HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint No:	**2245 of 2023**
Date of Filing:	**16.10.2023**
Amended Complaint Filed on	**03.06.2024**
Date of First Hearing:	**29.11.2023**
Date of Decision:	**07.08.2026**

Nalini Tayal through Authorised Representative Mr. Ankur Singhal S/o Satish Singhal
R/o 28D, Kamla Nagar, New Delhi-110007.

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Ltd.
Mahindra Towers 2A, 2nd Floor,
Bhikaji Cama Place, New Delhi-110066.

....RESPONDENT(S)

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

Hearing: **11th**

Present: - Mr. Tarun A Talwar, Advocate, for the Complainant through VC.
Ms. Samriti, Advocate, Proxy for Mr. Shubhnit Hans, Advocate, for the Respondent.

ORDER:

The present complaint was filed by the complainant 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 present complaint was initially filed on 16.10.2023. Subsequently the complainant filed an amended complaint on 03.06.2024 which was allowed on 17.04.2026. The amended complaint has superseded the original pleadings. Accordingly, this order is passed on the basis of the amended complaint.

3. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	TDI City, Kundli , Sonipat
2.	RERA registered/not registered	Un-registered.
3.	Plot No.	K-403
4.	Plot Area	250 sq. yds. (209.03 sq. mtrs.)
5.	Date of Allotment	10.02.2006
6.	Date of Builder Buyer Agreement	Not Executed
7.	Due Date of Offer of Possession	Not Available

8.	Possession Clause	Not Available
9.	Total Sale Consideration	₹19,89,500/-
10.	Amount Paid by the Complainant	₹20,28,425/- As mentioned in pleadings
11.	Offer of Possession	NA

B. FACTS OF THE COMPLAINT:

4. Brief facts of the case are that in the year 2006, the complainant purchased Plot No.K-403 , TDI City, Kundli, Sonipat, Haryana from the previous allottee, Mrs. Shashi Sharma. The complainant has paid a total amount of ₹20,28,425/- towards the said plot against its total sale consideration of ₹19,89,500/-. Copies of the payment receipts and payment details are annexed as Annexure C-2. Despite receiving the payment, the respondent has failed to hand over the actual and physical possession of the plot.

5. The respondent issued an Allotment Letter dated 10.02.2006, confirming the allotment of Plot No. K-403 in favour of the complainant. However, despite the allotment, the respondent has failed to deliver actual and physical possession of the plot. The respondent has neither disclosed any valid reason for the delay nor taken any steps to fulfil its contractual obligations. The failure to hand over possession, coupled with the defective title of the plot, is illegal and amounts to deficiency in service and unfair trade practice. The Allotment Letter is annexed herewith as Annexure C-1.

6. The complainant repeatedly approached the respondent and requested delivery of physical possession of the plot. However, the respondent failed to respond or hand over possession despite repeated requests. The respondent's conduct clearly demonstrates negligence, deficiency in service and a deliberate failure to honour its contractual obligations. As a result, the complainant has suffered severe mental agony, financial loss and unnecessary hardship. Therefore, the complainant is legally entitled to seek possession of the plot along with interest for the delayed possession, compensation for mental agony and financial loss and all other reliefs available under the RE(RD) Act and other applicable laws.

C. RELIEF SOUGHT:

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

i. To direct the respondent to give possession of the mentioned plot along with interest as per RE(RD) Act and Rules;

ii. To direct the respondent to give cost of litigation of ₹1,50,000/-;

iii. To direct the respondent to give compensation of ₹20,00,000/- on account of mental agony and monetary loss suffered by the complainant;

iv. To pass such other orders as this RERA Authority may deem fit in the facts and circumstances of the case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT:

8. On receipt of notice of the complaint, the respondent has filed reply on 19.07.2024 and amended on 24.01.2025, which in brief stated that:

(i) The complainant has voluntarily invested in the project. At the outset, it is submitted that the learned Authority, vide order dated 22.07.2024, directed the respondent company to file an amended reply to the application filed by the complainant seeking amendment of the relief claimed in the complaint. It is submitted that the order dated 22.07.2024 records that the complainant had filed an application seeking amendment of the relief. However, no such application under any provision of law has been filed. Instead, the respondent company has received an amended complaint incorporating the amended reliefs and the present reply is being filed in response to the said amended complaint.

(ii) It is further submitted that the original complaint was filed seeking refund of the amount paid by the complainant towards the allotted plot. By way of the amended complaint, the complainant has changed the relief and now seeks possession of the allotted plot along with interest under the RE(RD) Act and Rules, litigation expenses of ₹1,50,000/-, and compensation of ₹20,00,000/- towards alleged mental agony and monetary loss. The amended complaint does not disclose the legal provision under which such amendment has been made.

(iii) It is further submitted that the respondent company had, vide letter dated 10.01.2019 informed the complainant that due to circumstances beyond its control, it was unable to offer the originally allotted unit. The respondent company, therefore, offered the complainant an alternative ready-to-move unit in the same project or adjustment of the deposited amount towards any other unit in its projects. The complainant did not avail either of these options. The said letter has already been placed on record as Annexure R-5 with the original reply. The respondent company has consistently maintained in its earlier reply that due to force majeure circumstances, it became impossible to hand over possession of the originally allotted unit to the complainant.

(iv) It is further submitted that no alternate plot or unallotted plot with a clear and marketable title is presently available with the respondent company. In these circumstances, refund of the amount deposited by the complainant remains the only feasible remedy and the same has already been communicated to the complainant.

(v) It is further submitted that despite the dispute with the landowners, the respondent company made sincere efforts to resolve the issue by holding meetings and requesting the landowners to permit completion of the project. When such efforts failed, the respondent company issued legal notices requesting the landowners to honour their obligations under the Collaboration Agreement dated 12.07.2005 and permit completion of the development work. Copies of the said legal notices are annexed as Annexure R-1 (Colly). In these circumstances, it would be unjust and impracticable to direct the respondent company to hand over possession of the plot when the land itself is not in its possession or control. Any such direction would impose an impossible obligation upon the respondent company and expose it to continuing liability despite circumstances beyond its control. In view of the above facts and circumstances, the amended complaint is not maintainable, discloses no valid cause of action against the respondent company and is liable to be dismissed.

(vi) It is further submitted that the complainant's claim for compensation falls within the exclusive jurisdiction of the learned Adjudicating Officer under the provisions of the *RE(RD) Act, 2016.* Accordingly, this learned Authority has no jurisdiction to adjudicate or award the compensation claimed in the amended complaint.

(vii) It was further submitted that part completion certificates for the township project measuring approximately 927 acres approx. were obtained on 23.01.2008, 18.11.2013 and 22.09.2017, copies of which are annexed as Annexure R-1, Annexure R-2 and Annexure R-3 with reply filed on 19.07.2024. The respondent submitted that the provisions of the RE(RD) Act cannot be applied retrospectively unless specifically provided by law. Since the Part Completion Certificate of the project was issued before the RE(RD) Act came into force, the complainant cannot seek adjudication of his grievances before this Authority under the Act. When the respondent company commenced the construction of the said project, the 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. Further it is stated that the agreement between the parties was executed prior to the commencement of the RE(RD) Act. Therefore, the Authority has no jurisdiction to adjudicate the matter. In support of its contention, a judgment, passed by Hon'ble Apex Court in the matter of "*Newtech Promoters and Developers Pvt Ltd. vs. State of UP and others in Civil Appeal No.6745-6749 of 2021* is referred to in which it was held that application of RE(RD) Act is retroactive in character. Thus, the present complaint is not maintainable and falls outside the purview of provisions of RE(RD) Act. It is further stated that there is no likelihood of possession being offered in the foreseeable future.

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E. WRITTEN SUBMISSIONS FILED BY THE RESPONDENT:

9. The respondent company, in its written submissions, has primarily contended that the amendment sought by the complainant is legally

impermissible as it fundamentally alters the nature and basis of the original complaint. It is submitted that the original complaint was filed seeking refund of the amount deposited, whereas the amended complaint seeks possession of the allotted plot along with interest and compensation, thereby substituting the principal relief and introducing an altogether different cause of action. According to the respondent, such an amendment is beyond the permissible scope of amendment of pleadings, causes serious prejudice to the respondent and defeats the object of summary proceedings. The respondent has further asserted that the project in question stood completed much prior to the coming into force of the *RE(RD) Act, 2016* and the requisite Occupation Certificates had already been obtained, thereby excluding the project from the applicability of the Act. It is also contended that the project is an unregistered, pre-RERA project and, therefore, falls outside the regulatory and adjudicatory jurisdiction of the Authority. In support of its submissions, reliance has been placed upon various judicial precedents, "*Suraj Prakash Bhasin vs Raj Rani Bhasin and Anr. Manu/SC/0045/1980 decided on 29.04.1980*", "*Revajeetu Builders and Developers vs Narayanaswamy and Sons and Others 2009 INSC 1179 decided on 09.10.2009*", "*Devinarayan Housing and Property Developers Pvt. Ltd. and Anr vs Manu Karan and Anr decided on 20.09.2023*" to contend that the provisions of the RE(RD) Act cannot be applied retrospectively to completed or unregistered projects. The respondent has additionally submitted that owing to circumstances beyond its control, it had already offered the complainant an alternative ready-to-move unit in the year 2019, but the complainant failed to accept the said offer despite being afforded sufficient opportunity. On these grounds, the respondent has prayed that the amendment application as well as the amended complaint are misconceived, not maintainable in law and liable to be dismissed with costs.

F. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANT AND RESPONDENT:

10. During oral arguments, learned counsel for the complainant as well the respondent has reiterated arguments as were submitted in the complaint, reply and written submissions.

G. ISSUES FOR ADJUDICATION

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

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

12. 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) The objection raised by the respondent company that the amendment sought by the complainant is legally impermissible as it changes the nature of the original complaint, substitutes the principal relief, and introduces a new cause of action, does not merit any further consideration. The said objection has already been specifically considered and adjudicated upon by this Authority via a detailed order dated 17.04.2026, whereby the application seeking amendment of the complaint was allowed after considering the rival submissions of both parties.

(ii) The respondent's contention that the project is excluded from RERA's regulatory scope because it was completed prior to the Act, remains unregistered, or represents a "pre-RERA" development is legally untenable and is hereby rejected. The regulatory and adjudicatory jurisdiction of the RERA Authority is not contingent upon whether a developer has chosen to register a project or obtain a formal license. As established by the Hon'ble High Court of Punjab and Haryana in ***M/S Ramprastha Developers Pvt Ltd And Ors v. State Of Haryana And Ors (CWP-24591-2024)***, the "nerve center" and gateway for invoking RERA's jurisdiction is Section 31 of the RE(RD) Act. Section 31 categorically bestows an absolute statutory right upon any aggrieved person to file a complaint for violations or contraventions against a promoter. The Court's observations hinged on the interpretation of key provisions of the RE(RD) Act, especially Sections 31 and 3. The Court held that Section 31 of RE(RD) Act provides a statutory right to any aggrieved person, including allottees, to file a complaint with the RERA Authority or the Adjudicating Officer for violations of the provisions of the Act or rules made under it. The Court further emphasized that the jurisdiction of the RERA authority is conferred by Section 31 and that the mere non-registration of a project or non-compliance with specific provisions of the Act does not preclude the filing of complaints. The Court further highlighted that the definition of "promoter" under Section 2(zk) is broad and includes developers, builders, contractors, and any person involved in the sale or development of real estate. *The Court also observed that an allottee's right to file a complaint exists even if the project is still in the development stage or has not yet been registered with RERA*. The High Court rejected the Petitioner's argument that RERA lacked jurisdiction over unregistered projects, holding that the Act's primary objective is to protect consumers and regulate real estate transactions. If developers were allowed to evade scrutiny simply by not registering their projects, the very purpose of the legislation would be defeated. The Court explicitly ruled that a promoter's failure to cause an apposite project registration under Section 3 does not act as a statutory precursor to strip away consumer remedies or invalidate the authority's adjudicatory powers. A promoter cannot weaponize its own omission, non-compliance, or unregistered status to declare a RERA proceeding void or coram non judice. The remedial and consumer-centric framework of the Act ensures that any promoter who collects funds, books plots, or markets a real estate project remains fully answerable to the Authority under Section 31, irrespective of whether they have evaded formal registration obligations under Section 3. Consequently, the judicial precedents cited by the respondent regarding retrospective applicability do not dilute RERA's active jurisdiction to adjudicate valid disputes between an aggrieved allottee and a developer.

Further 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:-

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> *"52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term "converting and existing building or a part thereof into apartments" including*

every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.

53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."

(iii) The respondent in its reply has contended that the complainant is "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, complainant is an aggrieved person who has filed the present complaint under Section 31 of the RE(RD) Act, 2016 against the promoter for violation/contravention of the 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;*

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In view of the above-mentioned definition of "allottee" as well as upon careful perusal of the letter of allotment and statement of account, it is clear that the complainant is "allottee" as plot bearing no. K-403 in the Real Estate Project of the respondent namely, "TDI, City, Kundli", Sonipat which 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.

(iv) The respondent has also contended that substantial development of the project had already been completed and various Part Completion Certificates were issued by the competent authority on 23.01.2008, 18.11.2013 and 22.09.2017, and therefore the present dispute falls outside the jurisdiction of this Authority. The said contention is devoid of merit and cannot be accepted. Mere issuance of Part Completion Certificates in respect of certain portions of a licensed colony neither results in automatic exclusion of the project from the purview of the RE(RD) Act, 2016 nor absolves the respondent/promoter of its continuing statutory and contractual obligations towards the allottees. The Hon'ble Supreme Court in *M/s Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. & Ors.* has authoritatively held that the RE(RD) Act is retroactive in operation and applies to all ongoing projects in respect of which a Completion Certificate had not been issued on the date the Act came into force. The Court further held that the Act was enacted to regulate ongoing projects and protect the rights of allottees even where the underlying agreements are executed prior to coming into force of the RE(RD)Act.

In the present case, the respondent has relied only upon Part Completion Certificates issued for different portions of the licensed colony. A Part Completion Certificate is not synonymous with a final Completion Certificate of the entire real estate project contemplated under Section 3 of the Act. Consequently, such certificates cannot be construed as extinguishing the jurisdiction of this Authority or as conclusive proof that all statutory and contractual obligations owed to the allottees have been duly discharged. The Haryana Real Estate Appellate Tribunal in Appeal No. 102 of 2025 has also reiterated that projects supported merely by Part Completion Certificates continue to be treated as ongoing projects requiring compliance with the provisions of the Act and the promoter cannot avoid the jurisdiction of the Authority on that basis.

Accordingly, the respondent's objection regarding lack of jurisdiction solely on the ground that Part Completion Certificates were issued on 23.01.2008, 18.11.2013 and 22.09.2017 is rejected. The jurisdiction of this Authority is determined by the nature of the project and the continuing statutory obligations of the promoter under the RE(RD) Act, and not merely by the issuance of Part Completion Certificates for certain portions of the licensed colony.

It is further pertinent to note that although the respondent has placed reliance upon the Part Completion Certificates dated 23.01.2008, 18.11.2013 and 22.09.2017, it has failed to establish that the unit allotted to the complainant forms part of the area covered under any of the said Part Completion Certificates. No site plan, demarcation plan, completion plan or any other documentary evidence has been produced to correlate the complainant's unit with the portions allegedly covered by the aforesaid certificates. A mere reference to the issuance of Part Completion Certificates in respect of different portions of the licensed colony, without demonstrating that the subject unit is included therein, cannot be accepted as sufficient to oust the jurisdiction of this Authority or to conclude that the project, insofar as the complainant's unit is concerned, stood completed. The burden to establish such exclusion squarely lies upon the promoter and in the absence of any cogent material, the respondent's plea deserves to be rejected.

(v) It is further observed that the respondent has admitted that the possession of the originally allotted plot could not be offered to the complainant and the area in which the plot is situated is presently under dispute with local farmers, due to which there is no likelihood of possession being handed over in the foreseeable future. It is further observed that although the respondent has relied upon the offer letter dated 10.01.2019, no postal receipt, courier receipt, tracking report, or any other proof of dispatch and delivery has been placed on record to establish that the said offer was ever communicated to the complainant. The offer of an alternative plot made in the year 2019 also does not cure the continuing failure of the respondent to deliver possession of the originally allotted plot. Moreover, the respondent has not placed on record any material to show that a specific alternative plot, along with its particulars such as plot number, location, size and status of development, was actually offered to the complainant for consideration and acceptance. In the absence of any definite and concrete alternative allotment, the alleged offer cannot be treated as a valid substitute for the respondent's obligation to hand over possession of the allotted plot. Since the respondent itself acknowledges its inability to hand over possession due to ongoing disputes affecting the land, the cause of action continues to subsist. The respondent's inability to offer possession of the allotted plot for an indefinite period amounts to deficiency in service and failure to fulfil its obligations towards the complainants.

13. Upon consideration of the material facts available on record, it is observed that the respondent allotted Plot No. K-403 measuring 250 sq.

yards in its project "TDI City", Kundli, Sonipat and received almost the entire sale consideration from the complainant. Despite acceptance of substantial payments, the respondent neither executed the requisite Agreement for Sale nor delivered possession of the allotted plot within the period represented at the time of allotment. The record further reflects that the complainant has remained deprived of possession for an inordinate period despite having fulfilled their payment obligations. Such conduct prima facie indicates failure on the part of the respondent to discharge its contractual and statutory obligations towards the complainant and warrants appropriate relief in accordance with the provisions of the RE(RD) Act, 2016.

14. It is observed that the complainant as well respondent has not placed on record any document to substantiate the stipulated date of possession. The Authority observes that the booking for the plot in question was made in favour of the complainant on 10.02.2006. But Builder Buyer Agreement has not been executed till date and there is no clause pertaining to the deemed date of possession in the allotment letter/booking form. In absence of a specific clause for the deemed date of possession, it cannot rightly be ascertained as to when the possession of said plot was due to be given to the complainant. In ***Appeal No. 273 of 2019 titled as TDI Infrastructure Ltd Vs Manju Arya***, Hon'ble Appellate Tribunal has referred to the observation of Hon'ble Apex Court in "***2018 STPL 4215 SC titled as***

M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr."' in which it has been observed that period of three years is reasonable time for completion of construction work and delivery of possession. Accordingly, taking a period of three years from the date of allotment, as a reasonable time to complete development works in the project and to handover possession to the complainant, the deemed date of possession comes to 10.02.2009. In the present situation, the respondent failed to honour its contractual obligations without any reasonable justification.

15. The Authority has considered the submissions made by the respondent company regarding the offer of an alternative unit and the subsequent offer of possession. The respondent has stated that due to disputes with farmers relating to the project land, the project could not be completed within the stipulated period and, therefore, as a goodwill gesture, an alternative ready-to-move unit or adjustment in another project was offered to the complainant vide letter dated 10.01.2019 that too without delivery report as to whether it was delivered to the complainants or not. Mere offering of an alternative unit cannot absolve the respondent from its contractual and statutory obligations towards the complainants, particularly when there is nothing on record to show that the complainant accepted such alternative option. Therefore, the delay on the part of the respondent company stands established. Moreover, the dispute is between the respondent and landowners. No litigation or any other proceedings is

pending towards said dispute which operates as stay for the affected portion of land. It has not been established by the respondent that the valid offer of a booked plot is not possible due to some genuine reliable circumstances. 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. Unless the development of the project is carried out in the manner as promised to the allottees 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/her 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 Part Completion Certificate/Occupation Certificate to defeat the legitimate claim of the complainant for possession.

16. The complainant is insisting upon the possession of booked plot only as alternate plot is not available with the respondent. The respondent who is in receipt of a total amount of ₹20,28,425/- has not even made sincere efforts to provide at least a reasonable number of options of alternate plot to choose from. It is the respondent who has failed to develop the booked plot till date. However, no such circumstances have been specified in written statement/oral arguments which can be relied upon to convince the Authority that the physical possession of the booked plot is actually not possible. The law point is that facts not specifically pleaded are not considered and the

burden of proof lies on the party making the claim. Therefore, if a party fails to specify circumstances in its written statement or oral arguments that show physical possession of a booked plot is not possible, they cannot rely on those unspecified circumstances to convince the Authority that the possession is impossible. The party would need to provide specific facts and evidence to demonstrate this impossibility. For reference judgement dated 16.09.2025 passed by Hon'ble Bombay High Court in ***Criminal Revision Application No.108 Of 2023 titled as "Romell Housing Llp vs Sameer Salim Shaikh",*** is relied upon, in which it is held that "*In law, oral assertions without supporting physical acts cannot displace settled possession proved by continuous conduct.*"

17. The Authority observes that the respondent has severely misused its dominant position. Even today, the respondent is not able to offer valid possession to the complainant and has not even specified the valid reason/ground for not offering the possession of the booked plot. The complainant however is interested in getting the possession of the booked plot and does not wish to withdraw from the project. In these circumstances, the provisions of Section 18 of the Act, 2016, clearly come into play by virtue of which while exercising the option of taking possession of the plot the allottee can also demand delay interest along with monthly interest and the respondent is liable to pay the same for the entire period of delay caused

at the rates prescribed. For ready reference, the provisions of Section 18 is reproduced below:

Section 18 - Return of amount and compensation

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

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

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

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

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

18. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date of possession i.e.

10.02.2009 to the date on which a valid offer is to be sent to the complainant after obtaining occupation certificate/completion certificate.

19. 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;*

20. 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*

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State Bank of India may fix from time to time for lending to the general public".

21. 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. 07.08.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.80%.

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

Sr. No.	Principal Amount	From Deemed date of possession or date of payment whichever is later	Interest Accrued till 07.08.2026
1.	₹18,10,300/-	10.02.2009	₹34,21,735/-
2.	₹2,18,125/-	07.09.2010	₹3,75,242/-
	Total Delayed Interest		**₹37,96,977/-**
	Monthly interest		**₹18,606/-**

23. The complainant is also seeking legal expenses and compensation for mental agony. In this regard, it is observed that the Hon'ble Supreme Court of India, in ***Civil Appeal Nos. 6745–6749 of 2021, titled M/s Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh & Ors. (supra)***, has held that an allottee is entitled to claim compensation and litigation expenses under Sections 12, 14, 18 and 19 of the

RE(RD) Act, 2016. Such claims are required to be adjudicated by the Adjudicating Officer under Section 71 and the quantum of compensation and also the litigation expenses shall be determined by the Adjudicating Officer, having due regard to the factors specified under Section 72 of the Act. The Adjudicating Officer has exclusive jurisdiction to entertain and decide complaints relating to compensation and litigation expenses. Therefore, the complainant is advised to approach the learned Adjudicating Officer for seeking relief towards compensation and litigation expenses.

I. DIRECTIONS OF THE AUTHORITY

24. 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 respondent/promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to pay upfront delay interest of **₹37,96,977/-** to the complainant towards delay already caused in handing over the possession till the date of order and further monthly interest of **₹18,606/-** till the date of valid offer of possession after receipt of Occupation/Completion Certificate.

(ii) The complainant will remain liable to pay balance consideration amount, if any, to the respondent at the time when valid possession is offered to the complainant as per the agreed terms and conditions.

(iii) 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.

(iv) 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.

(v) The respondent shall not charge anything from the complainant which is not part of the agreed terms and conditions.

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

(CHANDER SHEKHAR)
MEMBER

07.08.2026
Narinder Kaur
(Law Associate)