

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	Rodeo Drive at "TDI CITY", Kundli, Sonapat
2.	RERA Registered/Not Registered	Unregistered
3.	DTCP License no.	200-285 of 2002, 153-157 of 2004, 183-228 of 2004, 42-60 of 2005, 652-722 of 2006, 729-872 of 2006, 177 of 2007 and 51 of 2010
	Licensed Area	1097.894 acres
4.	Unit No.	Shop No. FF-120
5.	Unit Area	335 Sq. ft. (Covered Area) 500 Sq. ft. (Super Built Up Area)
6.	Date of Allotment	Not Available
7.	Date of Builder Buyer Agreement	05.01.2010

8.	Due date of Offer of Possession	05.07.2012 (within 30 Months from the date of execution of Agreement)
9.	Possession Clause	Clause 1 of Article 4 in the BBA
10.	Total Sale Consideration	₹22,50,000/-
11.	Amount paid by Complainant	₹18,00,000/-
12.	Offer of Possession	Not mentioned in the complaint.

B. FACTS OF THE COMPLAINT

3. Facts of the present complaint are that the complainant had earlier filed a complaint bearing no. RERA-PKL-461-2021, which was dismissed vide order dated 04.08.2022 on the ground of non-prosecution with liberty to file afresh. A copy of the order dated 04.08.2022 is annexed as Annexure C-1. A fresh complaint bearing no. RERA-PKL-3068-2022 was filed by the complainant. However, due to a clerical error, inadvertently an incorrect party name i.e. 'TDI Infracorp (India) Limited' instead of 'TDI Infrastructure Pvt. Ltd.', was impleaded in that complaint and the Authority allowed the same vide order dated 07.02.2023 to be withdrawn with liberty to file afresh. A copy of the order dated 07.02.2023 is annexed as Annexure C-3.

4. The respondent advertised that it owns a large area of land measuring 28.905 acres situated at village Kundli, Sonapat. The respondent stated that it was going to develop a Mall cum Multiplex by the name

'Rodeo Drive' in TDI City. The complainant was further informed that the respondent had obtained necessary licence from the Director of Town and Country Planning (DTCP) for the said development of the project. Based on the representations made by the respondent, the complainant decided to purchase a shop/unit measuring 500 sq. ft. of super built up area. A Builder Buyer Agreement was entered into between the parties on 05.01.2010, a copy of which is annexed as Annexure C-4.

5. As per the Builder Buyer Agreement, the complainant was allotted Unit No. 120, First Floor in the said project for a total sale consideration of ₹22,50,000/-. The said payment was duly paid upfront by the complainant as per the payment plans which form part of the agreement as Annexure A. Clause 1 of the Article 4 in the Builder Buyer Agreement stipulated that the delivery of the possession of the unit to the complainant was to be given within 30 months from the date of the execution of the said agreement i.e. by 05.07.2012.

6. Despite expiry of more than 15 years, the respondent has failed to deliver the possession or communicate regarding the delivery of the possession. The complainant visited the office of the respondent multiple times and also followed up via email, WhatsApp etc. However, no proper explanation was given to the complainant and only vague answers were given regarding the delivery of possession. A copy of the said communications has been annexed as Annexure C-5 (Colly).

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7. The complainant has paid a total of ₹18,00,000/- and a copy of the account statement reflecting the payments has been annexed as Annexure C-7. Copies of the receipts issued by the respondent have been annexed as Annexure C-8.

8. The respondent has failed to complete the project and deliver the possession of the unit to the complainant by 05.07.2012. The delay on part of the respondent is continuing and therefore, the complainant has approached this Authority seeking relief.

C. RELIEFS SOUGHT

9. Complainant in her complaint has sought following reliefs:

- i. To direct the respondent to deliver the possession within a time bound period of 30 days.
- ii. To direct the respondent to pay interest and also award compensation to the complainant on account of harassment by the respondent, on the amount collected till date i.e ₹18,00,000/- along with interest @18% p.a from the date of making of payment to the complainant till the delivery of the possession.
- iii. Any other relief(s) as the Hon'ble Authority may deem fit and proper in the light of facts and circumstances of the above case.

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D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

10. The respondent filed a reply on 27.05.2024 stating therein that due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely- "Rodeo Drive" at TDI City, Kundli, Sonapat, Haryana. The respondent company had applied to the DTCP, Haryana for grant of the Occupation Certificate of commercial project measuring 6.558 acres under licence nos. 101-144 of 2005 dated 05.08.2005. A copy of the said letter is annexed as Annexure R-2. Part completion certificate for the said project measuring 1097.894 acres approx. with respect to the township has already been received on 23.01.2008, 18.11.2013 and 22.09.2017. Copies of Part Completion Certificates are annexed as Annexure R-3, 4 and 5. The respondent has also received the Occupation Certificate on 12.06.2019 for the commercial site measuring 6.558 acres which is a part of the residential plotted colony area measuring 1097.894 acres (TDI City). A copy of the Occupation Certificate is annexed as Annexure R-6.

11. When the respondent company commenced the construction of the said project, RE(RD) Act was not in existence. Therefore, the respondent company could not have contemplated any violations and penalties thereof, as per the provisions of the RE(RD) Act, 2016. The provisions of the RE(RD) Act are to be applied prospectively. Thus, the present complaint is not maintainable and falls outside the purview of provisions of RE(RD) Act.

12. Despite repeated requests to the complainant to clear the payment and take over the possession of the unit, the complainant failed to perform its part of the obligations and never paid any heed to the requests of the respondent company. The complainant chose to stay silent and therefore, the complainant does not deserve any relief from the learned Authority.

13. The complainant herein is an investor, has accordingly invested in the project of the respondent company for the sole reason of investing, earning profits and speculative gains.

14. The complainant has also not approached the Authority with clean hands as the complainant has concealed the most material facts. The complainant was offered the possession for fit outs of the unit twice in the year 2018 vide letters dated 05.03.2018 and 27.04.2018. However, the complainant did not come forward till date to perform the obligations on her part. A copy of the letters dated 05.03.2018 and 27.04.2018 is annexed as Annexure R-7 and R-8 respectively.

15. The respondent company also wrote another letter dated 14.03.2019 requesting the complainant to clear the outstanding dues and accept the possession of the unit. A copy of the said letter is annexed as Annexure R-9. The complainant has also not annexed any documentary proof to prove the allegations with respect to the booking made by the complainant. The complainant has merely raised vague allegations and made frivolous submissions to mislead the learned Authority. No cause of action

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has occurred in favour of the complainant as possession has already been offered to the complainant in the year 2018 and 2019. The complaint is also not maintainable before the Ld. Authority as it is barred by limitation and hit by the principle of delay and latches.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

16. During oral arguments, learned counsel for the complainant insisted upon the possession of booked shop alongwith delay interest stating that refund of paid amount is not acceptable to complainant. Learned counsel for the respondent has reiterated arguments as were submitted in the written statement.

F. ISSUES FOR ADJUDICATION

17. Whether the complainant is entitled to get possession of booked shop alongwith delay interest in terms of Section 18 of RE(RD) Act, 2016?

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

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

- (i) With regard to the plea raised by the respondent that provisions of RE(RD) Act, 2016 are applicable with prospective effect only, therefore the same were not applicable as on

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05.01.2010 when the Builder Buyer Agreement was executed between the parties and the complainant was allotted shop no. FF-120, in the project namely, Rodeo Drive, TDI City, Kundli; it is observed that the issue regarding operation of RE(RD) 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

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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) The respondent in its reply has contended that the complainant is an “investor” who has invested in the project for monetary returns and taking undue advantage of RE(RD) Act, 2016 as a weapon during the present down side conditions in the real estate market, therefore, they are not entitled to the protection of the Act of 2016. In this regard, the Authority observes that “any aggrieved person” can file a complaint against a promoter if the promoter contravenes the provisions of the RE(RD) Act, 2016 or the rules or regulations. In the present case, complainants are an aggrieved person who have filed the present complaint under Section 31 of the RE(RD) Act, 2016 against the promoter for violation/contravention of the

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provisions of the RE(RD) Act, 2016 and the Rules and Regulations made thereunder. Here, it is important to emphasize upon the definition of term “allottee” under the RE(RD) Act of 2016, reproduced below: -

Section 2(d) of the RERA Act:

(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

In view of the above-mentioned definition of “allottee” as well as upon careful perusal of the Agreement dated 05.01.2010, it is clear that the complainant is “allottee” as shop bearing no. FF-120 in the Real Estate Project of the respondent namely, “Rodeo Drive, TDI, City, Kundli”, Sonipat was allotted to them by the respondent promoter. The concept/definition of investor is not provided or referred to in the RE(RD) Act, 2016. As per the definitions provided under Section 2 of the RE(RD) Act, 2016, there will be “promoter” and “allottee” and there cannot be any party having a status of an investor. Further, the definition of “allottee” as provided under RE(RD) Act, 2016



does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. And Anr.* had also held that the concept of investors not defined or referred to in the Act. Thus, the contention of the promoter that allottees being investors are not entitled to protection of this Act also stands rejected.

(iii) The respondent has also taken objection that the complaint is grossly barred by the limitation. In this regard Authority places reliance upon the judgement of Apex court in "*Civil Appeal No. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise*" where it has been held that Indian Limitation Act deals with applicability to courts and not tribunals. Further, the RE(RD) Act is a special enactment with particular aim and object covering certain issues and violations relating to the housing sector. Provisions of the Limitation Act, 1963, would not be applicable to the proceedings under the RE(RD) Act, 2016, as the Authority set up under that Act being quasi-judicial and not a Court. The promoter has till date failed

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to fulfil its obligations because of which the cause of action is re-occurring.

19. Upon consideration of the material placed on record, it is observed that the Builder Buyer Agreement was executed in favour of the complainant on 05.01.2010, whereby the complainant was allotted a commercial unit in the project "Rodeo Drive" at TDI City, Kundli, for a total consideration of ₹22,50,000/-, out of which an amount of ₹18,00,000/- has been paid. As per the agreement, the possession was to be delivered within 30 months from the date of execution of the agreement, i.e., by 05.07.2012. However, despite a substantial lapse of time of more than 15 years, the respondent has failed to hand over the possession or provide any definite timeline for completion and the complainant has been constrained to repeatedly follow up without any satisfactory response.

20. On the other hand, the respondent has contended that the project forms part of a larger licensed township for which necessary approvals, part completion certificates and an occupation certificate have been obtained. It has further been asserted that the possession was offered to the complainant in the years 2018 and 2019 i.e. on 05.03.2018 and 27.04.2018 subject to clearance of outstanding dues and the complainant has failed to fulfil contractual obligations. Nonetheless, these contentions do not prima facie justify the prolonged delay in delivery of possession, which remains the

central grievance raised by the complainant, warranting consideration by the Authority in accordance with law.

21. It is further observed that although the respondent has placed on record an Occupation Certificate dated 12.06.2019 and the same does not advance the case of the respondent in the absence of a valid and lawful offer of possession to the complainant till date. Mere receipt of an Occupation Certificate cannot, by itself, be construed as compliance with the contractual obligation to hand over possession, particularly when no clear and unconditional offer of possession has been made after receipt of occupation certificate. Further, a perusal of the said Occupation Certificate does not specify whether the unit allotted to the complainant is included within its scope, thereby creating ambiguity regarding the readiness and legality of possession of the specific unit in question. Apart, the issuance of a part or full completion certificate will not be a conclusive proof of the fact that the project has been developed as envisaged under the agreement of sale executed between the promoter and the allottee. Unless the development of the project is carried out in the manner as promised to the allottee under the agreement of sale, the allottee may have some genuine grievance against the promoter and will have a right to invoke the jurisdiction of this Authority for redressal of his grievance, irrespective of the fact that the promoter had obtained a completion/part completion or an occupation certificate for its project. In such circumstances, the respondent cannot rely upon the said Part

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Completion Certificate/Occupation Certificate to defeat the legitimate claim of the complainant for possession.

22. In view of the above, the Authority finds that the delay in handing over the possession cannot be attributed to the complainant. The submissions of the respondent is, therefore, not sustainable and do not absolve it from its obligations. The complainant filed this complaint in the year 2024. During all these years, respondent remained silent and did not even bother to refund the amount received from the complainant towards sale consideration of the unit. Now, the respondent cannot take the benefit of its own wrong for causing delay in offering of the possession.

23. The complainant is insisting upon possession of the booked unit only as an alternate unit is not available with the respondent. The respondent who is in receipt of a total amount of ₹18,00,000/- till date has not even made sincere efforts to make a valid offer of possession. It is the respondent who has failed to develop the booked unit/plot till date. 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. 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-

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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 Authority observes that the respondent has severely misused its dominant position. The due date of possession was 05.07.2012. Now, even after the lapse of 16 years, the respondent has neither offered valid possession to the complainant. Respondent has not even specified the valid reason/ground for not offering the possession of the booked unit. In these circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the unit, the allottee can also demand delayed interest and the respondent is liable to pay delayed interest along with monthly interest for the entire period of delay caused at the rates prescribed. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date i.e. 05.07.2012 to the date on which a valid offer is sent to her after obtaining completion certificate.

25. 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;

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. Consequently, as per 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. 15.05.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.80%.

28. 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% till and said amount works out 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 15.05.2026
1.	₹18,00,000/-	05.07.2012	₹26,96,568/-
	Monthly interest		₹16,511/-

29. Further, the complainant has prayed for interest @18% per annum. However, the RE(RD) Act, 2016, read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, prescribes interest at the rate of SBI MCLR + 2%, which, as on date, works out to be 10.80% per annum. Accordingly, the interest shall be calculated and awarded at this statutory rate.

30. The complainant has also sought compensation. In this regard, it is observed that the Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027, M/s Newtech Promoters and Developers Pvt. Ltd. v. 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 19 of the RE(RD) Act, 2016. The Court further clarified that such claims are to be adjudicated by the learned Adjudicating Officer under Section 71 of the Act, 2016 and the quantum of compensation and legal expenses is to be determined having due regard to the factors enumerated in Section 72 of the Act, 2016. Accordingly, the Authority observes that the claim for

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compensation cannot be adjudicated in the present proceedings. The complainant is, therefore, advised to approach the learned Adjudicating Officer for seeking relief in respect of compensation and litigation expenses, if any.

H. DIRECTIONS OF THE AUTHORITY

31. 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) Respondent is directed to pay upfront delay interest of ₹26,96,568/- to the complainant towards delay already caused in handing over the possession till the date of order and further monthly interest of ₹16,511/- till the date of valid offer of possession after receipt of Occupation/Completion Certificate.

(ii) The respondent is directed to charge only those amounts permissible under the Agreement executed between the parties. If any amount is collected by the respondent in violation of the terms and conditions of the agreement, it shall be refunded to the complainant.

(iii) The complainant will remain liable to pay balance consideration amount, if any, to the respondent at the time when

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valid possession is offered to the complainant as per the agreed terms and conditions.

(iv) The rate of interest chargeable from the allottee/complainant by the respondent/promoter, in case of default shall be charged at the prescribed rate, i.e., 10.80% by the respondent/promoter which is the same rate of interest which the respondent/promoter shall be liable to pay to the allottees.

(v) 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 and Development) Rules, 2017, failing which legal consequences would follow.

(vi) The respondent shall not charge anything from the complainant which is not part of the agreement.

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


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(CHANDER SHEKHAR)
MEMBER

15.05.2026
Narinder Kaur
(Law Associate)