



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1585 of 2024
Date of filing:	25.10.2024
First date of hearing:	02.12.2024
Date of decision:	26.05.2026

Pratibha Rana
W/o Deepak Rana
R/o C-88, Luxmi Kunj, Plot No. 6,
Sector 13, Rohini,
Delhi 11008 5

.....COMPLAINANT

Versus

TDI Infracorp (India) Limited.
Vandana Building,
Upper Ground Floor, Vandana Building,
11, Tolstoy Marg,
Connaught Place, New Delhi- 110001

.....RESPONDENT

Present: - Adv. Abhinav Singla, Learned Counsel for the Complainant
through VC
Adv. Shubhnit Hans, Learned Counsel for the Respondent
through VC.

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ORDER (DR. GEETA RATHEE SINGH – MEMBER)

1. Present complaint has been filed on 14.08.2024 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 there under, 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 & location of project	“Waterside Floors” in TDI Lake Grove City, Kundli, Sonipat
2.	RERA registered/not registered	Registered with registration no. 43 of 2017 dated 11.08.2017
3	Unit no.	WF-55/DUPLEX
4.	Super built up area	1850 sq. ft.
5.	Date of Allotment	15.10.2013
6.	Builder buyer agreement	01.01.2014
7.	Due date of possession	01.07.2016 <i>Clause 28However, if the possession of the apartment is delayed beyond the stipulated period of 30</i>

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		<i>months from the date of execution hereof and the reasons of delay are solely attributable to the wilful neglect or default of the Company then thereafter for every month of delay, the buyer shall be entitled to a fixed monthly compensation/ damages/ penalty quantified @ Rs.5 per square foot of the total super area of the apartment. The Buyer agrees that he shall neither claim nor be entitled for any further sums on account of such delay in handing over the possession of the apartment</i>
8.	Total Sale Consideration of the unit	₹75,37,740/-
9.	Amount paid by complainant	₹68,36,373/-
10.	Occupation Certificate received by the respondent	30.06.2023
11.	Offer of possession	05.07.2023

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. That the complainant came across alluring and attractive advertisements issued by the respondent regarding its residential group housing tower/colony namely "Water Side Floors" situated at Sector-63, Kundli, Sonipat (Haryana).
4. That the complainant being in urgent need of residential accommodation and induced by the representatives of the respondent, allured by the rosy pictures given regarding the salient features of the project and promise of quick and timely delivery, booked a ground floor unit bearing No. WF-55/Duplex in the said project on 08.05.2013. Thereafter, the respondent issued an allotment letter dated 15.10.2013 after receiving a sum of

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₹21,03,037/- from the complainant as and when demanded from time to time. A copy of the allotment letter dated 15.10.2013 is annexed as Annexure C-1.

5. That despite receipt of a substantial amount, the respondent deliberately delayed execution of the buyer's agreement on one pretext or another. It was only after repeated follow-ups and persistent requests that the respondent executed the flat buyer's agreement dated 01.01.2014 with the complainant. A copy of the said buyer's agreement dated 01.01.2014 is annexed as Annexure C-2.
6. That as per the said agreement, the respondent promised to deliver possession of the floor within 36 months. The super area of the unit was agreed as 1500 sq. ft. and the basic sale price was fixed at ₹67,99,999/- (₹3,675.68 per sq. ft.). The Complainant further agreed to pay external development charges amounting to ₹5,27,620/-, thereby fixing the total consideration at ₹75,37,740/-.
7. That acting in good faith and in the hope of receiving timely possession, the complainant continued to make payments as and when demanded by the respondent and despite the fact that there was no progress on the ground with respect to construction of the unit. The complainant had paid a sum of ₹68,36,373/- i.e major portion of the sale consideration, by the year 2017. Copies of payment receipts and the account statement reflecting the



payments made by the complainant are annexed with the complaint as Annexure C-3 (Colly).

8. That the complainant visited the office of the respondent a number of times as wanted timely possession of the floor/property and complained regarding lack of development a project site. The respondent kept on delaying by promising that possession would be delivered soon after completion of development work of the project and kept on giving false dates for delivery of possession. The complainant has suffered a lot due to delay in delivery, despite major consideration amount was paid.
9. That after an inordinate delay of nearly nine years, the respondent issued an offer of possession in the year 2022 along with an exorbitant demand citing an alleged increase in super area. Shockingly, the said offer of possession was made without obtaining the occupation certificate and completion certificate. The complainant immediately sought clarification through email dated 27.02.2022 regarding the occupancy certificate, completion certificate and demarcation of increased super area but in vain. A copy of the email dated 27.02.2022 is annexed as Annexure C-4.
10. Being left with no option, the complainant sought information from the District Town Planner, Sonipat under the Right To Information Act. Vide letter dated 01.08.2022, the concerned department/Authority informed that no Occupation Certificate / Completion Certificate has been issued to the



colonizer of TDI Lake Grove City. A copy of the RTI reply dated 04.08.2022 is annexed as Annexure C-5.

11. Subsequently, the respondent again issued a letter dated 19.07.2023 offering possession subject to payment of total outstanding amount against the unit question. A copy of the said letter is annexed as Annexure C-6. The demands raised by respondent were not as per builder buyer agreement and were arbitrary and unjustified for the following reasons:

- i. The super area was increased from 1850 sq. ft. to 2007.25 sq. ft. without any explanation.
- ii. The base price was increased from ₹75,37,740/- to ₹88,99,452/- without any justification.
- iii. Parking charges of ₹1,50,000/- were illegally demanded despite no such provision in the agreement.
- iv. The respondent admitted that the occupation certificate was still not issued, making the offer of possession illegal and premature.

12. That the complainant repeatedly sought clarification regarding the alleged demands through emails dated 14.07.2023, 23.07.2023 and 31.07.2023, but no justification was provided. Copies of the email correspondence are annexed as Annexure C-7 (Colly).

13. That the complainant made it clear that he is ready and willing to pay the balance amount upon issuance of a valid occupation certificate. However, the respondent continued to demand payment despite the defective and



illegal offer of possession. Offering possession without obtaining the occupancy certificate is a violation of statutory obligations under the RERA Act.

14. That the respondent has thus failed to fulfill his contractual and statutory obligations and has wrongfully retained the hard-earned money of the complainant for more than ten years. The complainant has suffered severe financial loss, mental agony and harassment due to malpractice adopted by the respondent. The actions of the respondent clearly amount to deficiency in service and unfair trade practice. The respondent is thus liable to pay interest on delay in possession till the date of offer of possession with valid title and occupation certificate in the light of Sections 11, 12, 18 and 19 of the RERA Act, 2016 read with Rule 15 of the Haryana RERA Rules, 2017. Hence, present complaint has been filed.

C. RELIEF SOUGHT

15. In view of the facts mentioned above, the complainant has prayed for the following reliefs:
- i. To give necessary directions to the respondent to give offer of possession with occupation certificate as soon as possible, and arrange to registered sale deed of floor in favour of complainant.
 - ii. To give necessary directions to the respondent to pay interest on delay of possession on the amount paid by complainant in lieu of


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the floor/property along with future delay of interest till offer of possession with occupation certificate.

- iii. To give necessary directions to the respondent to raise demand as per buyer seller agreement.
- iv. In case where not able to give effective possession of floor with registered sale deed, complainant wish to withdraw her name from the project.
- v. To direct the respondent to pay interest as per Rule 15 and as per the provisions of Section 18 of the RERA Act, from the date of respective payments.
- vi. To issue directions to the respondent to pay compensation for harassment and mental agony suffered by the complainants to the extent of ₹5,00,000/-.
- vii. To issue directions to the respondent to pay the cost of litigation to the extent of ₹55,000/-.
- viii. To impose penalty upon the respondent as per the provisions of Section 60 of RERA Act for willful default committed by them.
- ix. To impose penalty upon the respondent as per the provisions of Section 61 of RERA Act for contravention of Sec. 12, Sec. 14, and Sec. 16 of RERA Act.
- x. To issue directions to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent's



company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Sec. 69 of RERA Act, 2016 to be read with Haryana RERA Rules, 2017.

- xi. To recommend criminal action against the respondents for the criminal offence of cheating, fraud and criminal breach of trust under section 420, 406 and 409 of the Indian Penal Code.
 - xii. Any other relief which this Hon'ble Authority deems fit and appropriate in view of the facts and circumstances of this complaint.
16. However, during the course of the proceedings, the complainant filed application on 07.05.2025 for **amendment of the relief clause** wherein following reliefs have been sought:
- i. To direct the respondent to pay interest as per Rule 15 and as per the provisions of Section 18 of the RERA Act, from the date of respective payments as complainant wish to withdraw her name from the project.
 - ii. To issue directions to the respondent to pay compensation for harassment and mental agony suffered by the complainants to the extent of ₹5,00,000/-.
 - iii. To issue directions to the respondent to pay the cost of litigation to the extent of ₹55,000/-.
 - iv. To impose penalty upon the respondent as per the provisions of Section 60 of RERA Act for willful default committed by them.



- v. To impose penalty upon the respondent as per the provisions of Section 61 of RERA Act for contravention of Sec. 12, Sec. 14, and Sec. 16 of RERA Act.
- vi. To issue directions to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent's company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Sec. 69 of RERA Act, 2016 to be read with Haryana RERA Rules, 2017.
- vii. To recommend criminal action against the respondents for the criminal offence of cheating, fraud and criminal breach of trust under section 420, 406 and 409 of the Indian Penal Code.
- viii. Any other relief which this Hon'ble Authority deems fit and appropriate in view of the facts and circumstances of this complaint.

D. REPLY ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 30.01.2026 pleading therein:

17. That at the very outset, it has been submitted that the present complaint filed by the complainant is not maintainable and is liable to be dismissed. That without prejudice to the above, it is submitted that the Statement of Objects and Reasons of the Real Estate (Regulation and Development) Act, 2016 clearly demonstrates that the Act has been enacted for effective consumer protection and not for protecting speculative investors. Since the


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RERA Act does not define the term “consumer”, the definition of consumer as provided under the Consumer Protection Act, 1986 must be relied upon. The complainant purchased the unit purely for investment and speculative gains, and therefore does not fall within the ambit of a “consumer”. On this ground alone, the complaint deserves dismissal.

18. That the complainant has not approached this Hon’ble Authority with clean hands. The complainant has deliberately concealed material facts and has suppressed the true and correct position regarding her own defaults. The complainant has failed to disclose that she was irregular and negligent in making timely payment of instalments and was a chronic defaulter under the agreed payment schedule.
19. That a bare perusal of the complaint reveals that the complainant has failed to establish any cause of action against the respondent. The complaint is based on bald and unsubstantiated allegations of delay in handing over possession, which are factually incorrect and legally untenable. That the allegations made by the complainant are false, baseless and mischievous. The complaint has been filed with an ulterior motive to wriggle out of the agreed contractual terms and conditions duly executed between the parties. There exists no cause of action in favour of the complainant to institute the present proceedings.
20. That without prejudice, it is submitted that there has been no delay attributable to the respondent in fulfilling its contractual obligations. Any



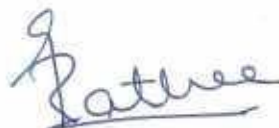
delay, if at all, occurred due to circumstances beyond the control of the respondent and falls squarely within the ambit of force majeure, including Covid-19 pandemic and nationwide lockdowns, prohibition and restrictions on construction activity in NCR due to pollution control measures and farmers' agitation leading to prolonged disruption of construction activities for more than 2 years.

21. That the complainant had booked a unit in the project of the respondent namely 'Water Side Floors', TDI Lake Grove City, Kundli, Sonipat.. Complainant was allotted unit no. WF-55/Duplex at a basic sale price of ₹67,99,999/- along with other charges.
22. That the respondent has made substantial investments for obtaining approvals, licences and for carrying out construction and development of the project despite facing multiple adversities. The respondent successfully completed the construction of the project and offered possession of the unit to the complainant on 05.07.2023 after receipt of occupation certificate dated 30.06.2023 (annexed as Annexure R-6) along with the Final Statement of Account. Copy of offer of possession letter dated 05.07.2023 along with postal receipt is annexed as Annexure R-1. Copy of Final Statement of Account dated 05.07.2023 is annexed as Annexure R-2.
23. That the complainant was not punctual in making payments and is liable to pay interest for delayed instalments. As on 22.01.2026, a sum of ₹20,24,609/- (excluding interest) remains outstanding. Copy of updated


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Statement of Account dated 22.01.2026 is annexed as Annexure R-3. Despite receipt of the offer of possession, the complainant failed to clear the outstanding dues and did not come forward to take possession of the unit.

24. That the respondent issued several demand notices and reminders to the complainant for payment of outstanding amount, but the complainant failed to comply. Copies of demand notices and reminders are annexed as Annexure R-5 (Colly).
25. That the respondent has rightly demanded the additional amount due to increase in super area and parking charges as per the terms of the Agreement. Request has been made to dismiss the complaint for above mentioned reasons.
26. The respondent has also filed reply on 20.04.2026 to the application filed by complainant for amendment in relief sought stating that the complainant had primarily sought the relief of issuance of offer of possession along with OC and interest for delay in handing over the possession or in alternate if respondent is unable to hand over effective possession of the unit, complainant be permitted to withdraw from the project and be granted relief of refund of the amount paid along with interest. Thereafter, Authority vide its order dated 21.04.2025 directed the complainant to clarify her relief as to whether she wants possession or refund of the paid amount. The complainant then filed an application seeking amendment of




relief and sought refund with interest. It has been submitted that respondent has obtained OC for the project on 30.06.2023, much prior to filing of present complaint i.e. 25.10.2024 and offer of possession has been made to the complainant vide letters dated 05.07.2023, 19.07.2023, 17.02.2024 and 13.06.2024. Further, Hon'ble Supreme Court of India in '*Ireo Grace Realtech Pvt. Ltd. vs Abhishek Khanna*' on 11 January 2021 has held that where occupation certificate has been issued and offer of possession has been made, the buyers are obligated to take the possession of the apartment. Further as per Section 19(10) of the RERA Act, 2016, it is the duty of the allottee to take possession of the unit within a period of two months from the date of issuance of OC. However, in the present complaint, in spite of taking possession on receiving valid offer of possession from the respondent, complainant filed the captioned complaint praying for refund of amount just to gain undue monetary advantage. It has been submitted that complainant is not entitled to claim relief of refund at this stage, rather it is the bounden duty of the complainant to take possession of the unit. It has been prayed that complainant be directed to seek possession of the unit and application for amendment of relief be dismissed.

E. WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENT

27. Learned counsel for the respondent filed written submissions in the matter on 20.04.2026 contesting the complaint on following grounds:



- i) **Concealment of material facts by the complainant** - It has been submitted that the complainant has approached the Authority with unclean hands and has deliberately concealed material facts. The complainant has intentionally suppressed the fact that the respondent company has already obtained the occupation certificate for the project on 30.06.2023 and has issued multiple valid offers of possession vide letters dated 05.07.2023, 19.07.2023, 17.02.2024 and 13.06.2024. Copies of the possession offer letters have been annexed as Annexure A-3 (Colly). Instead of accepting possession, the complainant has filed the present frivolous complaint with the sole intention of avoiding contractual obligations and gaining undue monetary advantage.
- ii) **Default in fulfilling its obligations on part of complainant** - It has been submitted that the complainant has consistently remained in breach of the builder buyer agreement by failing to adhere to the agreed payment plan. The respondent company issued several demand letters from time to time calling upon the complainant to clear the dues, copies of which are annexed as Annexure A-1 (Colly). However, the complainant failed to comply with the same and continued to remain in default. As per the final statement of account annexed as Annexure A-4, an amount of ₹27,57,335/- remains outstanding and payable by the complainant.



- iii) **Increase in area as per builder buyer agreement** - It has been submitted that during the course of construction, the area of the unit increased from 1850 sq. ft. to 2007.25 sq. ft. due to alterations in the layout plan which were expedient, necessary and directed by the competent authority, namely the Director, Town and Country Planning, Haryana. The said increase is well within 10% of the originally agreed area. As per the builder buyer agreement, particularly at page 8, paragraphs 5 and 6, any increase within permissible limits is payable at the basic sale rate.
- iv) **Charges for car parking and club membership** - It has been submitted that as per the builder buyer agreement, particularly at page 7, paragraph 3, club membership charges and all other charges for facilities provided uniformly to all residents are payable by the allottee and are over and above the basic sale price. The complainant had expressly agreed to the said terms at the time of execution of the agreement.
- v) **Delay due to force majeure events** - It has been submitted that any alleged delay in the completion of the project occurred due to force majeure circumstances beyond the control of the respondent company. It has been a continuous endeavor of the respondent company to complete the construction of the project in time and deliver the possession of the apartment to the consumers. As per



clause 28 of the builder buyer agreement, it has been clearly stated that on account of force majeure reasons which are beyond the control of respondent company, the respondent shall be entitled to extension of the time in completion of the project. During the construction of the project, several directions were issued by the Hon'ble Supreme Court and National Green Tribunal to stop construction activities in the NCR region due to rising pollution levels. Further, between March 2020 and November 2021, the COVID-19 pandemic resulted in nationwide lockdowns, labour migration, disruption of supply chains and stoppage of construction work due to orders issued by the Government of India and the Government of Haryana. In addition, from September 2020 to November 2021, the farmers' protest caused prolonged road blockages in and around the Sonipat region, severely affecting transportation of construction material and manpower. These circumstances were beyond the control of the respondent company and therefore the respondent is entitled to extension of time for handing over of the housing units in terms of Clause 28 of the builder buyer agreement.

- vi) **Breakup of pending amount of ₹27,57,335/-** - The respondent has submitted the breakup of outstanding amount of ₹27,57,335/- and has submitted that the tax charged on the unit comprises of Service



Tax applicable prior to July 2017 and GST applicable thereafter. The taxes were levied strictly as per law at the time of raising respective demands. As per the final statement of account annexed as Annexure A-4, an amount of ₹27,57,335/- remains due and payable by the complainant. The complainant is deliberately avoiding payment of legitimate dues and is therefore not entitled to any relief from this Hon'ble Authority.

F. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANT AND RESPONDENT

28. Learned counsel for the complainant reiterated the facts as were submitted in the complaint. He argued that the complainant has fulfilled all her contractual obligations by making timely payments as per the buyer's agreement. He argued that the respondent failed to deliver lawful and valid possession within the stipulated period and continued to raise arbitrary and inconsistent demands without obtaining the mandatory occupation certificate for a considerable period. He further argued that the offer of possession made on 07.02.2022 was not a valid offer of possession as it was made without obtaining occupation certificate. Further, the offer made on 19.07.2023 was also arbitrary as respondent demanded huge amount as outstanding dues. He argued that complainant has sent various emails to respondent to clarify the enhanced charges and provide certain documents and get the flat registered in her name or else refund the amount deposited

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by her with interest. But respondent failed to reply to any of the mails and therefore, complainant has filed present complaint seeking relief of refund along with interest from the Authority.

29. On the other hand, leaned counsel for the respondent argued that the complainant has not approached the Hon'ble Authority with clean hands and had not disclosed that the possession had already been offered to her vide letter dated 05.07.2023 but she had not come forward either to clear outstanding amount or to take possession of the unit in question. Rather she termed the demands as illegal. The respondent has already obtained the occupation certificate dated 30.06.2023, and therefore the project stands completed and the respondent remains ready and willing to hand over possession.

However, complainant is only interested in getting wrongful enrichment in the form of interest and is not interest in taking possession. Hence, she is liable for breach of provision of Section 19(6), 19(7) and 19(10) of the RERA Act, 2016 and is accordingly, liable to pay interest and holding charges for delay in making payments. It has been argued that since the project has been completed, granting the relief of refund would adversely affect the financial viability of the project and cause undue hardship to the respondent. Once a valid offer of possession has been made to the complainant, she cannot now withdraw from the project and claim refund of the amount deposited, since the entire amount stands vested in



the project. Request has been made that since the complainant has not approached the Authority with clean hands and concealed the important facts, present complaint needs to be dismissed with costs.

G. ISSUES FOR ADJUDICATION

30. Whether the complainant is entitled for refund of the amount paid by her along with interest in terms of Section 18 of RERA, Act of 2016?

H. FINDINGS ON THE OBJECTIONS RAISED BY RESPONDENT

a) Objection raised by the respondent that the complainant is not "consumer" but rather "investor" who purchased the unit for investment and speculative gains.

The respondent has taken a stand that the complainant is a speculative buyer who had invested in the project for monetary returns and taking undue advantage of RERA Act 2016 as a weapon during the present downside conditions of the real estate market and therefore not entitled to the protection of the Act of 2016. In this regard, Authority observes that "any aggrieved person" can file a complaint against a promoter if the promoter contravenes the provisions of the RERA Act, 2016 or the rules and regulations. In the present case, complainant is aggrieved person who have filed a complaint under section 31 of the RERA Act, 2016 against the promoters for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here it is

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important to emphasize upon the definition of the term allottee under the RERA Act 2016, reproduced below:-

"Section 2(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 builder buyer agreement dated 02.01.2014 it is clear that complainant is an allottee as Unit no. Wf-49/GF, admeasuring 1500 sq. ft. sq. ft. in the project known as "Water Side Floors" was allotted to her by the respondent promoter. The concept/definition of investor is not provided or referred to in RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there will be "promoter" and "allottee" and there cannot be a party having status of an investor. Further, the definition of "allottee" as provided under RERA Act, 2016 does not distinguish between an allottee/consumer 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**

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Sarvapriya Leasing (P) Ltd. and Anr. had also held that the concept of investors is not defined or referred to in the Act. Thus, the contention of the promoter that allottees being investor are not entitled to protection of this Act stands rejected.

b) Objection raised by the respondent that no cause of action exists in favour of the complainant to institute the present complaint.

In this regard it is observed that a cause of action arises the moment a legal right is violated and damages occur. It generally occurs when a person possessing a right recognized under law suffers damages due to breach of duty by the person who owes him a legal duty. In the present case, as per builder buyer agreement executed between the parties on 01.01.2014, respondent was under an obligation to hand over the possession of the unit within 30 months i.e by 01.07.2016. But he failed to do so. The moment there is a breach of duty on respondent's part to handover the possession within stipulated time as per the agreed terms, the cause of action arises in favour of the complainant and he is thus entitled to file complaint. Hence, the objection of the respondent that no cause of action exists in favour of the complainant stands rejected.

I. OBSERVATIONS OF THE AUTHORITY

31. Before going into the merits of the case, the Authority deems it appropriate to decide the application dated 07.05.2025 seeking amendment of the relief sought by the complainant. Perusal of record reveals that initially the



complainant had sought relief of possession along with interest and in case respondent is not able to give effective possession of the floor, complainant wishes to withdraw from the project. Thereafter, vide order dated 21.04.2025 Authority asked the complainant to clarify her relief as per Section 18 of the Act, 2016 as to whether she wants possession or refund of the paid amount. Resultantly application dated 07.05.2025 was filed by the complainant seeking amendment of the relief. Respondent has objected said application for the reason that OC has received on 30.06.2023 and offer of possession has been made on 05.07.2023, therefore complainant should be directed to take possession of the floor.

In this regard it is observed that it is the prerogative and unconditional right of the complainant to seek the relief he desires and he cannot be compelled to seek a relief which he does not want to. Whether or not he is entitled to that relief is an issue to be adjudicated at a later stage. Further, this amendment is a mere clarification of the relief sought, hence, respondent's objection not to allow the application and direct the complainant to seek possession is hereby declined and complainant's application dated 07.05.2025 is accordingly allowed.

32. Facts set out in the preceding paragraph demonstrate that the complainant booked a floor in the year 2013 and vide allotment letter dated 15.10.2013, floor No. WF-55/Duplex, admeasuring 1850 sq. ft. in the project namely "*Waterside Floors in Lake Grove City*", Kundli, Sonipat was allotted to



the complainant. Thereafter, a builder buyer agreement dated 01.01.2014 was executed between the parties for total sale consideration of ₹75,37,740/-. It is further evident from the record that against the said total sale consideration, the complainant has paid a total amount of ₹68,36,373/- (Appendix – DD).

33. It is an admitted fact that the floor in question was allotted to the complainant pursuant to the execution of the builder buyer agreement dated 01.01.2014, and as per Clause 28 thereof, the respondent was obligated to deliver possession within 30 months, i.e., on or before 01.07.2016. However, the respondent failed to honour its contractual obligation within the stipulated period. Respondent has attributed delay in delivery of possession to force majeure conditions on account of COVID outbreak, ban on construction activities in the NCR region, farmers protest causing prolonged road blockages etc.

As observed above, possession of the unit in question became due on 01.07.2016. It is a matter of fact that COVID-19 outbreak hit construction activities post 22nd March 2020 i.e nearly three years after the due date of possession. Authority observes that possession of the unit had already been delayed for a long period of time even before the COVID-19 halted construction. Respondent had failed to construct the project on time and deliver possession to the complainant. Further, reliance is placed on judgement passed by Hon'ble Delhi High Court in case titled as "M/s

Pattree

Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP

(1) (Comm.) No. 88/2020 and I.A.S 3696-3697/2020 dated 29.05.2020,

wherein Hon'ble High Court has observed that:

"69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March, 2020 in India. The contractor was in breach since September, 2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.

The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September, 2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself."

Therefore, as far as delay in delivery of possession of the unit in question is concerned, respondent cannot be allowed to claim benefit of COVID19 outbreak as a force majeure condition.

The Authority further observes that there has been a delay on the part of the respondent in completing the project and handing over possession of the unit to the complainant. The various reasons cited by the respondent such as ban on the construction activities within Delhi-NCR region expressing alarm on severe air pollution level, farmer's protest are not deemed convincing as all these incidents happen to occur after the due

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date of possession. The due date of possession as per the agreement was in the year 2016, which precedes the above said incidents. Thus, this contention of the respondents does not qualify for consideration under the force majeure clause, as the circumstances occurred after the contractual due date for possession. Therefore the respondent cannot be allowed to take advantage of the delay on their part by claiming the delay in statutory approvals/directions. So, the plea of respondent to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

34. Although the respondent issued an offer of possession vide letter dated 07.02.2022 with a demand of ₹20,67,505/-, the said offer was admittedly made without obtaining the occupation certificate, and therefore cannot be treated as a valid offer of possession in the eyes of law. It was only vide letter dated 05.07.2023, after obtaining the occupation certificate on 30.06.2023, that a legally valid offer of possession was made to the complainant. However, as per complainant said offer was not received by him instead he was offered possession vide letter dated 19.07.2023 along with final statement of account. Subsequently, vide emails dated 23.07.2023 and 31.07.2023, complainant requested the respondent to get the flat registered in her name and she would make the remaining payment related to stamp duty, registration charges and other expenses related to registration with balance amount as per approved area at the time of

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registration. Complainant also requested to provide certain documents to her and failing which the amount deposited by her be refunded with interest. No reply was given by respondent, hence aggrieved by the conduct of respondent, complainant filed the present complaint.

35. Complainant in her complaint is primarily seeking interest from the date of payment as she wishes to withdraw from the project. On the other hand respondent has averred that complainant was offered possession on 05.07.2023, however it is the complainant who has failed to accept the possession and make remaining payment and is therefore liable for breach of provision of Section 19(6), 19(7) and 19(10) of the RERA Act, 2016 and resultantly cannot seek relief under RERA. Authority observes that Sections 19(6), 19(7) and 19(10) impose obligations on the buyer to make timely payments and take possession when the promoter issues a notice of possession. In the present case, the complainant opted for construction linked plan and made maximum payment (more than 95%) till 2017. The remaining was to be made at the time of offer of possession which was due on 01.07.2016. However, the respondent did not complete the project as per agreed timelines and offer the possession on due date and hence post due date of possession complainant was not obligated to make further payments unless the possession of the unit was offered to him. Therefore, the respondents claim that the complainant is not entitled to relief under RERA is unsustainable.



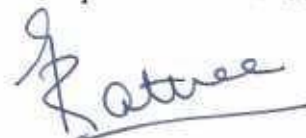
R. Ramesh

Under RERA Act, 2016 the promoter is responsible for completing the project on time and obtain all necessary approvals. In the present case, respondent had promised to deliver possession latest by 01.07.2016. This implies that the project should have been completed by that date, and the respondent should have applied for and obtained the Occupation Certificate (OC) from the competent authority to ensure timely possession. However, the respondent only received the Occupation Certificate on 30.06.2023. Although valid offer of possession was made to the complainant but same was made after a delay of approximately seven years from the due date of possession and it does not extinguish the statutory right of allottee to seek refund under Section 18(1) of the RERA Act once delay in handing over the possession beyond the stipulated period is established. The complainant, having made substantial and ultimately full payment towards the booked floor, filed the present complaint seeking refund along with interest on the ground that the respondent failed to make a timely and lawful offer of possession as per the terms of the buyer's agreement. The Authority finds merit in the contention that the complainant invested hard-earned money in the project with a legitimate expectation of timely delivery. However, the possession was offered after an inordinate delay of more than seven years, thereby giving rise to the present claim for refund and consequential reliefs.



36. When an allottee becomes a part of the project, it is with a hope that he will be able to enjoy the fruits of his hard earned money in terms of a safety and security of his own home. However, in this case due to peculiar circumstances complainant has not been able to enjoy the fruits of her investment capital as the possession of the floor in question is shrouded by a veil of uncertainty. Complainant had invested a huge amount of about ₹68,36,373/- with the respondent to gain possession of a residential floor. However respondent has miserably failed to offer possession of the unit within the timeline as agreed in the agreement.
37. Complainant is at liberty to exercise her rights to withdraw from the project on account of default on the part of respondent to deliver possession and seek refund of the paid amount. Section 18 (1) (a) of the Act confers unqualified right upon the allottee to withdraw from the project and demand refund along with interest. Even the 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(S). 6745 - 6749 OF 2021 has observed that in case of delay in granting possession as per agreement for sale, allottee has an unqualified right to seek refund of amount paid to the promoter along with interest. Para 25 of this judgement is reproduced below:

"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It



appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

However this valuable right to demand refund of amounts paid along with interest has to be exercised within a reasonable period of time by the complainant. Now the question arises is what shall constitute a reasonable time to exercise their right to seek refund and whether complainant may choose to exercise this right years after the time when the valid offer of possession is made to her. Here, harmonious interpretation of the right to seek refund under section 18(1) and the obligation of allottee to take physical possession under Section 19(10) within a period of two months of the offer of possession after grant of occupation certificate has to be made. When a valid offer of possession is made, then under Section 19(10) an allottee is obligated to accept the physical possession. However in case he does not wish to take the possession he should communicate his intention to withdraw to the respondent and demand refund of paid amount along with interest. In the present case, an offer of possession was made on

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05.07.2023 and 19.07.2023 and the complainant approached the Authority to seek the relief of refund under Section 18(1) in October 2024. However, after receipt of offer of possession, the complainant vide emails dated 23.07.2023 and 31.07.2023 annexed as Annexure C-8 (colly) expressed her desire to get the flat registered in her name subject to certain conditions and in case respondent fails to provide her the documents, the amount deposited by her be refunded with interest. This clearly shows her intention to withdraw from the project and same was communicated to the respondent within 2 months of the receipt of occupation certificate. Respondent has not placed on record any document to prove that any communication after said emails was made to complainant and documents asked for were provided to her. Admittedly, possession of the floor has not been handed over to the complainant till date.

38. So, the Authority finds it to be a fit case for allowing refund in favour of complainant. The complainant will be entitled to refund of the paid amount along with interest from the dates of various payments till actual realization of the amounts. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(z) of the Act which is as under:

“(z) "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". "

39. 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. 26.05.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.80%.
40. Hence, Authority directs respondents to pay refund to the complainant on account of failure in timely 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 10.80% (8.80% + 2.00%) from the date of various payments till actual realization of the amount.

41. Authority has got calculated the interest on the total paid amount from the date of respective payments till the date of this order i.e., 26.05.2026 at the rate of 10.80%. Complainant shall be entitled to further interest on the paid amount till realization beginning from 27.05.2026 at the rate of 10.80%.

The calculations of interest are depicted below in the table:

Sr. No.	Principal Amount (in ₹)	Date of payment (as per Annexure C-3)	Interest Accrued till 26.05.2026 (in ₹)
1.	8,00,000/- (4,00,000/- + 4,00,000/-)	08.05.2013	11,28,408/-
2.	6,02,100/- (1,12,100/- + 4,90,000/-)	06.06.2013	8,44,101/-
3.	6,13,022/- (1,10,000/- + 1,94,000/- + 1,77,500/- + 1,31,522/-)	29.08.2013	8,44,177/-
4.	87,915/-	11.09.2013	1,20,727/-
5.	2,63,810/-	28.11.2013	3,56,183/-
6.	7,01,020/- (2,83,000/- + 4,18,020/-)	05.02.2014	9,32,168/-
7.	7,01,020/- (4,11,720/- + 2,89,300/-)	16.04.2014	9,17,649/-

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8.	2,63,810/- (63,810/- + 2,00,000/-)	13.10.2014	3,31,282/-
9.	3,50,505/-	16.12.2014	4,33,512/-
10.	3,29,888/-	13.02.2015	4,02,254/-
11.	7,01,012/-	03.06.2015	8,31,973/-
12.	6,68,367/-	05.04.2016	7,32,516/-
13.	59,678/- (16,239/- + 13,600/- + 29,839/-)	21.04.2016	65,123/-
14.	6,94,226/-	04.03.2017	6,92,453/-
Total	₹68,36,373/-		₹86,32,526/-

42. The reliefs claimed by the complainant from (iv) to (vii) are neither part of the pleadings nor pressed upon by the complainant during hearing. Hence, no observation is being made in this regard.
43. Complainant is also seeking compensation of ₹5,00,000/- on account of harassment and mental agony caused to the complainant and litigation expenses to the tune of ₹55,000/-. In this regard 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 complaint in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses and compensation.

F. DIRECTIONS OF THE AUTHORITY

44. 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 refund the entire amount of ₹1,54,68,899/- (₹68,36,373/- Principal + ₹86,32,526/- interest calculated till date of order) to the complainant. Further, interest shall be paid till actual realization of the amount at the rate of 10.80%.
- ii. A period of 90 days is given to the respondents 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 to follow.



45. Hence, the complaint is accordingly **disposed of** in view of above terms.
File be consigned to the record room after uploading of the order on the website of the Authority.



.....
DR. GEETA RATHEE SINGH
[MEMBER]

