



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint No:	1037 of 2025
Date of Filing:	01.08.2025
Date of First Hearing:	21.11.2025
Date of Decision:	18.09.2026

Anmol Kakar D/o Sh. Harish Kakar
412, Meera Bagh, Paschim Vihar,
Delhi-110087.

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Limited
Mahindra Tower, 2A, Bhikaji Kama Place,
2nd Floor, New Delhi-110066.

....RESPONDENT(S)

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

Hearing: **5th**

Present: - Ms. Neelam Singh, Advocate, for the Complainant
through VC.
Mr. Shubhnit Hans, Advocate with Ms. Samriti,
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 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 Tuscan City, Kundli, Sonipat
2.	RERA registered/not registered	Un-registered.
3.	Unit No.	NA
4.	Unit area	1434 sq. ft. (Approx.)
5.	Date of Allotment/Receipt	25.12.2011/17.01.2012
6.	Date of Builder Buyer Agreement	NA
7.	Due Date of Offer of Possession	NA
8.	Possession Clause	NA
9.	Total Sale Consideration	₹41,03,481/- mentioned by the respondent at Page no.14 of Reply

10.	Amount Paid by the Complainant	₹11,53,971/-
11.	Offer of Possession	NA

B. FACTS OF THE COMPLAINT:

3. Facts of the present complaint are that in December 2011, the complainant applied for allotment of a residential built-up floor measuring approximately 1434 sq. ft. in TDI Tuscan Floors, Kundli, Haryana. At the time of application, he paid an advance amount of ₹5,00,000/- to the respondent through Cheque No. 334234 dated 25.12.2011. Thereafter, on the demand of the respondent, the complainant made a further payment of ₹6,53,971/- through Cheque No. 334237 dated 27.02.2012, drawn on ICICI Bank, Paschim Vihar. The said amount was credited to the respondent's account on 01.03.2013. However, despite receiving the payment, the respondent did not issue any receipt to the complainant for the said amount.

4. After receiving the aforesaid payments, the respondent stopped sending further demand letters to the complainant. However, no independent floor/unit was allotted to him. The complainant approached the respondent several times and requested allotment of the floor, but instead of making the allotment, the respondent kept assuring him that the allotment would be made in the near future. Despite repeated assurances, the respondent failed to allot any independent floor/unit in favour of the complainant.

5. Since no unit was allotted even after the payments made by him, the complainant repeatedly requested the respondent to refund the amounts paid. However, the respondent failed to refund the money. Therefore, the complainant has approached this Authority seeking refund of the entire amount paid by him, along with applicable interest, in accordance with the provisions of the RE(RD) Act.

C. RELIEF SOUGHT:

6. The complainant in his complaint has sought following reliefs:
- i. To direct the respondent to refund the amount of ₹11,53,971/- along with interest in terms of Section 18(1)(b) of the Act;
 - ii. To direct the respondent to pay ₹1,00,000/-, as litigation expenses;
 - iii. Any other relief which this Authority deems appropriate.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT:

7. On receipt of notice of the complaint, the respondent has filed reply on 23.02.2026, which in brief states that due to the reputation and goodwill of the respondent company, the complainant voluntarily decided to invest in the project of the respondent company, namely "TDI Tuscan City", situated at Kundli, Sonapat, Haryana.

8. On 25.12.2011, the complainant applied for registration and allotment of a residential built-up duplex unit measuring 1434 sq. ft. in the said project, being developed by M/s TDI Infrastructure Ltd., for a total

basic sale consideration of ₹37,50,000/-. A copy of the registration form was annexed as Annexure R-1. On 13.02.2012, the respondent company issued a demand letter to the complainant, requiring payment of ₹6,53,971/- in accordance with the construction-linked/payment plan applicable to the said unit. A copy of the demand letter dated 13.02.2012 was annexed as Annexure R-2. Despite repeated reminders and demands issued by the respondent company from time to time, the complainant failed to make the payments as required under the payment plan and remained in default. As per the statement of account maintained by the respondent company, an amount of ₹11,813/- was outstanding and payable by the complainant as on 31.03.2014. However, the complainant failed to pay the said outstanding amount. A copy of the statement of account was annexed as Annexure R-3.

9. During the relevant period, certain force majeure circumstances arose due to a dispute between the landowners/farmers and the respondent company, resulting in serious issues regarding the title and ownership rights over the land on which the project was being developed. The complainant also did not approach the respondent company for issuance of the allotment letter or for further processing of the proposed allotment. The complainant did not make any communication or follow-up in this regard. This conduct shows that the complainant did not take any steps to pursue the proposed allotment. In view of the aforesaid circumstances, including the force

majeure conditions, the respondent company could not proceed with the allotment process or issue an allotment letter in favour of the complainant.

10. The respondent company had commenced the development/construction of the project before the enactment of the RE(RD) Act. Therefore, at the relevant time, the respondent company could not have contemplated any liability, violation or penalty under the provisions of the RE(RD) Act. The respondent submitted that the provisions of the RE(RD) Act cannot be applied retrospectively to acts or transactions which took place prior to its enactment. Giving retrospective effect to the provisions of the RE(RD) Act would cause undue hardship to the respondent company and adversely affect its financial position and the development and construction of the project. Retrospective application of the RE(RD) Act in the present case would be unjust, unwarranted and arbitrary. The provisions of the RE(RD) Act are required to be applied prospectively. Since the transactions in question relate to a period prior to the enactment of the RE(RD) Act, the present complaint does not fall within the purview of the Act and is therefore not maintainable.

11. Despite repeated reminders issued by the respondent company, the complainant failed to clear the outstanding dues of ₹11,813/-, as reflected in Annexure A-3. The complainant has, therefore, remained in default of his payment obligations.

12. The complaint does not state when the alleged cause of action arose, nor does it mention any specific date, event or circumstance giving rise to the grievance. It is submitted that a complaint must contain the material facts constituting the cause of action as well as the time when such cause of action arose. In the absence of these particulars, the complaint remains vague and incomplete and does not satisfy the basic requirements of pleadings. Therefore, the present complaint is liable to be dismissed as not maintainable under Order VII Rule 1 of CPC. It is further submitted that the complaint has been filed with the intention of seeking monetary benefits arising out of the complainant's own acts and omissions. The complainant had invested in the project with the intention of earning profits and speculative gains.

13. The present complaint is also liable to be dismissed on the ground of delay and laches, as the complainant remained inactive for several years and did not pursue his alleged rights within a reasonable period. No cause of action has arisen in favour of the complainant for filing the present complaint.

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**E. ARGUMENTS OF LEARNED COUNSEL FOR
COMPLAINANT AND RESPONDENT:**

14. During oral arguments, learned counsel for the complainant has argued that the complainant had paid a total amount of ₹11,53,971/- towards

the proposed allotment of a residential floor/unit, but despite receipt of the said amount, the respondent neither allotted the unit nor refunded the amount despite repeated requests. It was therefore submitted that the complainant is entitled to a refund of the amount paid along with applicable interest under the RE(RD) Act.

15. Learned counsel for the respondent submitted that the complainant had failed to make the payments as per the agreed payment plan and an amount of ₹11,813/- remained outstanding. It was further submitted that due to force majeure circumstances arising from disputes with the landowners, the respondent could not proceed with the allotment and the complainant also failed to pursue the allotment. The complaint was also opposed on the grounds of non-disclosure of cause of action and delay and laches and dismissal of the complaint was sought.

F. ISSUES FOR ADJUDICATION:

16. Whether the complainant is entitled to refund of amount deposited by him alongwith interest in terms of Section 18 of Act of 2016?

G. OBSERVATIONS AND DECISION OF THE AUTHORITY:

17. 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, Authority observes as follows:

- (i) With regard to the plea of the respondent that the provisions of the RE(RD) Act, 2016 are prospective in

operation and, therefore, are not applicable to the present case, the said contention is not tenable. The issue has already been settled by the Hon'ble Supreme Court in *Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. & Ors.*, Civil Appeal Nos. 6745-6749 of 2021, decided on 11.11.2021, wherein it was held that the RERA Act is retroactive in character and applies to ongoing projects where the completion certificate had not been issued. The Hon'ble Supreme Court clarified that completed projects or projects for which completion certificates had already been granted are outside the purview of the Act. Therefore, merely because the project or the transaction commenced prior to enactment of the RE(RD) Act does not, by itself, exclude an ongoing project from its applicability. Accordingly, the objection raised by the respondent regarding the prospective application of the Act is rejected, subject to the project being otherwise covered by the provisions of the Act. Relevant part of the judgment 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 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."

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(ii) The objection raised by the respondent that the complaint does not disclose any specific cause of action or the date of its accrual is not sustainable. The pleadings clearly disclose the grievance of the complainant that despite payment

of the requisite amounts, the respondent failed to allot the unit and also failed to refund the amount paid. Thus, the material facts giving rise to the cause of action have been sufficiently pleaded. The contention that the complaint is vague or liable to be dismissed under Order VII Rule 1 CPC is therefore rejected. The allegation that the complainant had invested merely for speculative gains is also unsupported by any material and in any event, does not defeat the complainant's substantive claim arising from non-allotment and non-refund. The Authority further 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;

In view of the above-mentioned definition of "allottee" as well as upon careful perusal of the receipt dated 17.01.2012, it is clear that the complainant is "allottee". 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 the allottee being investor is not entitled to protection of this Act also stands rejected.

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(iii) The objection raised by the respondent regarding delay and laches is not sustainable as the cause of action arose from the respondent's failure to allot the unit and/or refund the amount paid by the complainant. The respondent has merely contended that the complainant remained inactive for several years, but has not demonstrated how such alleged delay has extinguished the complainant's right to seek refund of the amount admittedly received by the respondent. The material grievance of the complainant is that despite having received the amounts towards the proposed allotment, the respondent neither allotted the unit nor refunded the amount. Thus, the failure of the respondent to allot the unit or refund the amount constitutes a continuing grievance and cannot be defeated merely on the ground of alleged inaction on the part of the complainant. Further, the respondent has not placed on record any document showing that the complainant had been informed of cancellation of the proposed allotment or that the amount paid by him had been duly refunded or adjusted. Therefore, the contention that no cause of action arose in favour of the complainant is contrary to the facts on record, as the cause of action arises from the respondent's failure to fulfil its obligation and to refund the amount received. Accordingly, the plea of delay and laches and

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the contention that no cause of action arose in favour of the complainant are rejected.

(iv) On consideration of the reply filed by the respondent, it is also evident that the complainant had initially applied for allotment of a residential built-up duplex unit measuring 1434 sq. ft. in the project "TDI Tuscan City" on 25.12.2011 for a basic sale consideration of ₹37,50,000/-. The respondent has relied upon the registration form, demand letter and statement of account to contend that the complainant failed to adhere to the payment schedule and an amount of ₹11,813/- remained outstanding as on 31.03.2014. However, the respondent's own stand indicates that the project was subsequently affected by disputes between the landowners/farmers and the respondent company concerning the title and ownership of the project land. Such circumstances, irrespective of the nomenclature of force majeure, are material for determining whether the respondent was in a position to proceed with the proposed allotment and fulfil its corresponding obligations. The mere assertion that the complainant did not approach the respondent for issuance of the allotment letter cannot, by itself, absolve the respondent of its obligations, particularly when the respondent itself states that

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owing to the prevailing circumstances, it could not proceed with the allotment process or issue the allotment letter.

It is also significant that the registration form and demand letter relied upon by the respondent establish that the complainant had expressed his intention to purchase the unit and had made payments pursuant to the demand raised by the respondent. Therefore, the subsequent absence of communication from the complainant has to be considered in the context of the respondent's failure to proceed with the allotment and the difficulties relating to the title of the project land. The respondent cannot simultaneously rely upon the alleged default of the complainant and the force majeure circumstances to defeat the complainant's claim without establishing that the respondent was itself ready and legally competent to perform its obligations under the transaction.

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Accordingly, the defence raised by the respondent regarding the complainant's alleged default and the force majeure circumstances requires examination in the light of the actual payments made by the complainant, the terms of the registration/payment plan, the nature and duration of the land dispute and the respondent's conduct during the relevant period.

Mere production of a statement of account showing a small outstanding amount of ₹11,813/- does not, by itself, establish that the complainant was solely responsible for the failure of the transaction, particularly in the absence of an allotment letter and when the respondent admits that the allotment could not be processed on account of circumstances concerning the project land.

18. Having heard learned counsel for both the parties and having perused the record, this Authority is of the considered view that the complainant cannot be made to wait indefinitely for possession/allotment of the unit/flat, particularly where the respondent itself has failed to establish that the project is free from title disputes and litigation and has failed to demonstrate a definite timeline for completion and handing over of possession. The plea of force majeure raised by the respondent is not substantiated by any order of a competent court/authority restraining development of the project nor has it been shown that the alleged dispute continues to subsist as on date. Mere allegation of force majeure, unsupported by cogent evidence, cannot be permitted to defeat the statutory right of the allottee/complainant indefinitely. 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

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their written statement or oral arguments that show physical possession of a booked floor/unit/flat is not possible, they cannot rely on those unspecified circumstances to convince the Authority that possession is impossible. The party would need to provide specific facts and evidence to demonstrate this impossibility. In *Energy Watchdog v. CERC*, (2017) 14 SCC 80, the Hon'ble Supreme Court held that a party cannot avoid contractual obligations unless the event clearly falls within force majeure and makes performance impossible, which must be strictly proved by evidence.

19. Further, 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. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

“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."

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.

20. In view of the above and in the facts and circumstances of the case, this Authority is of the considered opinion that the complainant is entitled to seek withdrawal from the project and refund of the amount paid by him, along with interest, in terms of Section 18 of the RE(RD) Act, 2016, which entitles an allottee to claim refund of the amount paid, with interest, where the promoter fails to complete or is unable to give possession of the unit in accordance with the terms of the agreement/allotment. Accordingly, the complaint is allowed.

21. 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;

22. 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".

23. 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. 18.09.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.80%.

24. Thus, the respondent company will be liable to pay the complainant interest from the dates when the amounts were paid till the actual realization of the amount. Authority directs the respondent no.1

company to refund the paid amount of ₹11,53,971/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, i.e., at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.80% (8.80% + 2.00%) from the date amounts were paid till the actual realization of the amount to the complainant. Authority has got calculated the total amount along with interest calculated at the rate of 10.80% till the date of this order, total amount works out to ₹29,75,668/- as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 18.09.2026
1.	₹5,00,000/-	17.01.2012	₹7,92,838/-
2.	₹6,53,971/-	28.02.2012	₹10,28,859/-
	Total=₹11,53,971/-		Total= ₹18,21,697/-
	Total Payable to complainant	₹11,53,971/- +₹18,21,697/- = ₹29,75,668/-	

25. Regarding relief of litigation expenses, 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 and litigation charges under Sections 12, 14, 18 and Section 19 of the RE(RD) Act, 2016 which is to be decided by the learned Adjudicating Officer as per Section 71 and the quantum of compensation and litigation expenses shall be adjudged by the learned Adjudicating Officer having due regard to the

factors mentioned in Section 72. The Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses. Therefore, the complainant is free to approach the Adjudicating Officer for seeking the relief of compensation and other expenses.

H. DIRECTIONS OF THE AUTHORITY

26. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the RE(RD) 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 paid amount of ₹11,53,971/- along with interest of ₹18,21,697/- (totaling to ₹29,75,668/-) to the complainant. It is further clarified that the respondent will remain liable to pay interest to the complainant till the actual realization of the amount.

(ii) A period of 90 days is given to the respondent company to comply with the directions given by this Authority in this order as provided in Rule 16 of Haryana Real Estate (Regulation and Development) Rules, 2017 failing which, legal consequences would follow.

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


(CHANDER SHEKHAR)
MEMBER

18.09.2026
Narinder Kaur
(Law Associate)

