



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint No:	417 of 2025
Date of Filing:	24.03.2025
Date of First Hearing:	28.04.2025
Date of Decision:	24.04.2026

1. Pawan Kumar Singla S/o Sh. Net Ram Singla
4/71, Near Hindu Girls College, Kath Mandi,
Sonipat, Haryana-131001.

2. Pankaj Garg S/o Sh. Naresh Kumar Garg
H-3, G.S. Apartment, Rohini, Sector-13,
North West Delhi-110085.

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Ltd., through its M.D./Chairman,
Upper Ground Floor, Vandana Building, 11, Tolstoy Marg,
Connaught Place, Delhi-110001.

....RESPONDENT(S)

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CORAM:

Sh. Chander Shekhar

Member

Hearing:

5th

Present: - Mr. Gaurav Gupta, Advocate, for the Complainants through VC.
Mr. Shubhnit Hans, Advocate, for the Respondent.

ORDER:

The present complaint was filed on 24.03.2025 by the complainants under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation and 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 complainants, 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 Mall, TDI City, Sonipat
2.	RERA registered/not registered	Un-registered
3.	Unit No.	FF-12
4.	Unit Area	722.95 sq. ft.

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5.	Date of Booking by Original Allottee	16.10.2006
6.	Date of Allotment in favour of Complainants	30.12.2006
7.	Date of Builder Buyer Agreement in favour of Complainants	18.07.2007
8.	Due Date of Offer of Possession	Within 24 months from the date of sanction of building plans with a grace period of 6 months
9.	Possession Clause	Clause 7 of BBA
10.	Total Sale Consideration	₹28,91,800/-
11.	Amount Paid by the Complainants	₹33,24,971/-
12.	Offer of Possession	Not Available

B. FACTS OF THE COMPLAINT:

3. Brief facts of the case are that the respondent advertised a Shopping Mall namely "TDI Mall" in TDI City, Sonipat and promised to build shops of different sizes after obtaining all necessary approvals. Relying on this, Mr. Kamal Aggarwal booked a shop on 16.10.2006 by paying ₹4,33,770/-. Later, on 30.12.2006, he transferred his booking to the complainants and the amount was credited to them. The complainants then paid ₹2,90,000/- more. After receiving

₹7,23,770/-, the respondent executed the Builder Buyer Agreement on 18.07.2007 and allotted a Shop No. FF-12 to the complainants measuring 722.95 sq. ft. The total sale price was fixed at ₹28,91,800/-. As per clause 7 of the agreement, the possession of the shop would be given within 24 months from approval of building plans with a grace period of 6 months, but no such date was clearly mentioned. The complainants later found that the project was still at a planning stage and approvals had not been obtained. The agreement had unfair terms, such as no fixed possession date and heavy penalties only for the buyers. The complainants paid a total of ₹33,24,971/- by the year 2013. The respondent also demanded extra amounts beyond the agreed price without justification. Even after taking full payment, the respondent did not complete the project or obtain an Occupation Certificate. Instead, it increased the shop size and imposed additional charges, including penalties and maintenance, without handing over possession. Whenever the complainants asked about possession, they were given false assurances.

4. Even the maintenance agency namely, M/s Cannes Property Management Services Pvt. Ltd. demanded charges of ₹45,56,064/- without possession being given through legal notice dated 30.10.2023. On checking official records and through RTI application dated 11.11.2024, the complainants found that no Occupation Certificate had been issued for the project. It means that the project is still incomplete and possession cannot be given. The complainants booked the

shop for their livelihood in 2006, expecting possession by 2010. However, due to a delay of more than 15 years, they no longer need the shop and want to withdraw from the project. As per the Supreme Court judgment in 'CA No.12238 of 2018 titled as *Pioneer Urban Land vs Govindan Raghavan*' decided on 02.04.2019, a buyer cannot be forced to take possession if the builder has not obtained the Occupation Certificate or delivered possession on time. Therefore, the complainants are entitled to seek a refund. The complainants have already waited a long time for possession, which was expected around 18/07/2010. Making them wait any further or forcing them to continue would cause serious injustice that cannot be compensated. Therefore, considering the facts, the complainants seek a refund of ₹33,24,971/- along with interest as per Section 18 of the RE(RD) Act and Rule 15 of the HRERA Rules, from the date of payment until full refund is made.

C. RELIEF SOUGHT:

5. The complainants in their complaint has sought the following reliefs:
- i. To direct the respondent to refund the total paid amount of ₹33,24,971/- along with interest as per provisions of RE(RD) Act and Rule 15 of the HRERA Rules, 2017 till actual realisation to the complainants.
 - ii. Any other relief which is deemed fit by this Authority.

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D. REPLY SUBMITTED ON BEHALF OF RESPONDENT:

6. On receipt of notice of the complaint, the respondent filed a reply on 18.09.2025, which in brief stated that the respondent company is a reputed builder with many successful projects and a good track record of quality and timely delivery. Based on this reputation, the complainant chose to invest in the TDI Mall, TDI City, Sonipat project. The respondent submitted that it has already received the Occupation Certificate in the year 2012 and Part Completion Certificate in the year 2013, so the project is complete and there is no delay in completion of the project. It further stated that the possession was offered twice in the year 2012 and 2013 i.e. on 14.05.2012 and 13.03.2013 after obtaining Occupation Certificate on 25.05.2012, but the complainant did not come forward to take possession. Therefore, any delay is due to the complainant's own inaction. The respondent also submitted that since the project was completed before the RE(RD) Act came into force, the provisions of the RE(RD) Act does not apply to this case and the complaint is not maintainable.

7. It is further stated that the complainant is a subsequent buyer in whose favour the shop was transferred in the year 2006 and had knowledge of the project status at the time of purchase. The Builder Buyer Agreement dated 18.07.2007 clearly defines the rights and obligations of both parties and the complainant's claims are contrary to it. The respondent company also raised a demand for VAT as

per law and court judgments. Further, the respondent submitted that despite several reminders, the complainant neither took possession nor cleared dues and instead filed this complaint, which should be dismissed.

8. The present complaint is barred by limitation and is not maintainable before this Authority. The complainant was entitled to approach this Authority within three years from the date of the expiry of the letter sent by the respondent as per Section 29(2) of the Limitation Act, 1963. The complainant chose to stay silent and did not take any action. The present complaint is made only with the intent to harass and extort money from the respondent company.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT:

9. During the course of oral arguments, learned counsel appearing on behalf of both the parties reiterated the facts and submissions as set out in their respective pleadings and reply.

F. ISSUES FOR ADJUDICATION:

Csh 10. Whether the complainants are entitled to refund of the amount deposited by them along with interest in terms of Section 18 of Act of 2016?

G. OBSERVATIONS AND DECISION OF THE AUTHORITY:

11. 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. Admittedly, a shop was booked on 16.10.2006 by the original allottee and subsequently transferred to the complainants on 30.12.2006, who made substantial payments from time to time. A Builder Buyer Agreement was executed on 18.07.2007, fixing the sale consideration as ₹28,91,000/- but without clearly specifying a definite date of handing over of the possession and containing one-sided terms. Despite receiving an amount of ₹33,24,971/- i.e. exceeding the agreed sale price, the respondent neither completed the project nor obtained the Occupation Certificate and failed to hand over the possession within the stipulated period. Instead, the respondent raised additional and unjustified demands, including increased area charges and maintenance charges, without offering possession. It was further revealed through official records and RTI that the project remained incomplete and no Occupation Certificate had been issued. Even after an inordinate delay of more than 15 years, the possession was not

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delivered, compelling the complainants to seek refund of the deposited amount along with interest.

ii. On the other hand, the respondent stated that the complainants invested in the project relying on its credibility. It was further stated that the project "TDI Mall" was duly completed, having received the Occupation Certificate in the year 2012 and Part Completion Certificate in the year 2013 and therefore, there was no delay in completion of the project. The respondent further contended that the possession of the shop was duly offered to the complainants on 14.05.2012 and 13.03.2013 after obtaining the Occupation Certificate on 25.05.2012, but the complainants failed to take possession. Hence, any delay is attributable to the complainants themselves. It was also argued that since the project was completed prior to the coming into force of the RE(RD) Act, the provisions of the Act are not applicable and the present complaint is not maintainable. Additionally, the respondent stated that the complainants, being subsequent purchasers, were fully aware of the project status and are bound by the terms of the Builder Buyer Agreement dated 18.07.2007. The demands raised, including VAT and other charges, were stated to be lawful. Lastly, the respondent raised a preliminary objection that the complaint is barred

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by limitation, as it was not filed within the prescribed period and alleged that the complaint has been filed with mala fide intent to harass and extract money.

(iii) The Authority has carefully examined the objection raised by the respondent that the project was allegedly completed prior to coming into force of the RE(RD) Act, 2016 as Part Completion Certificate as well as Occupation Certificate was obtained by the respondent in the year 2013 and 2012 respectively. Therefore, the provisions of the Act are not applicable and the present complaint is not maintainable. At the outset, this contention is legally unsustainable on two grounds. Firstly, it is well settled that the RE(RD) Act, 2016 applies not only to projects launched after its enactment but also to ongoing projects, where completion and delivery of possession have not been lawfully achieved. In the present case, even as per the respondent's own version, although an Occupation Certificate is claimed to have been obtained in the year 2012, the possession has admittedly not been taken by the complainants and more importantly, the Authority has already found that no valid offer of possession has been made till date as the occupation certificate was obtained on 25.05.2012 and offer for fitout

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possession was made on 14.05.2012 i.e. prior to receipt of occupation certificate. Therefore, the project, qua the complainants, remains incomplete. Secondly, the obligation of the promoter to hand over the possession in accordance with law is a continuing obligation and failure to do so gives rise to a continuous cause of action. Hence, the rights of the allottees/complainants survive and can be enforced even after the enactment of RE(RD) Act, 2016. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in *Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. , Civil Appeal no. 6745-6749 of 2021*, wherein it was held that the RE(RD) Act, 2016 is a beneficial legislation intended to protect the interests of allottees and has retroactive application to ongoing projects. The Court categorically upheld the jurisdiction of the Authority to entertain complaints where the default of the promoter continues even after the Act came into force. The relevant para of which is reproduced herein:

" 37. Looking at the Scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all "ongoing projects" that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including

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allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority.”

Further, in *M/s Imperia Structures Ltd. v. Anil Patni (2020) 10 SCC 783*, the Hon'ble Supreme Court held that remedies under RE(RD) Act, 2016 are in addition to and not in derogation of other remedies and the Act applies even where agreements were executed prior to its enactment, provided the cause of action survives. Additionally, in *Pioneer Urban Land and Infrastructure Ltd. v. Govindan Raghavan (2019) 5 SCC 725*, the Hon'ble Supreme Court emphasized that a buyer cannot be compelled to wait indefinitely and is entitled to seek refund where the promoter fails to deliver possession within the agreed timeline. This principle squarely applies in the present case, where there is a delay of more than 15 years. It is also pertinent to note that mere issuance of an Occupation Certificate does not extinguish the rights of the allottees/complainants unless lawful and valid possession is actually offered and handed over. In absence thereof, the project cannot be said to be complete in the eyes of law vis-à-vis such allottees.

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In view of the above legal position, the Authority holds that the present case involves a continuing default on the part of the respondent. The complainants' right to seek possession or refund subsists even after the enactment of RE(RD) Act, 2016. Furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder.

Further, the respondent has pleaded that part completion certificate for 415 acres out of 981.559 acres has already been received in the year 2013. A copy of said part completion certificate has been placed on record but it is not specified in the written statement as to whether the unit/plot of complainants gets covered in said part completion certificates or not? Hence, the provisions of the RE(RD) Act, 2016 are fully applicable to the present case. Accordingly, the objection raised by the respondent regarding non-applicability of the RE(RD) Act, 2016 and maintainability of the complaint is rejected. The Authority has complete jurisdiction and mandate to adjudicate the same on merits.

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(iv) Further, the respondent has 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 RE(RD) Act. The RE(RD) 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 RE(RD) 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 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.

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(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 RE(RD) Act, 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.

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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 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 possession along with interest remains alive and enforceable until the project is completed or the matter is finally adjudicated.

(v) The Authority observed the contention of the respondent that the complainants, being subsequent purchasers, were fully aware of the project status and are strictly bound by the terms of the Builder Buyer Agreement cannot be accepted in a blanket manner. Merely because the complainants stepped into the shoes of the original allottee does not absolve the respondent from its statutory and contractual obligations, particularly with regard to timely completion and lawful offer of possession. It was further observed that the terms of the Builder Buyer Agreement, especially those which are one-sided or unfair, cannot be enforced to the disadvantage of the allottee. The respondent cannot rely upon such clauses to justify delay or shift the burden on the complainants. With regard to the demands raised, including VAT and other charges, the Authority held that such demands must be supported by clear contractual stipulations and actual stage of development. In the absence of completion of the

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project and valid offer of possession, raising additional financial demands is unjustified and cannot be termed as lawful.

12. In view of above facts and circumstances, the Authority observed that the respondent, being a builder, ought to have acted fairly by either handing over lawful possession or cancelling the booking and refunding the amount, with or without permissible deductions. However, the respondent failed to take either course of action and has continued to retain the complainant's money since the year 2006 without any valid justification. The Authority observes that the RE(RD) Act, 2016 was enacted to protect the interests of consumers in the real estate sector. The Authority is of the view that the complainant cannot be made to wait indefinitely for handing over the possession. Accordingly, this is a fit case for grant of refund of the amount paid along with interest at the prescribed rate under Section 18(1)(a) of the RE(RD) Act.

13. 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:

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"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.

14. The definition of term '*interest*' is defined under Section 2(z*a*) of the Act which is as under:

*(z*a*) "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;

15. 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".

16. 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. 24.04.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.80%.

17. Thus, respondent will be liable to pay the complainants interest from the date amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainants the paid amount of ₹33,24,971/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2% which as on date works out to 10.80% (8.80%+2.00%) from the date amounts were paid till the actual realization of the amount. 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 ₹92,88,877/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 24.04.2026
1.	₹4,33,770/-	16.10.2006	₹9,15,252/-
2.	₹2,90,000/-	30.12.2006	₹6,05,463/-
3.	₹1,00,000/-	23.11.2007	₹1,99,075/-
4.	₹3,00,000/-	29.01.2008	₹5,91,278/-
5.	₹3,25,000/-	27.03.2008	₹6,34,973/-
6.	₹2,86,310/-	12.08.2008	₹5,47,691/-
7.	₹2,90,000/-	21.12.2009	₹5,12,189/-
8.	₹6,00,000/-	18.10.2011	₹9,41,464/-
9.	₹2,89,617/-	16.03.2012	₹4,41,586/-
10.	₹2,31,273/-	13.03.2013	₹3,27,855/-
11.	₹1,79,001/-	17.07.2013	₹2,47,080/-
	Total=₹33,24,971/-		Total=₹59,63,906/-
	Total Payable to the Complainant	₹33,24,971/- + ₹59,63,906/-	₹92,88,877/-

J. 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 obligations cast upon the promoter 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 ₹33,24,971/- with interest of ₹59,63,906/- (total ₹92,88,877/-) to the complainants. It is further clarified that the respondent will remain liable to pay interest to the complainants 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.

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

24.04.2026
Narinder Kaur
(Law Associate)


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(CHANDER SHEKHAR)
MEMBER