems fit and proper be also provided to the complainants / allottees.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

Learned counsel for the respondents filed detailed reply on 23.11.2022 and pleading therein:

10. It is submitted that the complaint filed by the complainant is not maintainable and the same is liable to be dismissed as it is filed beyond the period of limitation. Respondents offered possession of the plot and sent the final statement of account dated 14.05.2015 and demanded the outstanding amount on account of balance basic price, boundary wall charges, club membership charges EDC, Miscellaneous expenses along with interest free maintenance security and stamp duty for registration of conveyance deed in favour of the complainant. The complainant challenged the demand raised by the respondents by filing a consumer complaint no. 125 of 2015 before District Consumer Disputes Redressal Forum, Panipat. The complaint was allowed by the Ld. Forum vide its order dated 22.06.2016 and the respondents filed First Appeal no. 673 of 2016 against the order dated 22.06.2016 before the State



Consumer Disputes Redressal Commission, Panchkula in which the order dated 22.06.2016 was set aside and a liberty was given to the complainant to file fresh complaint on the same cause of action vide order dated 02.01.2018. However, complainant failed to file a fresh complaint and now the complainant by way of filing the present complaint after more than 4 years of dismissal of the complaint has challenged the demand raised by the respondents in the final statement of account dated 14.05.2015 regarding which the respondents sent many letters and demand notices after dismissal of the complaint on 02.01.2018. Hence the cause of action to challenge the demand raised by the respondents first accrued on 14.05.2015 and the present complaint filed by the complainant after more than 7 years is time barred.

11. Respondents submitted that complainant has not come with clean hands and concealed the material fact that the complainant has deliberately failed to make the timely payment of outstanding amount and never came forward to make the payment and take possession of the plot. The respondents have every right to demand interest for delayed period and to send pre-cancellation notice to the complainant.

12. That this Hon'ble Authority has got no jurisdiction to try and entertain this complaint as the matter has already been decided by the consumer commission.

13. That the complainant has committed intentional default in the payment of installments and other outstanding dues payable by him which were



demand by the respondents from time to time. Complainant is estopped by his own act and conduct from filing the present complaint. So the complainant is not entitled to any relief as prayed and the complaint is liable to be dismissed.

E. ARGUMENT OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS

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

F. ISSUES FOR ADJUDICATION

15. Whether the complainant is entitled for physical possession of plot in question?

G. OBJECTION RAISED BY RESPONDENTS AND FINDING OF THE AUTHORITY ON SAME

G.1 Objection raised by respondents that Authority has no jurisdiction to try and entertain this complaint as the matter has already been decided by the consumer commission.

Respondents counsel raised objection that Authority has no jurisdiction to try and entertain this complaint as the matter has already been decided by the consumer commission. In this regard it is observed that State Consumer Disputes Redressal Commission, Panchkula vide its order dated 02.01.2018 had granted liberty to file fresh complaint to complainant. Therefore, respondents objection regarding no jurisdiction to try and entertain this complaint as the



matter has already been decided by the consumer commission stands rejected.

G.2 Objection raised by respondents that the present complaint is barred by limitation

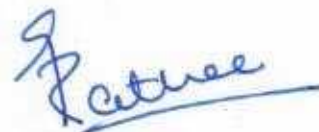
Respondents had raised objection regarding maintainability of the complaint on ground of that complaint is barred by limitation. In this regard the Hon'ble Apex Court in Civil Appeal no. 4367 of 2004 titled as **M.P Steel Corporation v/s Commissioner of Central Excise** has held that the Limitation Act applies only to courts and not to the tribunals. Relevant para is reproduced herein:

"19. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963."

Authority observes that the Real Estate Regulation and Development Act, 2016 is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Indian Limitation Act 1963, thus, would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority established under the Act is a quasi-judicial body and not Court. Therefore, in view of above objection of respondents with respect to the fact that complaint is barred by limitation is rejected.

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

16. Proceeding on the merits of the case, it is not disputed between the parties that complainant booked a plot in the year 2006 in the respondentss project



namely TDI City, Panipat. Plot buyer agreement was executed on 23.11.2013 for unit/plot no. 262, Block-E, measuring area 250 sq. yard. Complainant has made the payment of ₹23,54,060/-against the total sale price of ₹20,96,500/- .

17. Complainant is aggrieved by the fact that even after lapse of 9 years from the date of plot buyer agreement, possession has not been offered to complainant and despite not offering possession respondents vide final statement of account dated 06.02.2022 have raised illegal and arbitrary demands.

18. Perusal of plot buyer agreement dated 23.11.2013 reveals that there is no possession clause in plot buyer agreement. Therefore, there is no stipulated due date of possession. In order to determine a reasonable due date for handing over possession, Authority places reliance upon judgment of Hon'ble Supreme Court titled as **M/s Fortune Infrastructure & Anr, 2018 STPL 4215 SC**, where the Hon'ble Apex Court had held the following:

"15. Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract."



In view of the ratio of law laid down by Hon'ble Supreme Court, in absence of specific clause with respect to handing over possession, 3 years is taken to be reasonable time to handover possession to allottee. In present case to plot buyer agreement was executed between parties on 23.11.2013 therefore, deemed date for handing over possession works out to be 23.11.2016.

19. With regards illegal demands raised by respondents vide final statement of account dated 06.02.2022 demanded ₹75,000/- on account of club membership charges, ₹10,000/- on account of miscellaneous expenses, ₹1,27,100/- on account of stamp duty charges etc. Authority observes that respondents can demand these charges at the time of handing over possession. Respondents have not provided any documents to prove/show that whether valid possession was offered to complainant or not. Thus, respondents could not have demanded said charges. Said charges can only be demanded at the time of legally valid offer of possession after obtaining occupation certificate from the competent authority. Respondents are also demanding late payment fee of ₹15,96,185/- including ₹4,55,989/- on account of EDC_14, ₹2,64,957/- on account of EDC_9 and ₹8,75,239/- on account of unit cost. However, respondents have not given any justification of said late payment fee. Therefore, respondents cannot demand said late payment fee from complainant.

20. Respondents in its reply have averred that complainant defaulted in making payment. With regard to this it is observed that deemed date of handing over possession was 23.11.2016 therefore, complainant was obligated to pay till



23.11.2016 and as per receipts attached with complaint file complainant had paid ₹ 23,54,060/- till 2013 against total sale price of ₹20,96,500/- which is more than total sale price of unit. Therefore, respondents defence that complainant defaulted in making payment is not maintainable.

21. As till date no valid offer of possession has been made to complainant, it is concluded that the respondents have failed to fulfill its obligation to offer timely possession of unit and it is clear violation of section 11(4)(a) of the RERA Act, 2016. In such circumstances, as per Section 18(1) of RERA Act, allottee may either choose to withdraw from the project and demand refund of the amount paid or may continue with the project. In the present case complainant wish to continue with the project, therefore Authority directs respondents to handover valid offer of possession to complainant.

22. The facts set out in the preceding paragraphs demonstrate that in the captioned complaint delivery of possession of the booked plot has been delayed beyond reasonable time from the date of execution of builder buyer agreement. Possession of the unit was to be delivered to the complainant within a reasonable time i.e. by 23.11.2016 (as observed in Para 18 above), however, no offer of possession has been made till date. Even after a lapse of 9 years from deemed date of possession, respondent is not in a position to offer possession of the plot to complainant since respondent company has yet to receive occupation certificate in respect of the booked plot. Admittedly there has been delay in delivery of possession but the complainant wishes to continue with the project



and take possession. In these circumstances, provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the booked plot, the complainant is also entitled to receive interest from the respondent on account of delay caused in delivery of possession for the entire period of delay till a valid offer of possession is issued. So, the Authority hereby concludes that complainant is entitled to receive delay interest for the delay caused in delivery of possession from the deemed date of possession i.e 23.11.2016 up to the date on which a valid offer is sent to him after receipt of occupation certificate.

23. In the present complaint, the complainant intends to continue with the project and is seeking compensation prescribed under RERA Act, 2016 which is nothing but interest as per prescribed rate. The delayed possession charges as provided under the proviso to Section 18 (1) of the Act, Section 18 (1) proviso reads as under :-

"18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-

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".

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-

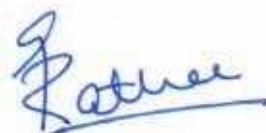
- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter 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;*

Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

"Rule 15: "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 (NCLR) 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."

25. Hence, Authority directs respondent to pay delay interest to the complainant for delay caused in delivery of possession 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 10.90% (8.90% + 2.00%) from the deemed date of possession i.e. 23.11.2016 till the date of a valid offer of possession after obtaining occupation certificate.



26. Authority has got calculated the interest on total paid amount from due date of possession i.e. 23.11.2016 till the date of this order i.e. 03.02.2026 which works out to ₹ 23,40,387 and further monthly of ₹ 20,896/- as per detail given in the table below:

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 03.02.2026
1.	₹23,54,060/-	23.11.2016	23,40,387/-
Monthly interest			20,896/-

27. Complainant is also seeking compensation on account of delay in handing over possession. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "**M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & Ors.**" has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of compensation.



28. Complainant is seeking refund of excess payment of ₹2,57,560/- During hearing proceeding Authority had directed complainant to clarify under what head and on what date complainant had made excess payment. However, complainant had not provides the same till date. Therefore, this relief is not allowed.

29. As for relief clause C (iv) wherein complainant demands penal clauses be invoked against the respondents, it is not a part for pleadings and also it is not argued in hearings. Therefore, same not allowed.

I. DIRECTIONS OF THE AUTHORITY

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

- (i) Respondents are directed to pay upfront delay interest of ₹ 23,40,387/- (till date of order i.e 03.02.2026) to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order. Further, monthly interest of ₹ 20,896/- 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) Respondents shall make a legally valid offer possession of the unit to complainant within 30 days along with final statement of account from the date of obtaining occupation certificate.

(iii) Complainant will remain liable to pay balance consideration amount, if any, to the respondent at the time of offer of possession. However, respondent shall not charge anything that is specifically not a part for agreement for sale.

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




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Dr. GEETA RATHEE SINGH
[MEMBER]