BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.517 of 2019
Date of Decision: 15.05.2020

M/s Experion Developers Pvt. Ltd., Plot No.18, Second Floor, Institutional Area, Sector-32, Gurugram-122001, Phone: 0124-6281630, Fax: 0124-6281681

Appellant

Versus

1. Sumeet Deendayal Yadav s/o Shri Deen Dayal Yadav, Resident of Flat No.4P-804, AWHO Township, Sector CHI-1, Greater Noida-201310.
2. Priyanka Yadav w/o Shri Sumeet Deendayal Yadav, Resident of Flat No.4P-804, AWHO Township, Sector CHI-1, Greater Noida-201310.

(M.No.9822778118, Email ID: sumeet1710@gmail.com)

Respondents

CORAM:

Justice Darshan Singh (Retd.) Chairman
Shri Inderjeet Mehta Member (Judicial)
Shri Anil Kumar Gupta Member (Technical)

Argued by: Shri Puneet Kansal, Advocate, learned counsel for the appellant.
Col. Sudesh Prakash Yadav, Authorised Representative of the respondents.

ORDER:

JUSTICE DARSHAN SINGH (Retd.) CHAIRMAN:

The present appeal has been preferred under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') against the order dated 16.05.2019 passed by learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority).

2. The respondents filed the complaint dated 15.02.2019 under Section 31 of the Act read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter called 'the Rules') before the learned Authority.

3. The allegations in nutshell in the complaint filed by the respondents can be summed up as under:

The parents of the respondents/complainants booked the disputed apartment with the appellant/promoter on 21.11.2012 by making payment of Rs.7.00 lacs as booking amount. The flat/unit No. D2-0803 located on 8th floor in Tower D2 having super area of 2631 Sq. ft. in the project 'The Heartsong' Group Housing Colony, Sector-108, Gurugram was allotted. The 'Apartment Buyer Agreement' (hereinafter called 'the Agreement') was executed on 19.04.2013. The apartment/flat was subsequently transferred to the respondents/allottees on 23.10.2013. The appellant had assured to hand over the possession of the flat within 36 months from the date of signing the agreement with additional grace period of 180 days. So, the possession of the flat was to be handed over by 16.10.2016. However, the construction of Block-D of the project was intentionally delayed because this block contained large sized apartments and less than 25% of this apartment were sold. The appellant received the Occupation Certificate for Block-D only on 04.05.2018 and offered the possession on 04.06.2018. While offering the

possession, the appellant did not provide delayed interest as per the current guidelines of the Act but gave compensation @ Rs.7.50 per sq. ft as per para No.13.1 of the Agreement, which amounted only 1.4% simple interest, whereas, the appellant has charged interest @ 18% on the delayed payments. Hence, the delayed possession interest provided by the appellant was grossly unfair and in contravention of the provisions of the Act.

4. It is further pleaded that a detailed letter dated 26.06.2018 was written by the respondents to the appellant highlighting large number of unethical actions of the appellant. Large number of emails were also sent by the respondents demanding delayed possession interest as per the provisions of the Act and requesting the appellant to behave in ethical and transparent manner.

5. It is further pleaded that the respondents are working in Pune since 2014. So, due to their time and location, the respondents/allottees were constrained to take possession of their apartment before entering into any litigation despite the fact that the project was still not complete in all respects. They have cleared all the dues of the appellant and got the Conveyance-deed executed and registered on 06.11.2018 and thereafter physical possession of the apartment was handed over to the respondents on 01.12.2018 after rectifying the defects. The respondents/allottees have also narrated large number of

unethical actions in the complaint and finally they claimed the refund of a sum of Rs.23,08,895/- towards paid interest and a refund of Rs.1,76,439/- towards excess GST which was paid due to delayed possession by the appellant.

6. The appellant/promoter contested the complaint on the grounds inter alia that the complaint is an afterthought. The respondents had taken the possession of the apartment on 06.11.2018 and accepted the compensation given by the appellant as per the agreed terms of the Agreement. The appellant had adjusted the delayed compensation amounting to Rs.3,28,875/- as per the agreed terms of the Agreement which was accepted by the respondents and after accepting the same, they also agreed to execute the Conveyance-deed and obtained the possession of the apartment in question. It is further pleaded that after accepting compensation for delay, as per the terms of the Agreement, the respondents cannot take U-turn and demand more money through Court of Law and cannot challenge the same before the learned Authority to give undue profit at the cost of the appellant without having any cause for the same. The possession was offered much prior to the date specified for completion of the project under the Act and Rules. It is further pleaded that the appellant is not liable to pay delayed compensation as per Section 18 read with Section 19 of the Act and Rule 15 of the Rules, as the respondents will be liable to pay the same after the expiry of extended date for

completion of the project. With these pleas the appellant/promoter pleaded for dismissal of the complaint.

7. On appreciating the pleas raised by the parties/learned counsel and the material placed on the record, the learned Authority disposed of the complaint filed by the respondents/allottees with the following directions: -

> "i) The respondent is directed to pay delayed possession charges to the complainants at prescribed rate of interest i.e. 10.65% per annum w.e.f. 19.10.2016 to 04.05.2018 as per the provisions of section 18(1) of the Real Estate (Regulation & Development) Act, 2016.
> ii) The respondent has issued a letter of delivery of possession dated 04.05.2018 and also pay an amount of Rs.3,28,875/- for the delayed possession charges.
> iii) The respondent is entitled to deduct the amount of delayed possession charges already given to the complainant from the amount awarded to him."

8. Aggrieved with the aforesaid order dated 16.05.2019, the present appeal has been preferred.

9. We have heard Shri Puneet Kansal, Advocate, learned counsel for the appellant, Col. Sudesh Prakash Yadav, learned authorised representative of the respondents and have carefully gone through the record of the case.

10. Initiating the arguments, learned counsel for the appellant contended that the respondents/allottees have sought the refund of the amount, so the learned Authority had

no jurisdiction to entertain the complaint as the claim sought was within the sole purview of the Adjudicating Officer.

11. He further contended that the provisions of Section 18 are praesenti (in the present) in nature and are not operative for the past concluded contract. He contended that the respondents have taken over the possession of the unit. Even the conveyance-deed was executed on 06.11.2018 much prior to the filing of the complaint. Thus, he contended that the provisions of Section 18 of the Act to claim the interest for delayed possession as per Rule 15 of the Rules are not applicable.

12. He contended that as per proviso to Section 18(1) of the Act, the withdrawal is only possible before the taking over of possession. He further contended that the respondents are also estopped to file the complaint by the principle of election. Once they have elected to accept the compensation for delayed possession as per the terms of the agreement, they cannot be allowed to approbate and reprobate. He contended that the respondents/allottees had elected to accept the compensation for delayed possession as per the terms and conditions of the agreement and a sum of Rs.3,28,875/- was adjusted towards the amount recoverable from them. After availing the said concession or the benefit under the agreement, now they are estopped to claim the interest for delayed possession as per the provisions of the Act and the rules framed thereunder as the contract was already

concluded with the execution of the Conveyance-deed and delivery of possession. Even the complaint was filed three months thereafter. The respondents had elected to accept the benefit as per the provisions of the agreement and now they cannot claim delayed interest as per Act and rules framed thereunder. To support his contentions, he relied upon the following authoritative pronouncements: -

(1) R.N. GOSAIN Versus YASHPAL DHIR
(1992) 4 Supreme Court Cases 683

(2) PUNJAB & SIND BANK AND ANOTHER Versus S. RANVEER SINGH BAWA AND ANOTHER,
(2004) 4 Supreme Court Cases 484

(3) NATIONAL INSURANCE CO. LTD. Versus MASTAN AND ANOTHER, (2006)2 Supreme Court Cases 641

(4) Vipin Kumar Vs. State of U.P., 2018(11) ADJ 511 (Allahabad)

(5) S. Nehru Vs. Sriram City Union Finance Limited Original Side Appeal Sr.Nos.74164, 74166, 74162 of 2019, C.M.P. Nos. 14824, 14825 and 14829 of 2019, Decided on 04.09.2019 (Madras)

13. Thus, he contended that the learned Authority had fallen into an error in awarding the interest for delayed possession to the respondents/allottees at the rate prescribed in the rules for which they were not entitled and the impugned order is violative of the settled principle of law.

14. To counter the aforesaid contentions, Col. Sudesh Prakash Yadav, the learned Authorised Representative of the respondents contended that the respondents have only sought the interest for delayed possession which is evident

from the application filed by respondents for the amendment of the complaint. As they only claimed interest for delayed possession thus, the learned Authority has complete jurisdiction to entertain and adjudicate the complaint.

15. He further contended that it is clear from the proviso to Section 18(1) that where the promoter fails to complete or is unable to give possession of the apartment as per the terms of the agreement and the allottee does not intend to withdraw from the project, is entitled for interest for every month of delay at the prescribed rate. He contended that the right of the allottee had accrued once the promoter fails to deliver the possession as per the terms of the agreement. Mere with the delivery of possession and execution of the conveyance-deed, this right is not extinguished.

16. He further contended that the principle of election is not applicable in this case. The notice for offer of possession was issued on 04.05.2018 alongwith the statement of account. The respondents/allottees have sent the emails dated 22.05.2018, 17.06.2018 and 26.06.2018 making it clear that they are entitled for interest for delay in delivery of possession as per the provisions of the Act and Rules made thereunder. So, it cannot be stated that the respondents/allottees have waived their right to claim the interest as per the provisions of the Act/Rules or they have elected to be satisfied with the delayed compensation offered

by the appellant/promoter. The respondents have reserved their right to claim the interest for delayed possession as per the provisions of the Act and the rules made thereunder. He contended that the learned Authority has rightly awarded the interest at the prescribed rate for the period of delay.

17. We have duly considered the aforesaid contentions. In the relief clause in the complaint filed by the respondents/allottees, it is mentioned that the appellant/promoter be directed to refund a sum of Rs.23,08,895/- towards delayed possession interest as per calculation shown in Annexure C-6. But it is evident from para no.24 of the impugned order that during the pendency of the complaint before the learned Authority, the respondents/allottees had moved an application wherein they stated that they mistakenly asked for the refund of Rs.23,08,895/- as they wanted delayed interest for the same amount. With the moving of that application, the respondents/allottees have made the position clear that 'refund' in the relief clause in the complaint was mentioned mistakenly. In fact, the respondents/allottees had only sought the interest for delay in delivery of possession. Thus, no refund in this case was sought by the respondents/allottees. Moreover, the question of seeking the refund does not arise as even before the institution of the complaint, the respondents/allottees have already received the possession of the unit and also got executed the

conveyance-deed on 06.11.2018. So, the complaint filed by the respondents/allottees is for grant of interest simplicitor for delay in the delivery of possession for which the learned Authority had complete jurisdiction.

18. Learned counsel for the appellant had vehemently contended that the provisions of Section 18 of the Act are praesenti (in the present) in nature and will not be operative for the past concluded contract. He contended that once the possession of the unit has been delivered and conveyance-deed has been executed prior to filing of the complaint, the respondents/allottees could not have claimed the interest for delayed possession under Section 18 of the Act read with rule 15 of the Rules.

19. Section 18(1) of the Act reads as under: -

> ***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.*

20. As per the opening sentence of Section 18(1) of the Act, if the promoter fails to complete or is unable to give possession of apartment, plot or building in accordance with the terms of the agreement for sale, then the allottee will have two options. First option available to the allottee is that he may choose to withdraw from the project and demand the return of the money deposited by him with interest at such rate as may be prescribed including the compensation. The second option available to the allottee is that if he does not intend to withdraw from the project, then he will be entitled to claim interest for every month of delay till the handing over of the possession at such rate as may be prescribed from the promoter. When the opening sentence of Section 18(1) of the Act is read in conjunction with Clause(a) and proviso to Section 18(1), the position becomes clear that in case the promoter fails to deliver the possession in accordance with the terms and conditions of the agreement for sale or duly completed by the dates specified therein and the allottee does not intend to withdraw from the project, he can claim the interest for every month of delay at the prescribed rate from the promoter. In the instant case, the respondents/allottees are invoking the proviso to Section 18(1) of the Act to claim the interest as the appellant/promoter had failed to deliver

the possession as per the terms and conditions of the agreement to sell dated 19.04.2013. As per the buyer's agreement dated 19.04.2013, the deemed date of possession comes to 19.10.2016 i.e. 36 months plus 180 days as grace period from the date of execution of the agreement. But the possession has been offered by the appellant/promoter on 04.05.2018 on receiving the Occupation Certificate on 02.05.2018. So, the delay in delivery of possession has occurred w.e.f. 19.10.2016 to 04.05.2018. Thus, the moment the date of handing over the possession as per the agreement is over the statutory right to claim the interest for delay of every month had accrued to the respondents/allottees as per Section 18 of the Act. The cause of action to claim the interest for delay had occurred to the respondents/allottees with the delay or the failure of the appellant/promoter to deliver the possession as per the terms and conditions of the buyer's agreement dated 19.04.2013. The subsequent handing over of the possession will not extinguish the right of the respondents/allottees to exercise their statutory right to claim the interest for delayed possession.

21. There is no dispute that the opening sentence of Section 18(1) of the Act, which provides that if the promoter fails or is unable to give possession of an apartment, plot or building, is in the "Present Tense". But the opening lines of Section 18(1) of the Act are to be read in conjunction with Clause (a) and the proviso which furnishes a cause of action

to the allottee to claim the interest for delayed possession if the promoter fails to deliver the possession as per the terms of the agreement. The main object of the Act, besides the other objects, is to protect the interest of customers in the real estate sector. It is the accepted principle of interpretation to interpret the provisions in such a manner that it will help in achieving the object of the Act as well as the intention of the Legislature in enacting that provision. The interpretation which renders the provision redundant or superfluous should always be avoided. Reference can made to case **Nathi Devi Vs. Radha Devi Gupta AIR 2005 SC 648**. If the interpretation projected by the learned counsel for the appellant is accepted, then the very objects of the Act shall be frustrated and the provisions of the proviso to Section 18(1) of the Act shall be rendered redundant in respect of the cases where the possession has been delivered to the allottee with delay, that can never be the intention of the Legislature. So, mere "Present Tense" used in the opening sentence of Section 18(1) of the Act is no ground to conclude that Section 18 of the Act is only praesenti in nature and will have no application if the possession is delivered as the cause of action to claim interest for delay in delivery of possession had already accrued to the allottee, once the promoter failed to deliver the possession as per the terms of the agreement for sale which cannot be defeated or got extinguished with the subsequent

delivery of possession. So, there is no ground to decline the claim of the respondents/allottees on this ground.

22. Learned counsel for the appellant contended with much force at his command that the claim of the appellant is barred by doctrine of election as the respondents/allottees has accepted the compensation of Rs.3,28,875/- towards delayed possession. Credit of said amount was given in the 'Statement of Accounts' at the time of offer of possession. The said amount was accepted by the respondents/allottees. They received the possession and also got executed the conveyance-deed.

23. We have duly considered the aforesaid contentions. The doctrine of election is the principle of equity and is based on the principle of estoppel. Where a person with clear intention and deliberately chooses one of the remedies, he cannot take the benefit of both the remedies. Meaning thereby, a person cannot approbate and reprobate in the same transaction.

24. The Hon'ble Apex Court in case **M/s Transcore Versus Union of India and Anr., AIR 2007 SC 712** had dealt with the doctrine of election and laid down as under: -

> *"In the light of the above discussion, we now examine the doctrine of election. There are three elements of election, namely, existence of two or more remedies; inconsistencies between such remedies and a choice of one of*

> *them. If any one of the three elements is not there, the doctrine will not apply. According to American Jurisprudence, 2d, Vol. 25, page 652, if in truth there is only one remedy, then the doctrine of election does not apply. In the present case, as stated above, the NPA Act is an additional remedy to the DRT Act. Together they constitute one remedy and, therefore, the doctrine of election does not apply. Even according to Snell's Equity (Thirty-first Edition, page 119), the doctrine of election of remedies is applicable only when there are two or more co-existent remedies available to the litigants at the time of election which are repugnant and inconsistent. In any event, there is no repugnancy nor inconsistency between the two remedies, therefore, the doctrine of election has no application.*

25. As per the aforesaid ratio of law laid down by the Hon'ble Apex Court, there must be following three elements for the application of doctrine of election: -

(i) existence of two or more remedies;

(ii) Inconsistencies between such remedies;

(iv) Choice of one of them.

It has been further laid down by the Hon'ble Apex Court that if any one of the three elements is missing, the doctrine will not apply.

26. In the instant case, the aforesaid elements are not attracted. Two or more remedies to the respondents/allottees for delay in delivery of possession were not in existence or

available. Only one remedy was available to them and that was to claim the interest/compensation for delay in the delivery of possession albeit there may be difference of the rate/amount as per the agreement for sale entered into between the parties and as per the provisions of the Act and the rules made thereunder.

27. There is also no inconsistency in the remedy available to the respondents/allottees. He has claimed the interest for delayed possession as per the provisions of Section 18(1) of the Act read with rule 15 of the Rules. Mere this fact that different rate of interest/compensation for delayed possession was provided in the agreement for sale does not constitute any inconsistency in the remedy available to the respondents. Thus, the elements for application of the doctrine of election enumerated by the Hon'ble Apex Court in **M/s Transcore Versus Union of India and Anr.** case (Supra) are completely missing in this case. Thus, it is difficult to apply the principle of doctrine of election in this case. Reference can also be made to case **National Insurance Co. Ltd. Versus Bakkiam 2018(1) R.C.R.(Civil) 44**.

28. The doctrine of election is applied to ensure equity. It must not be applied in such a manner, so as to violate the principle of, what is right and, of good conscience. The equity in this case is not in favour of the appellant/promoter. The appellant/promoter has assured the respondents to deliver the possession by 19.10.2016 but the same was actually

offered to the respondents on 04.05.2018. As per the agreement for sale dated 19.10.2013, in case of delay in making payment by the respondents/allottees, he was liable to pay the interest @ 18% per annum, whereas the respondents/allottees were entitled to the liquidated damages @ 7.50% per Sq. ft. of the sale area in case of delay in delivery of possession which comes to merely 1.35% per annum. Thus, the equity does not lie in favour of the appellant/promoter.

29. Taking the case from another angle, impliedly in the doctrine of election, is the doctrine of waiver. In order to apply the doctrine of waiver, there must be an intentional relinquishment of a known right or the voluntarily replenishment or abandonment of known existing legal right. The Hon'ble Apex Court in case **P. Dasa Muni Reddy Vs. P. Appa Rao, AIR 1974 SC 2089** laid down as under: -

> *"13. Abandonment of right is much more than mere waiver, acquies- cence or laches. The decision of the High Court in the present case is that the appellant has waived the right to evict the respondent. Waiver is an intentional relinquishment of a known right or advantage, benefit, claim or privilege which except for such waiver the party would have enjoyed. Waiver can also be a voluntary surrender of a right. The Doctrine of waiver has been applied in cases where landlords claimed forfeiture of lease or tenancy because of breach of some condition in the contract of tenancy. The doctrine which the courts of*

law will recognise is a rule of judicial policy that a person will not be allowed to take inconsistent positions to gain advantage through the aid of courts. Waiver sometimes partakes of the nature of an election. Waiver is consensual in nature. It implies a meeting of the minds. It is a matter of mutual intention. The doctrine does not depend on misrepresentation. Waiver actually requires two parties, one party waiving and another receiving the benefit of waiver. There can be waiver so intended by one party and so understood by the other. The essential element of waiver is that there must be a voluntary and intentional relinquishment of a right. The voluntary choice is the essence of waiver. There should exist an opportunity for choice between the relinquishment and an enforcement of the right in question. It cannot be held that there has been a waiver of valuable rights where the circumstances show that what was done was involuntary. There can be no waiver of a non-existent right. Similarly, one cannot waive that which is not one's as a right at the time of waiver. Some mistake or misapprehension as to some facts which constitute the underlying assumption without which parties would not have made the contract may be sufficient to justify the court in saying that there was no consent."

30. In the instant case, there is ample material on record to negate the intentional and voluntarily relinquishment or abandonment to claim the interest for delay in delivery of possession as per the statutory provisions of the Act and the rules made thereunder by the

respondents/allottees. The possession was offered by the appellant/promoter vide notice of offer of possession dated 04.05.2018. Alongwith that notice, the final statement of account was also communicated to the respondents/allottees. In response to the said notice of possession and final payment, the respondents/allottees had sent the email dated 22.05.2018 (available at page 169 of the paper-book) wherein it was mentioned as under: -

> *"a) Delayed Possession Penalty not calculated as per RERA: -*
>
> *(i) While your company has levied 18% interest for all delayed payments, the delayed possession penalty has been calculated at only Rs.7.5 per sq. ft. The D Block is registered.*
>
> *under Haryana RERA vide Regd.No.306 of 2017. Therefore, delayed possession penalty needs to be paid at 18% of our account balance with effect from 01 May 2017 since*
>
> *when RERA is applicable. Please also refer to Para 9.2 of Haryana RERA published on 28 June 2017 for further clarification in this matter."*

31. Then, there is email dated 17.06.2018 sent by the respondents to the appellant/promoter (available at page 172 of the paper-book) wherein it was mentioned as under: -

> *"Please note that we reserve our right to claim delayed possession penalty as per RERA laws till the date when your company confirms that the*

project is ACTUALLY ready for possession. Also, we will not take any liability to pay any holding charges since the project is actually not ready for possession."

32. Then, there is third email dated 26.06.2018 sent by the respondents to the appellant/promoter (available at page 162 of the paper-book). Para no.6 of the email reads as under:-

"6. Delayed completion penalty not calculated correctly or as per RERA

a) Your company has levied 18% interest in case any payment was delayed by buyers by even one day. Since the D Block is registered under Haryana RERA vide Registration Number 306 of 2017, delayed possession penalty needs to be paid to buyers as per HRERA and not as per the Buyers Agreement signed in April 2013. Please note that the delayed possession penalty calculated at Rs.7.5 per sq. ft. amounts to only around 1.5% simple interest on the amounts paid, which you will agree is too meagre and highly inequitable since we have been paying high interest of around 10% on our home loan during the delay period. Part V of Haryana RERA published on 28 June 2017 as well as Para 9.2 in Annexure A (Agreement for sale) clearly specifies that the delayed possession penalty will be paid at the rate of SBI MCLR plus 2% on the amount outstanding. Since RERA is effective from 01 May 2017, the delayed possession penalty should be calculated as per RERA from 01 May 2017.

b) Since your company has already taken advantage of the grace period of 6 months while

calculating the delayed possession period, the additional force majeure period of 60 days is not understood. However, in the interest of being flexible and reading an equitable settlement, we have decided not to contest this force majeure period of 60 days."

33. All these three emails have been sent by the respondents/allottees after receiving the notice of offer of possession and final statement of account. They have raised protest that the delayed possession penalty needs to be paid as per the provisions of the Act and not as per the terms and conditions of the agreement. In the email dated 17.06.2018, relevant portion reproduced above, the respondents/allottees have categorically mentioned that they reserve their right to claim delayed possession penalty as per RERA law till date. Thus, there is no question of any waiver or abandonment of the statutory rights by the respondents/allottees to claim the interest for delayed possession as per the provisions of the Act and the rules made thereunder.

34. It is an admitted fact that there was already delay of more than 1½ year in offering possession. The respondents/allottees were located outstation. They have already made the substantial payment. Moreover, if they would not have taken over the possession, they would have been further liable to pay the holding charges. So, due to these reasons, the respondents/allottees being under pressure might have received the possession of the unit and

got the conveyance-deed executed. But in view of the clear assertions by the respondents/allottees in the emails referred above, they have reserved their right to claim the delayed possession interest as per the provisions of the Act. Thus, it cannot be stated that the respondents have voluntarily and intentionally elected to have the compensation for delay as per the terms of the agreement. Consequently, the doctrine of election is not applicable to debar the respondents/allottees to claim the interest for delay in delivery of possession as per Section 18(1) read with rule 15 of the Rules.

35. Cases relied upon by the learned counsel for the respondents are quite distinguishable. In case **R.N. GOSAIN Versus YASHPAL DHIR, (Supra)** a tenant has given the undertaking before the High Court to hand over the vacant possession of the premises on the expiry of one month. He obtained the protection of that undertaking. The Hon'ble Apex Court held that later on the petitioner/tenant cannot be permitted to invoke the jurisdiction of the Hon'ble Apex Court under Article 136 of the Constitution and assail the judgment of the Hon'ble High Court.

36. In case **PUNJAB & SIND BANK AND ANOTHER Versus S. RANVEER SINGH BAWA AND ANOTHER, (Supra)** the respondent had opted for the voluntarily retirement scheme and also obtained the benefits thereof. He had utilised the payment made by the appellant/bank under VRS

scheme to discharge his obligations. The Hon'ble Apex Court held that later on he cannot withdraw his voluntarily retirement once he accepted the benefits.

37. In case **National Insurance Co. Ltd. Versus Mastan and another, (Supra)** the respondent had chosen the remedy to claim compensation under the provisions of the Workmen's Compensation Act, 1923. It was held that after availing that remedy, he cannot invoke the provisions of the Motor Vehicle Act, 1988.

38. In case **Vipin Kumar and 11 others Versus State of U.P. and 2 others, (Supra)** the petitioners had taken the benefit of transfer to their desired districts by giving the undertaking and having given up certain rights to seek benefits, the Hon'ble Allahabad High Court held that once the petitioners have given up certain rights to seek benefit, they cannot be permitted to turn around and regain the loss which they have voluntarily suffered in the process.

39. In case **S. Nehru Vs. Sriram City Union Finance Limited, (Supra)**, the matter was earlier disposed of on the basis of the agreement by the Hon'ble Single Judge. The original side appeal was filed to challenge the very same order passed on the basis of settlement. The Hon'ble Madras High Court by referring to the doctrine of approbate and reprobate, doctrine of election and doctrine of estoppel dismissed the

appeal. Thus, the facts of the cases referred above are of no help to the appellant.

40. No other point was raised before us.

41. Thus, keeping in view our aforesaid discussions, we do not find any illegality in the award of interest by the learned Authority in favour of the respondents for delay in delivery of possession as per the provisions of the Act and the rules made thereunder. Consequently, the present appeal is without any merits and the same is hereby dismissed.

42. The amount deposited by the appellant/promoter i.e. Rs.20,89,461/- with this Tribunal to comply with the provisions of Section 43(5) of the Act be remitted to the learned Haryana Real Estate Regulatory Authority, Gurugram for disbursement to the respondents/allottees after the expiry period of limitation to file appeal and in accordance with law.

43. The copy of this order be communicated to learned counsel for the parties/parties and the learned Authority for compliance.

44. File be consigned to the records.

Announced:
15th May, 2020

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

M/s Experion Developers Pvt. Ltd.
Vs.
Sumeet Deendayal Yadav and anr.
Appeal No.517 of 2019

Present: None

Ld. counsel for the appellant and the Authorized Representative of the Respondents were telephonically informed on 14.05.2020 that the judgement in this case shall be pronounced today. But none has come present, obviously due to the lockdown.

The judgement is pronounced.

The appeal preferred by the appellant stands dismissed. The amount of Rs.20,89,461/- deposited by the appellant with this Tribunal to comply with the provisions of Section 43(5) of the Act be remitted to the Ld. Haryana Real Estate Regulatory Authority, Gurugram for disbursement to the respondents/allottees after the expiry period of limitation to file appeal and in accordance with law.

The office is directed to convey the pronouncement to Ld. counsel for the appellant and the Authorized Representative of the respondents telephonically.

The copy of this order be communicated to Ld. counsel for the parties/parties and the Ld. Authority for compliance.

File be consigned to the records.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh
15.05.2020

Inderjeet Mehta
Member (Judicial)
15.05.2020

Anil Kumar Gupta
Member (Technical)
15.05.2020