



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## COMPLAINT NO. 625 OF 2021

Dheeraj Singh

....COMPLAINANTS(S)

VERSUS

Jindal Realty Pvt Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 09.08.2022**

**Hearing: 5<sup>th</sup>**

**Present:** Sh. Vishal Singhal, Counsel for the Complainant through VC.  
Sh. Drupad Sangwan, Counsel for the Respondent.

### **ORDER: (RAJAN GUPTA-CHAIRMAN)**

Captioned complaint was heard at length on 14.12.2021 detailed order was passed stating therein view of the Authority. Said order is reproduced below:-

1. The complainant's case is that he is a subsequent allottee in the respondent's project-Jindal Global City, Sonipat. He had purchased the flat from Mr. D.P.Garg on 10.12.2012. The flat buyer agreement was entered between the original allottee and respondent on 16.11.2010 for the plot bearing no. F-29 admeasuring super area of 239 sq. yds. In terms of clause 8(i) of it, the possession was supposed to be delivered by 16.05.2013. An amount of Rs 22,63,569/- stood paid upto 2012 against total sale price of Rs 23,96,263/-. Respondent had completed various amenities in the project in August 2019, and thereafter handed over possession of plot on 17.09.2019 after delay of 6 years approximately. Thereafter, conveyance deed was executed on 17.09.2019, but no interest on paid amount/ delay interest has been paid by respondent for the delay caused by him in handing over of possession. So, present complaint has been filed seeking delay interest on the amount paid from deemed date of possession till execution of conveyance deed.

2. Respondent in his reply has admitted the allotment of plot to original allottee and its endorsement in the name of complainant as effected on 10.12.2012. Further, it has been submitted that after completion of development works in the project, possession was offered to complainant on 09.11.2015 alongwith demand of Rs 3,29,322/-, copy of said offer is attached as Annexure OP-7. But complainant did not honor said demand for which various reminders were issued to him on 02.01.2016, 26.05.2016, 22.08.2017, but in vain. Thereafter the respondent as a gesture of goodwill waived off delayed interest amounting to Rs 1,54,104/- and holding charges Rs 3,44,636/-. In light of these events conveyance deed was executed between the parties on 17.09.2019. So, as a matter of fact possession was offered to complainant in year 2015 but complainant did not come forward to accept the same, accordingly delay of 6 years in execution of conveyance deed is solely due to default on part of complainant, therefore complainant is not entitled to relief claimed by him. Further, it has been stated that complainants after being fully satisfied with

possession had come forward and executed the conveyance deed on 07.09.2019. Thus, agreement between the parties has already been concluded and once an agreement is concluded no cause of action survives. Further, complainant has not alleged any coercion or unfair means of any kind used by respondent. Therefore, this complaint deserves to be dismissed.

3. Learned counsel for complainant referred to judgment dated 24.08.2020 passed by Hon'ble Supreme Court in Civil appeal no. 6239 of 019 titled Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Others vs. DLF Southern Homes Pvt. Ltd. wherein Hon'ble Court has ruled that it would be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance, to forsake the right to claim compensation. He further stated that in said case Hon'ble Supreme Court has held that flat purchasers will continue to have right to make claim for compensation for the delayed handing over of the flats even after execution of conveyance deeds. Learned counsel for the complainant argued that in light of said judgment respondent should be directed to pay to complainant interest for delay in handing over the possession.

4. In rebuttal, learned counsel for the respondent argued that conveyance deed had already been executed between the parties and now complainant has no locus standi to file present complaint for the reason that after handing over of possession and execution of conveyance deed, mutual obligations of both parties stood discharged. Further, he argued that judgment dated 24.08.2020 relied upon by learned counsel for complainant is distinguishable from facts and circumstances of present complaint. In said judgment there was element of coercion on the part of developer in getting the complainant to execute conveyance deed. However, in present complaint conveyance deeds was executed by free will of the complainant and except bald assertions, no document or any

material has been placed on record to question the circumstances leading to execution of conveyance deed. Therefore, he has prayed for dismissal of this complaint.

5. After hearing arguments of both parties and going through documents placed on record, Authority observes as under:

(i) Entire case of complainant rests upon judgment passed by Hon'ble Supreme Court of India in Civil Appeal No. 6239 of 2019 titled as Wg. Cdr. Arifur Rahman Khan & Ors. Vs. DLF Southern Homes Pvt. Ltd.

At this stage, it is necessary to cite relevant paragraphs of the said judgment of Hon'ble Supreme Court, as follows:-

“25. Numerous judgments of this Court have elaborated on the nature and extent of the jurisdiction of the consumer forum to **award just and reasonable compensation**. Since the decision of this Court in Lucknow Development Authority v. M K Gupta<sup>16</sup>, it has been a settled principle of law that the jurisdiction of the consumer forum extends to the **award of compensation** to alleviate the harassment and agony to a consumer. In Balbir Singh<sup>17</sup>, a two judge Bench of this Court, while explaining the ambit of the jurisdiction of the adjudicatory fora under the CP Act 1986 observed:

“6...**The word compensation is of a very wide connotation. It may constitute actual loss or expected loss and may extend to compensation for physical, mental or even emotional suffering, insult or injury or loss.** The provisions of the Consumer Protection Act enable a consumer to claim and empower the Commission to redress any injustice done.”  
(emphasis added)

26. The court observed that **the award of compensation has to be based on a finding of loss or injury and must correlate to it.** The court observed that no “hard and fast rule” could be prescribed:

“ No hard-and-fast rule can be laid down, however, a few examples would be where an allotment is made, price is received/paid but possession is not given within the period set out in the brochure. **The Commission/Forum would then need to determine the loss. Loss could be determined on basis of loss of rent which could have been earned if possession was given and the premises let out or if the consumer has had to stay in rented premises then on basis of rent actually paid by him. Along with recompensing the loss the Commission/Forum may also compensate for harassment/injury, both mental and physical.**”

**Where possession has been given, one of the circumstances which must be factored in is that the purchaser has been compensated by the increase in the value of the property.”**  
(emphasis added)

“...34. The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into a pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the **tenor of**

**the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their right to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their title to the flats for which they had paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who seeks to espouse a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position which the NCDRC has espoused. We cannot countenance that view. (emphasis added)**

35. The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeking a Deed of Conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition

for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation.

36. It has been urged by the learned counsel of the developer that a consequence of the execution of the Deed of Conveyance in the present case is that the same ceases to be a transaction in the nature of "supply of services" covered under the CP Act 1986 and becomes a mere sale of immovable property which is not amenable to the jurisdiction of Consumer Fora. In *Narne Construction (P) Ltd. v. Union of India*<sup>21</sup>, this Court distinguished between a simple transfer of a piece of immovable property and housing construction or building activity carried out by a private or statutory body falling in the category of „service“ within the meaning of Section 2 (1) (o) of the CP Act 1986. This Court held that:

“8. Having regard to the nature of transaction between the appellant Company and its customers involved much more than a simple transfer of a piece of immovable property it is clear the same constitutes “service” within the meaning of the Act. It was not the case that the appellant Company was selling the given property with all its advantages and/or disadvantages on “as is where is” basis, as was the position in *UT Chandigarh Admn v. Amarjeet Singh*. It is a case where a clear-cut assurance was made to the purchasers as to the nature and extent of development that would be carried out by the appellant Company as a part of package under which a sale of fully developed plots with assured facilities was made in favour of the purchasers for valuable

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consideration. To the extent the transfer of site with developments in the manner and to the extent indicated earlier was a part of the transaction, the appellant Company has indeed undertaken to provide a service. **Any deficiency or defect in such service would make it accountable before the competent Consumer Forum at the instance of consumers like the respondents.”**

The developer in the present case has undertaken to provide a service in the nature of developing residential flats with certain amenities and remains amenable to the jurisdiction of the Consumer Fora. **Consequently, we are unable to subscribe to the view of the NCDRC that flat purchasers who obtained possession or executed Deeds of Conveyance have lost their right to make a claim for compensation for the delayed handing over of the flats.”** (emphasis added)

“...55. For the above reasons we have come to the conclusion that the dismissal of the complaint by the NCDRC was erroneous. **The flat buyers are entitled to compensation for delayed handing over of possession and for the failure of the developer to fulfil the representations made to flat buyers in regard to the provision of amenities.** The reasoning of the NCDRC on these facets suffers from a clear perversity and patent errors of law which have been noticed in the earlier part of this judgment. Allowing the appeals in part, we set aside the impugned judgment and order of the NCDRC dated 2 July 2019 dismissing the consumer complaint. While doing so, we issue the following directions:

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(i) Save and except for eleven appellants who entered into specific settlements with the developer and three appellants who have sold their right, title and interest under the ABA, **the first and second respondents shall, as a measure of compensation, pay an amount calculated at the rate of 6 per cent simple interest per annum to each of the appellants.** The amount shall be computed on the total amounts paid towards the purchase of the respective flats with effect from the date of expiry of thirty-six months from the execution of the respective ABAs until the date of the offer of possession after the receipt of the occupation certificate;

(ii) The above amount shall be **in addition to the amounts which have been paid over or credited by the developer at the rate of Rs 5 per square foot per month at the time of the drawing of final accounts;** and

(iii) The amounts due and payable in terms of directions (i) and (ii) above shall be paid over within a period of one month from the date of this judgment failing which they shall carry interest at the rate of 9 per cent per annum until payment.” (emphasis added)

(ii) It is apposite to reproduce below the provisions of Sections 18 and 19 (4) of the Real Estate (Regulation and Development) Act, 2016.

**“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.**

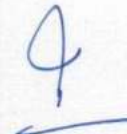
(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay **such compensation** to

the allottees, in the manner as provided under this Act.” (emphasis added)

“....Section 19(4): The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed **and compensation in the manner as provided under this Act**, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.” (emphasis added)

(iii) The Civil Appeal No. 6239 of 2019 in which aforesaid judgment has been passed by Hon'ble Supreme Court of India was filed against an order passed by Hon'ble NCDRC. The NCDRC in the said matter was dealing with rights of consumers for seeking compensation on account of deficiency in service provided by supplier promoter to the consumer allottees. The Consumer Protection Act was enacted in the year 1986. It entitled all consumers thereafter their rights as provided for in the Act. The crux of the law laid down by Hon'ble Supreme Court is that right of a consumer to seek compensation on account of deficient services provided to him will not lapse merely for the reason of having executed a conveyance deed. If service was indeed deficient, Hon'ble Apex Court has ruled that consumer's right to seek compensation shall not lapse, except when a settlement deed has been arrived at between the parties.

In this case the consumers who had approached Hon'ble Apex Court, additional compensation @ 6% was



allowed over and above the compensation provided for in the builder buyer agreement @ Rs.5/- per square feet per month.

(iv) The concept of compensation admissible to consumer allottee has been elaborated at multiple places by Hon'ble Supreme Court such as in para 25 and para 26 of the order.

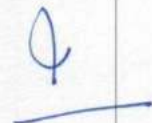
The concept of compensation so highlighted by Hon'ble Apex Court has to be read together with sub section 1 (b), sub section (2) and sub section (3) of Section 18 of the RERA Act, 2016. The aforesaid provisions of Section 18 clearly provide for following reliefs which are admissible to allottees:

- Return/refund of the amount received on demand alongwith interest at such rate as may be prescribed in case allottee does not wish to continue in the project;
- The interest for every month delay till handing over of possession at such rate as may be prescribed when allottee seeks possession, and
- Compensation in the manner as provided under the Act.

(v) Hon'ble Punjab and Haryana High Court in CWP No. 38144 of 2018 titled as Experion Developers Pvt. Ltd. versus State of Haryana & Ors. and Hon'ble Supreme Court of India in lead SLP No. 3711 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. versus State of U.P. & Ors. pertaining to Uttar Pradesh, has unequivocally laid down the law that RERA Authority has all powers to deal with any kind of dispute or questions between allottees and promoter/developer except the question of compensation. Whenever an allottee demands compensation from promoter, this issue can only be decided by Adjudicating Officer of the Authority.

(vi) Aforesaid provisions of Section 18 of RERA Act vests jurisdiction upon the Authority to order refund of money to allottees in case they do not wish to continue in the project alongwith interest at prescribed rate; or to order payment of interest for every month of delay till handing over of possession alongwith interest at the rate prescribed. Authority is of the view that wherever possession has already been delivered and conveyance deeds have been executed, all obligations under Section 18 shall be deemed to have been discharged except the issue of compensation in case allottee wishes to claim it on account of some special damage having suffered. Compensation has to be determined by a separate adjudicatory mechanism, for which no power has been vested in the Authority. Claim for compensation lies only before the Adjudicating Officer. Therefore, in considered opinion of this Authority after possession of apartment/plot has been handed over and/or the conveyance deed has been executed, contractual relationship between the parties shall be deemed to have come to an end. However, for the loss or injury suffered on account of defect in the services provided or delayed handing over of possession, claim for compensation could be preferred before an appropriate forum including Consumer Forum or Adjudicating Officer. Section 18 does not vest power in the Authority to compensate an allottee-consumer in respect of loss, damage, or injury suffered. The Authority does not have jurisdiction to deal with claims for compensation.

(vii) The Authority respectfully observes that Hon'ble Supreme Court has upheld the right of allottees to seek compensation and not the interest at the rate prescribed. This Authority is empowered to grant interest at the rate prescribed but not compensation. It is reiterated that the allottee may be entitled to compensation, but such compensation is not possible to be awarded by Authority.



The allottees will have to approach either Consumer Forum or Adjudicating Officer of the Authority for pressing their claim for compensation.

(viii) Authority is further of the view that subject to right of compensation as ordered by Hon'ble Supreme Court, contractual relations between the parties must come to an end at some stage. The buyers have to be careful while accepting possession of their apartments. After accepting possession, they cannot be allowed to say that certain defects existed in the apartments which they failed to point out at the time of taking possession or, they cannot be allowed to agitate after taking possession and execution of conveyance deed that builders have charged more money from them than agreed except in a situation when such possession was taken or conveyance deed was executed under coercion. If allottee did not protest against charging of higher amounts, or against non-payment of delay interest at the stage of taking possession or executing conveyance deed, except when an element of duress or coercion is proved, such dealings cannot be disregarded. One of the important reasons why Hon'ble Supreme Court did not disregard the claim for compensation after execution of conveyance deed was that conveyance deed was got executed under duress.

No such element of duress or coercion has been alleged in the instant complaints. The complainant in the instant complaint even never protested against non-payment of delay interest at the time of taking possession or at the time of execution of conveyance deed. It is a common knowledge that in property dealings many transactions take place off the record. Therefore, in considered view of this Authority, once the obligations of the parties prescribed under the Act have been discharged without any protest or reservation, the same shall be considered full and final discharge of obligations and same cannot be allowed to be



reopened. The Authority is further of the view that allowing reopening of concluded contracts will be against public policy. If contracts discharged without any protest or reservation are allowed to be reopened, it will lead to anomalous results. In this manner anyone and everyone after taking possession of property and after completion of contractual obligations will start pointing out defects of all kinds and seek intervention of this Authority. It will lead to endless litigation and disputes. It is for this reason that Hon'ble Supreme Court has laid a law that only claims for compensation, shall be admissible on account of special damage, injury or deficiency in service having suffered. Authority considers that the interest at the rates prescribed is an automatic right to be allowed upon establishing a cause of action, it cannot be pressed after conclusion of contractual obligations.

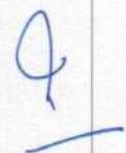
6. The Authority has made aforesaid observations in its order dated 19.10.2021 passed in another bunch of complaints with lead case no. 367/2021 titled as Pawan Jeet Singh Kohli & Anr. vs Parsavnath developers Ltd. Said cases are listed for final hearing on 10.02.2022. The Authority proposes to dispose off present complaint in above terms. However, case is adjourned to 10.02.2022 awaiting final outcome of complaint no. 367/2021. The matter will be finally disposed of on the next date after hearing arguments which the parties concerned may choose to put forward. Adjourned to same date i.e. 10.02.2022.

2. Thereafter, the case was adjourned awaiting final outcome of complaint no. 367/2021 titled as Pawan Jeet Singh Kohli & Anr. vs Parsavnath developers Ltd. Said case had already been decided by the Authority vide its order dated 27.04.2022. Relevant part of the order is reproduced below:-



“After hearing contentions of both parties and going through documents placed on record, it is observed that complainants have already taken possession of the plots and got conveyance deeds executed in their names on 08.04.2019. They should have pressed for the amount of delay interest at the time of execution of conveyance deeds. Although complainants had written letters to respondent seeking delay interest but all those letters were written before execution of conveyance deeds. These complaints have been filed nearly two years after execution of conveyance deeds. Execution of conveyance deed is equivalent to entering into a new agreement which inter alia signifies that both parties are satisfied with the considerations exchanged between them, and also that all other obligations have been duly discharged except the facts recorded in the conveyance deed. In present complaints, there is no mention of delay interest in the conveyance deeds and by omitting to do so, complainants cannot be allowed to seek delay compensation at this stage by approaching this Authority. As of today, contractual obligations between the parties stand discharged. Authority further observes that some act or incident must signify conclusion of contractual relationship between the parties. Handing over of lawful possession and execution of conveyance deed brings contractual relationship to an end. Thereafter only certain statutory rights like rectification of defects or satisfactory maintenance etc will survive. Permitting to reopen concluded contracts will not be in public interest. It will lead to endless litigation. Therefore, Authority reiterates its views already expressed in order dated 19.10.2021 and decides to dismiss the present complaints. Accordingly, these complaints are dismissed.

5. Disposed of. Files be consigned to record room and orders be uploaded on the website of the Authority.”





3. Today, Ld. counsel for complainant submitted that he has already perused the order dated 27.04.2022 passed by this Authority in complaint case no. 367/2021 pertaining to Parsavnath Developers Pvt Ltd. He further requested that his case be transferred to Hon'ble Adjudicating Officer for deciding his claim of compensation.
4. After hearing submissions of both parties and perusing relevant record, Authority in consonance with the principles laid down in order dated 27.04.2022 passed in complaint no. 367/2021 mentioned herein above, observes that as of today, contractual obligations between the parties stand discharged. Handing over of lawful possession and execution of conveyance deed brings contractual relationship between the parties to an end. Thereafter only certain statutory rights like rectification of defects or satisfactory maintenance etc will survive. Permitting reopening of concluded contracts will not be in public interest. It will lead to endless litigation. Therefore, Authority reiterates its views already expressed in order dated 14.12.2021 and decides to dismiss present complaint. Accordingly, these complaints are dismissed.
5. Further, in regard to prayer of ld. counsel of complainant to transfer his case to Ld. Adjudicating Officer for deciding claim of compensation, reference is drawn to sub rule (e) of Rule 28 of RERA Rules, 2019. Said sub rule provides that if in a complaint compensation is sought, the complaint for



adjudging quantum of compensation as contained in Section 12, 14, 18 and 19, shall be referred to Adjudicating Officer by Authority and Adjudicating Officer shall conduct an inquiry to adjudge quantum of compensation as per provisions of Sub Section 3 of Section 71 by taking into consideration the factors mentioned in Section 72 of RERA Act 2016.

6. Authority observes that to enable the Adjudicating Officer to adjudge quantum of compensation, details of the claim duly supported with evidence will have to be placed by the claimant before the Adjudicating Officer. For this purpose Form-CAO has been prescribed in the HRERA Rules, 2017. The information as is required to be submitted in form-CAO is not before this Authority, therefore, for addressing the issue of claim compensation, complainant/claimant has to submit an application before learned Adjudicating Officer alongwith information in proforma-CAO. Other information of relevant evidence in support of the claim also has to be submitted by claimant-complainant before learned Adjudicating Officer.

7. Complainant herein may follow the procedure prescribed for claiming compensation by filing an application on proforma-CAO. For the purpose of 'reference' to be made in accordance with sub rule (e) of Rule 28, Authority will send a copy of this order to learned Adjudicating Officer to take into

  
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consideration findings of the Authority, while taking decision on the application for compensation filed by the complainant.

8. **Disposed of** in above terms. File be consigned to record room after compliance.



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**RAJAN GUPTA**  
**[CHAIRMAN]**



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**DILBAG SINGH SIHAG**  
**[MEMBER]**

