

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal Nos.12 to 16, 18 to 29 of 2020 & 44 of 2021
Date of Decision: 30.09.2022**

(1) Appeal No.12 of 2020

Ramesh Kumar son of Shri Dharam Pal, Resident of Village Gadarwas and Post Office Dalawas, Tehsil Satnali District Mahendergarh, Haryana.

Appellant

Versus

1. Haryana Real Estate Regulatory Authority Panchkula, Mini Secretariat, 2nd and 3rd Floor, Sector-1, Panchkula-134109.
2. M/s Baderwals Projects Private Limited, 211, 2nd Floor, Ansal Bhawan, 16 Kasturba Gandhi Marg, Connaught Place, New Delhi-110001 through its authorised signatory Shri Mukesh Rai s/o Shri Dhanpat Rai, Resident of Palwal, Haryana.

Respondents

(2) Appeal No.13 of 2020

Surender Singh son of Shri Duli Chand Yadav, Resident of H.No.254, Village Bawania, District Mahendergarh, Haryana.

Appellant

1. Haryana Real Estate Regulatory Authority Panchkula, Mini Secretariat, 2nd and 3rd Floor, Sector-1, Panchkula-134109.
2. M/s Baderwals Projects Private Limited, 211, 2nd Floor, Ansal Bhawan, 16 Kasturba Gandhi Marg, Connaught Place, New Delhi-110001 through its authorised signatory Shri Mukesh Rai s/o Shri Dhanpat Rai, Resident of Palwal, Haryana.

Respondents

Appeal Nos.12 to 16, 18 to 29 of 2020 & 44 of 2021

(3) Appeal No.14 of 2020

Mangal Sain son of Shri Budhram, Resident of Village Sihor,
District Mahendergarh, Haryana.

Appellant

Versus

1. Haryana Real Estate Regulatory Authority Panchkula,
Mini Secretariat, 2nd and 3rd Floor, Sector-1, Panchkula-
134109.
2. M/s Baderwals Projects Private Limited, 211, 2nd Floor,
Ansal Bhawan, 16 Kasturba Gandhi Marg, Connaught
Place, New Delhi-110001 through its authorised
signatory Shri Mukesh Rai s/o Shri Dhanpat Rai,
Resident of Palwal, Haryana.

Respondents

(4) Appeal No.15 of 2020

Suman Yadav wife of Shri Sunil Yadav, Resident of Village
Kuksi, Post Office Daroli Ahir, District Mahendergarh,
Haryana.

Appellant

Versus

1. Haryana Real Estate Regulatory Authority Panchkula,
Mini Secretariat, 2nd and 3rd Floor, Sector-1, Panchkula-
134109.
2. M/s Baderwals Projects Private Limited, 211, 2nd Floor,
Ansal Bhawan, 16 Kasturba Gandhi Marg, Connaught
Place, New Delhi-110001 through its authorised
signatory Shri Mukesh Rai s/o Shri Dhanpat Rai,
Resident of Palwal, Haryana.

Respondents

(5) Appeal No.16 of 2020

Mamta Devi wife of Shri Alok Yadav, Resident of Village and
Post Office Patikara, Tehsil Narnaul District Mahendergarh,
Haryana.

Appellant

Appeal Nos.12 to 16, 18 to 29 of 2020 & 44 of 2021

Versus

1. Haryana Real Estate Regulatory Authority Panchkula, Mini Secretariat, 2nd and 3rd Floor, Sector-1, Panchkula-134109.
2. M/s Baderwals Projects Private Limited, 211, 2nd Floor, Ansal Bhawan, 16 Kasturba Gandhi Marg, Connaught Place, New Delhi-110001 through its authorised signatory Shri Mukesh Rai s/o Shri Dhanpat Rai, Resident of Palwal, Haryana.

Respondents

(6) Appeal No.18 of 2020

Sharmila wife of Shri Birender Singh, Resident of H.No.266, Village Nayagaon, Tehsil Kosli, District Rewari, Haryana.

Appellant

Versus

1. Haryana Real Estate Regulatory Authority Panchkula, Mini Secretariat, 2nd and 3rd Floor, Sector-1, Panchkula-134109.
2. M/s Baderwals Projects Private Limited, 211, 2nd Floor, Ansal Bhawan, 16 Kasturba Gandhi Marg, Connaught Place, New Delhi-110001 through its authorised signatory Shri Mukesh Rai s/o Shri Dhanpat Rai, Resident of Palwal, Haryana.

Respondents

(7) Appeal No.19 of 2020

Sunita wife of Shri Mahesh Kumar Chitlang, Resident of Village Chitlang and Post Office Dewas, District Mahendergarh, Haryana.

Appellant

Versus

1. Haryana Real Estate Regulatory Authority Panchkula, Mini Secretariat, 2nd and 3rd Floor, Sector-1, Panchkula-134109.

Appeal Nos.12 to 16, 18 to 29 of 2020 & 44 of 2021

2. M/s Baderwals Projects Private Limited, 211, 2nd Floor, Ansal Bhawan, 16 Kasturba Gandhi Marg, Connaught Place, New Delhi-110001 through its authorised signatory Shri Mukesh Rai s/o Shri Dhanpat Rai, Resident of Palwal, Haryana.

Respondents

(8) Appeal No.20 of 2020

Parkash Chander Gupta son of Shri Banwari Lal Gupta, Resident of House No.89, Ward No.13, Shankar Colony, Mahendergarh, District Mahendergarh, Haryana.

Appellant

Versus

1. Haryana Real Estate Regulatory Authority Panchkula, Mini Secretariat, 2nd and 3rd Floor, Sector-1, Panchkula-134109.
2. M/s Baderwals Projects Private Limited, 211, 2nd Floor, Ansal Bhawan, 16 Kasturba Gandhi Marg, Connaught Place, New Delhi-110001 through its authorised signatory Shri Mukesh Rai s/o Shri Dhanpat Rai, Resident of Palwal, Haryana.

Respondents

(9) Appeal No.21 of 2020

Ashok Kumar son of Shri Ram Partap, Resident of Railway Road, Opposite Bal Bhawan, Mahendergarh, District Mahendergarh, Haryana.

Appellant

Versus

1. Haryana Real Estate Regulatory Authority Panchkula, Mini Secretariat, 2nd and 3rd Floor, Sector-1, Panchkula-134109.
2. M/s Baderwals Projects Private Limited, 211, 2nd Floor, Ansal Bhawan, 16 Kasturba Gandhi Marg, Connaught Place, New Delhi-110001 through its authorised signatory Shri Mukesh Rai s/o Shri Dhanpat Rai, Resident of Palwal, Haryana.

Respondents

Appeal Nos.12 to 16, 18 to 29 of 2020 & 44 of 2021

(10) Appeal No.22 of 2020

Ranbir Kaur wife of Shri Anil Kumar, Resident of Village Gopalwas, P.O. Badrai, Tehsil Badhra District Charkhi Dadri, Haryana.

Appellant

Versus

1. Haryana Real Estate Regulatory Authority Panchkula, Mini Secretariat, 2nd and 3rd Floor, Sector-1, Panchkula-134109.
2. M/s Baderwals Projects Private Limited, 211, 2nd Floor, Ansal Bhawan, 16 Kasturba Gandhi Marg, Connaught Place, New Delhi-110001 through its authorised signatory Shri Mukesh Rai s/o Shri Dhanpat Rai, Resident of Palwal, Haryana.

Respondents

(11) Appeal No.23 of 2020

Satish Kumar son of Shri Om Parkash, Resident of H.No.2, Ward No.4, Mahendergarh, District Mahendergarh, Haryana.

Appellant

Versus

1. Haryana Real Estate Regulatory Authority Panchkula, Mini Secretariat, 2nd and 3rd Floor, Sector-1, Panchkula-134109.
2. M/s Baderwals Projects Private Limited, 211, 2nd Floor, Ansal Bhawan, 16 Kasturba Gandhi Marg, Connaught Place, New Delhi-110001 through its authorised signatory Shri Mukesh Rai s/o Shri Dhanpat Rai, Resident of Palwal, Haryana.

Respondents

(12) Appeal No.24 of 2020

Suman Lata wife of Shri Balwant Singh, Resident of Village Jatwas, District Mahendergarh, Haryana.

Appellant

Versus

Appeal Nos.12 to 16, 18 to 29 of 2020 & 44 of 2021

1. Haryana Real Estate Regulatory Authority Panchkula, Mini Secretariat, 2nd and 3rd Floor, Sector-1, Panchkula-134109.
2. M/s Baderwals Projects Private Limited, 211, 2nd Floor, Ansal Bhawan, 16 Kasturba Gandhi Marg, Connaught Place, New Delhi-110001 through its authorised signatory Shri Mukesh Rai s/o Shri Dhanpat Rai, Resident of Palwal, Haryana.

Respondents

(13) Appeal No.25 of 2020

Rajni Devi wife of Shri Jai Singh, Resident of Village Jatwas, District Mahendergarh, Haryana.

Appellant

Versus

1. Haryana Real Estate Regulatory Authority Panchkula, Mini Secretariat, 2nd and 3rd Floor, Sector-1, Panchkula-134109.
2. M/s Baderwals Projects Private Limited, 211, 2nd Floor, Ansal Bhawan, 16 Kasturba Gandhi Marg, Connaught Place, New Delhi-110001 through its authorised signatory Shri Mukesh Rai s/o Shri Dhanpat Rai, Resident of Palwal, Haryana.

Respondents

(14) Appeal No.26 of 2020

Raj Kumar, Resident of Village Bhagdana, P.O. Paldi Panihar, District Mahendergarh, Haryana.

Appellant

Versus

1. Haryana Real Estate Regulatory Authority Panchkula, Mini Secretariat, 2nd and 3rd Floor, Sector-1, Panchkula-134109.
2. M/s Baderwals Projects Private Limited, 211, 2nd Floor, Ansal Bhawan, 16 Kasturba Gandhi Marg, Connaught Place, New Delhi-110001 through its authorised

Appeal Nos.12 to 16, 18 to 29 of 2020 & 44 of 2021

signatory Shri Mukesh Rai s/o Shri Dhanpat Rai,
Resident of Palwal, Haryana.

Respondents

(15) Appeal No.27 of 2020

1. Ishwar Singh s/o Shri Kishan Lal, Resident of H.No.113/2, Ward No.13, Shankar Colony Mahendergarh, Haryana.
2. Ashok Kumar son of Shri Kishan Lal, Resident of H.No.113/2, Ward No.13, Shankar Colony, Mahendergarh, Haryana.

Appellants

Versus

1. Haryana Real Estate Regulatory Authority Panchkula, Mini Secretariat, 2nd and 3rd Floor, Sector-1, Panchkula-134109.
2. M/s Baderwals Projects Private Limited, 211, 2nd Floor, Ansal Bhawan, 16 Kasturba Gandhi Marg, Connaught Place, New Delhi-110001 through its authorised signatory Shri Mukesh Rai s/o Shri Dhanpat Rai, Resident of Palwal, Haryana.

Respondents

(16) Appeal No.28 of 2020

Ghanshyam Sharma son of Shri Jai Narayan Sharma,
Resident of Village Dhana, Tehsil Kanina, District Mahendergarh, Haryana

Appellant

Versus

1. Haryana Real Estate Regulatory Authority Panchkula, Mini Secretariat, 2nd and 3rd Floor, Sector-1, Panchkula-134109.
2. M/s Baderwals Projects Private Limited, 211, 2nd Floor, Ansal Bhawan, 16 Kasturba Gandhi Marg, Connaught

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Place, New Delhi-110001 through its authorised signatory Shri Mukesh Rai s/o Shri Dhanpat Rai, Resident of Palwal, Haryana.

Respondents

(17) Appeal No.29 of 2020

Chander Shekhar Sharma son of Shri Jai Narayan Sharma, Resident of Village Dhana, Tehsil Kanina, District Mahendergarh, Haryana.

Appellant

Versus

1. Haryana Real Estate Regulatory Authority Panchkula, Mini Secretariat, 2nd and 3rd Floor, Sector-1, Panchkula-134109.
2. M/s Baderwals Projects Private Limited, 211, 2nd Floor, Ansal Bhawan, 16 Kasturba Gandhi Marg, Connaught Place, New Delhi-110001 through its authorised signatory Shri Mukesh Rai s/o Shri Dhanpat Rai, Resident of Palwal, Haryana.

Respondents

(18) Appeal No.44 of 2021

Tara Devi wife of late Shri Bishan Dayal Mehta, Resident of 175/1, Ward No.6, Karelia Bazaar, Mahendergarh, Haryana.

Appellant

Versus

1. Haryana Real Estate Regulatory Authority Panchkula, Mini Secretariat, 2nd and 3rd Floor, Sector-1, Panchkula-134109.
2. M/s Baderwals Projects Private Limited, 211, 2nd Floor, Ansal Bhawan, 16 Kasturba Gandhi Marg, Connaught Place, New Delhi-110001 through its authorised signatory Shri Mukesh Rai s/o Shri Dhanpat Rai, Resident of Palwal, Haryana.

Respondents

Appeal Nos.12 to 16, 18 to 29 of 2020 & 44 of 2021

CORAM:

Shri Inderjeet Mehta,
Shri Anil Kumar Gupta,

Member (Judicial)
Member (Technical)

Argued by: Shri Ravinder Bhambhu, Advocate, learned counsel for the appellants in appeal nos.12 to 16 and 18 to 29 of 2020.

Shri Aseem Aggarwal, Advocate, learned counsel for appellant in appeal no.44 of 2021.

Shri Aashish Chopra, learned Senior Advocate with Ms. Sugandha Kundu, Advocate and Ms. Srishiti Girdhar, Advocate, Id. Counsel for the respondent.

ORDER:

INDERJEET MEHTA, MEMBER (JUDICIAL):

Vide this judgment we are going to dispose of all the above mentioned eighteen appeals filed by the appellants-allottees under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') which have arisen out of the common order dated 17.10.2019 passed by the learned Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called 'the Authority').

2. The facts of all the complaints filed by the appellants-allottees are almost similar and common questions of law and facts are involved in all these appeals. So, for the purpose of disposal of these appeals, we are referring the facts of Complaint No.978 of 2019 titled as "Ramesh Kumar vs.

Baderwals Infra Project Pvt. Ltd.” (Appeal No.12 of 2020) taking it as a lead case.

3. Appellant-Ramesh Kumar had booked a plot No.D-106, measuring 308.12 square yards, in a project at Baderwals City, Mahendergarh, launched by the respondent-promoter, at the rate of Rs.5200/- per square yard, vide allotment letter dated 27.09.2010. The total cost of the said plot was Rs.16,02,224/-, out of which 90% payment had been made. Though, the due date of possession of the said plot was in the year 2012, but till the filing of the complaint in the year 2019, the possession was not delivered to the appellant-allottee. Having no other option, the appellant-allottee had to knock the door of the Authority seeking interest for the delayed possession of the plot and in the alternative for refund of entire deposited amount by him.

4. Upon notice, the respondent-promoter has taken the stand that prior to approaching the Authority for redressal of his grievances, the appellant-allottee had filed a complaint before the Additional Deputy Commissioner, Narnaul and four hearings on dated 23.01.2019, 05.02.2019, 12.02.2019 and 25.02.2019 had already taken place and a settlement dated 14.03.2019 was arrived at between the respondent-promoter and the appellant-allottee as well as other allottees. The

respondent has alleged that though 90% of the development work of the colony had been completed prior to the year 2012, but on account of ongoing controversy of the respondent-developer with the Town and Country Planning Department (for short 'TCP') regarding rate, at which External Development Charges (EDC) shall be applicable on the colony in question being set up in a relatively backward area of the State i.e. District Mahendergarh, the possession could not be delivered within the stipulated period. The respondent-promoter has also specifically pleaded in its reply on merits that the respondent company had completed the construction of the project well before time, but due to non-fixation of the EDC by the Town and Country Planning Department, the possession could not be delivered. It has been also alleged that the respondent-promoter had sent the Builder Buyer's Agreement to the appellant-allottee for due execution of the same, but the appellant-allottee neither signed nor returned the same to the respondent-promoter. Since, there is no fault of the respondent-promoter in delivering the possession of the unit to the appellant-allottee in time, so dismissal of the complaint was prayed for.

5. After hearing learned counsel for the parties and appreciating the documents placed on record, the learned

Authority disposed of the complaint filed by the appellant vide impugned order dated 17.10.2019 with the following directions: -

- “(i) As per the decision of the Council of Ministers of Haryana of the year 2016 the rate of EDC applicable in the year 2010-11 was Rs.52.048 lakh per acre. The respondent shall issue demand notices to the allottees for payment of EDC in respect of their plots calculated at this rate of Rs.54.048 lakh per acre. The demand notice in this regard shall be delivered to all the allottees within a period of 30 days. A table of EDC to be collected from the allottees shall also be hosted on the website of the respondent.*
- (ii) An Escrow account shall be opened by the respondent for receiving the aforesaid EDC from all the allottees. The entire amount collected in the Escrow account, after adjusting the amount already paid, shall be directly remitted to the Department of Town & Country Planning. No money can be used from this Escrow Account for any other purpose.*
- (iii) Within four months of uploading of this order on the website of the Authority, the respondent shall complete all the remaining development works and send an offer of possession to the allottees. The offer of possession shall be accompanied with the statement of accounts specifying therein the balance of basic sale price to be paid and the EDC amount calculated in*

accordance with this order. All the allottees shall accept the possession of plots after payment of all the dues to the respondent. After acceptance of the possession, conveyance deed shall also be executed within a further period of 30 days from the date of acceptance of possession.

(iv) The allottees will not be entitled to any compensation for delay in handing over possession because the delay has been caused for the reasons beyond the control of the respondent. The above stated reasons for delay in offering possession shall be treated as force majeure condition. The respondent has been making their best efforts to get the rate of EDC finalised but it is on account of delay in decision on the part of the State Government that the rate could not be finalized and possession could not be offered. Further, it is to be presumed that if a person chooses to be part of an under-development project, he also has consented to share risks which arise on account of circumstances beyond the control of the either of the parties.

(v) Within 30 days from uploading of the orders by this Authority, a detailed representation accompanied by this order shall be filed by the respondent before the Principal Secretary, Town & Country Planning Department by way of additional application in the already pending appeal before him. Learned Principal Secretary

shall duly take into account the facts and circumstances of the matter, especially the fact that it is the department which did not finalise and communicate the applicable EDC to the respondent which has resulted in this situation of non-payment by the respondent. It was expected from the department that precise amount of EDC payable by the licensee at the time of grant of license was conveyed within a reasonable period of time. Accordingly, the rate of EDC should have been communicated in the year 2008 itself or at best within a further reasonable period of 3-4 months. The department could not finalise this matter even up to 2016. More seriously, even after decision of the Council of Ministers in 2016, the department has still not conveyed the revised rates to the respondent.

- (vi) Further-more, while granting the LOI for grant of a new license in the year 2013 the department stipulated a very high rate of EDC as Rs. 76.3807 lakh per acre. This was not the rate applicable in the backward areas of the State as defined vide policy dated 14.07.2011 of the State Government. Admittedly the Council of Ministers in 2016 correctly read it to be Rs. 52.048 lakh per acre which shows that the rates indicated by the department in the LOI were incorrect. It is expected from learned Principal Secretary that he would take note of all the facts and circumstances and determine*

the correct rate of EDC payable by the respondent/allottees. It would be expected from the department to consider that the respondent does not appear to have defaulted in any manner in paying EDC dues, and further not collecting the same from allottees, therefore no interest or penal interest shall be charged from them for the entire period of non- payment. It is to be understood by the department that Allottees cannot be subjected to the burden of penal interest for no fault of their, nor can the promoter be made to pay from his own pocket for no fault of his.

(vii) If learned Principal Secretary determines the rate of EDC to be Rs.54.97 lakh per acre, the same shall remain applicable and the matter will be settled. Further, no interest or penal interest appears to be payable by the respondent/allottees. However, in case a higher rate is determined by the learned Principal Secretary, or interest/penal interest is imposed, the respondent may exercise his legal rights of filing a writ petition before the Hon'ble High Court. In that eventuality the rates finalized by the Hon'ble High Court shall become payable by all the allottees and the respondent shall be entitled to collect the same from them. The respondent shall have legal rights to recover the additional amount so decided by the Hon'ble High Court from the allottees and the allottees shall be legally bound to pay the same.”

6. We have heard Shri Ravinder Bhambhu, Advocate, learned counsel for the appellants, Shri Aashish Chopra, learned Senior Advocate with Ms. Sugandha Kundu, Advocate, and Ms. Srishiti Girdhar, Advocate, Id. Counsel for the respondent. The respondent-promoter has also filed the written arguments. We have meticulously examined the record of the case.

7. Opening his side of arguments, learned counsel for the appellants has contended that the delivery of the possession of the allotted plot has been delayed by the respondent-promoter without any reasonable cause for more than seven years. Further, he has submitted that the learned Authority has wrongly declined the interest on delayed possession to which the appellants-allottees were legally entitled, in view of Section 18 of the Act. Lastly, it has been submitted that the respondent-promoter has now wrongly charged the External Development Charges (EDC) from the appellants at exorbitant rates.

8. Per contra, learned counsel for the respondent has submitted that the learned Authority while appreciating the entire factual matrix of the case has rightly held that the appellants-allottees are not entitled for interest on account of

delay in handing over the possession as the said delay has been caused for the reasons beyond the control of the respondent-promoter and the learned Authority has rightly treated the reasons for delay as a 'force majeure' condition. Further, it has been submitted that in fact the respondent-promoter had completed 90% of the development works of the colony prior to the year 2012 and had been pursuing with the office of Town and Country Planning Department, Haryana for fixation of the rate, at which the EDC shall be applicable in the colony in question being set up in a relatively backward area of the State i.e. District Mahendergarh. Lastly, it has been submitted that the respondent-promoter is not liable to pay interest for the delayed possession of the allotted plot because inspite of the best efforts made by the respondent-promoter, the rate of the EDC was not fixed by the department concerned and without making the payment of the EDC to the concerned department, completion certificate qua the colony could not have been issued.

9. In view of the aforesaid submissions made by learned counsel for the parties, the bone of contention between the parties is that whether the respondent-promoter has deliberately delayed the delivery of the possession of the

allotted plots to the appellants or the delay has been caused for the reasons beyond the control of the respondent-promoter.

10. For proper appreciation of the aforesaid submissions of the learned counsel for the parties and proper adjudication of the controversy, first of all, let us have a thorough look at the chequered history of these cases. The appellants-allottees had booked plots in a project at Baderwals City, Mahendergarh in 2010, launched by the respondent-promoter. Regarding recovery of EDC from the colonizer in Medium and Low Potential zones, a letter dated December 20, 2010 (2010 Policy) Annexure R-8, was issued by Financial Commissioner and Principal Secretary to Government of Haryana, Town and Country Planning Department, vide which the colonizers-promoters were asked to pay EDC after finalization of the rate of EDC by the government and it was also mentioned that part completion certificate (completion certificate) shall be granted after payment of finally conveyed EDC. Vide letter dated 21.03.2011 (Annexure R-9), the licence of the respondent-promoter was renewed by the Director General, Town and Country Planning Department, Haryana, Chandigarh. The respondent-promoter had applied for renewal of the licence under 2010 policy and the said renewal of the licence specifically provides that the respondent-

promoter would comply with the terms and conditions of 2010 policy dated 20.12.2010. Thereafter, vide letter dated 21.03.2012 (Annexure R-2), addressed to the Director General, Town and Country Planning Department, Haryana, Chandigarh, the respondent-promoter informed that it wished to offer the possession to the appellants-allottees and other plot holders, and it was also mentioned by the respondent-promoter that it had not recovered/charged any EDC amount from the allottees as the EDC rates have not been finalized by the department/government. It was also specifically requested to the department/government to look into the matter and finalize the EDC rates in Mahendergarh town as early as possible so that the respondent-promoter may be able to hand over the possession and charge the EDC from the plot holders and to deposit the same to the department well in time to avoid any financial complication at later stage. Thereafter, new licence bearing No.156 dated 11.09.2014 (Annexure P-4) for the same project was granted to the respondent-promoter specifically stating that the change in the licence would not have any impact on the terms of the licence. As per 'Letter of Intent' dated 31.12.2013 regarding the said new licence, EDC was fixed @ Rs.76.3807 lakhs per acre which was interim in nature and were being levied on tentative basis. However,

later on the Government of Haryana had issued a '2016 Policy', wherein through the mechanism of indexation, the rate of the EDC for Mahendergarh area was fixed at Rs.52.048 lakhs per acre. Thereafter, a representation dated 23.08.2017 was made by the respondent-promoter to DTCP to extend '2016 Policy' to its project and accordingly notify the rate of EDC as per the rates mentioned in '2016 Policy'. Other representations dated 21.01.2019, 30.01.2019 and 26.08.2019 were also made regarding fixation of EDC by the respondent-promoter. The reference of all these aforesaid representations including that of a letter dated 21.03.2012 and 23.08.2017 as referred above, has been mentioned in the order dated 26.09.2019 (Enclosure 'A') passed by the Principal Secretary, Town and Country Planning Department in Appeal No.34 of 2019, titled 'Baderwal Infra Projects Pvt. Ltd. Vs. DTCP'.

11. Prior to approaching the Authority for redressal of their grievances by way of filing the complaints towards the end of March, 2019, the appellants-allottees and other allottees had preferred complaints before the Additional Deputy Commissioner, Narnaul and firstly settlement dated 25.02.2019 (Annexure R-1) and subsequently other settlement dated 14.03.2019 was arrived at between the respondent-promoter and the appellants-allottees.

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12. As per the contents of compromise dated 25.02.2019 (Annexure R1), following points were settled between the respondent-promoter and the appellants-allottees/other allottees:-

“We, on behalf of Baderwals Projects Private Limited do hereby confirm that we will hand over the possession of the plots located at Mahendergarh to the plot allottees on the same date, when the EDC for plot is deposited @ Rs.52 lacs per acre. All these matters have been decided before the Enquiry Officer-cum-A.D.C. Narnaul on 25.02.2019.

Any increase or decrease in the EDC charges levied by concerned Authority/DTCP shall be borne by all the plot holders.

This undertaking and decision of today, stated above shall be applicable upon the plot holders who have no dues on the said date of handing over of DD of EDC charges.

The signature of the duly authorised person of the respondent-promoter and 22 plot allottees had been appended below the aforesaid compromise.

Subsequent to that next date of hearing before the A.D.C. Narnaul was fixed to be 14.03.2019.

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On the said date i.e. 14.03.2019, the respondent-promoter had confirmed the following points:-

- i) We confirm that we have already issued the External Development Charges (EDC) demand letters followed by reminders as Company is ready to give the terms of possession of plots to our valuable plot holders upon receiving the demanded EDC and other outstanding payments.
- ii) We do hereby confirm that we are ready to open a dedicated bank account in Mahendergarh solely for the purpose of depositing the EDC for our Residential Plotted Colony namely "Baderwal City" situated at Mahendergarh, Haryana. The said bank account will be under supervision of the Hon'ble District Collector, Mahendergarh.
- iii) We have already provided the copy of the BBA (Builder Buyer Agreement) for further action.
- iv) We have also provided the terms of the possession to the Hon'ble D.C. Mahendergarh.
- v) Consequently, Mr. Ranga Rao Singh on behalf of all/entire plot holders confirms that they are fully satisfied with the Company and reiterate that they will not file any complaint and withdraw all the

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complaints against the Company from all Departments, Authorities, Courts etc. in all manners whatsoever it may be.

- vi) This confirmation is in addition to the earlier settlement dated 25.02.2019 held in the office of learned A.D.C. Narnaul.

The aforesaid confirmation dated 14.03.2019 was duly signed by authorised signatory of the respondent-promoter and Shri Rang Rao Singh, authorised representative of the plot holders. However, Shri Rang Rao Singh, authorised representative of the plot holders in his own hand mentioned his reservation regarding aforesaid clause no.(v) by disagreeing to the same and he would only agree when the possession of the plot would be delivered.

13. From the above facts, circumstances and the documents available on the record, it is explicit that after the appellants/allottees had booked the plots in a project launched by the respondent in 2010, vide policy dated 20th December, 2010 issued by the Financial Commissioner and Principal Secretary to Government of Haryana, Town and Country Planning Department, the respondent-promoter and

other colonizers were required to pay the EDC after finalization of the rate of EDC by the Government and it was also mentioned in clause (vii) of the said policy that part completion certificate/completion certificate would be granted after final payment of conveyed EDC.

14. To show its inclination to hand over the possession of the allotted plots to the allottees, the respondent vide letter dated 21.03.2012 (Annexure R-2) addressed to the Director General, Town and Country Planning Department, Haryana, Chandigarh, specifically mentioned that it wished to offer the possession to the appellants-allottees and other plot holders, and made request to the department/government to look into the matter and finalize the EDC rates in Mahendergarh town, as early as possible, so that the respondent-promoter may be able to hand over the possession and charge the EDC from the plot holders, and to deposit the same to the department well in time, to avoid any financial complication at later stage. Subsequent to that, the respondent-promoter made a representation dated 23.08.2017 to DTCP to extend 2016 policy, vide which the rate of EDC for Mahendergarh area was fixed at Rs.52.048 lakhs per acre, to its project and to notify the rate of EDC as per the said policy. In spite of that, no action was initiated by the department concerned. Thereafter,

the respondent-promoter also made representations dated 21.01.2019, 30.01.2019 and 26.08.2019 regarding fixation of EDC.

15. Here, it is pertinent to mention that reference of these aforesaid representations including that of the letters dated 21.03.2012 (Annexure R-2) and dated 23.08.2017, as referred above, was specifically mentioned by the Principal Secretary, Town and Country Planning Department, in its order dated 26.09.2019, handed down in Appeal No.34/2019, titled as 'Baderwal Infra Projects Pvt. Ltd. Vs. DTCP'. The intention of the respondent-promoter to hand over the possession to the appellants-allottees and other plot holders is also established from the contents of compromise dated 25.02.2019 (Annexure R-1), wherein, on behalf of the respondent-promoter, it was specifically stated before the Enquiry Officer-cum-A.D.C., Narnaul that the respondent-promoter would hand over the possession of the plots located at Mahendergarh to the allottees of the plots on the same date when the EDC for the plots is deposited by the appellants-allottees and other plot holders @ Rs.52 lakhs per acre. Further, in the subsequent proceedings dated 14.03.2019, as referred above, the respondent-promoter had also confirmed that it had already issued the demand letter for 'External

Development Charges' followed by reminders and it was ready to give the terms of possession of plots to the plot holders on receipt of the demanded EDC and other outstanding payment. The respondent-promoter was also ready to open a dedicated bank account in Mahendergarh solely for the purpose of depositing the EDC for its Residential Plotted Colony namely 'Baderwal City', Mahendergarh, Haryana and the said bank account would be under supervision of the District Collector, Mahendergarh.

16. Thus, as referred above, since the year 2012 and up to 14.03.2019, not only the respondent-promoter has been relentlessly pursuing the matter with the State of Haryana/department concerned to fix the rate of EDC, but has always been ready and willing to hand over the possession to the appellants-allottees and other plot holders after receipt of EDC fixed by the Government of Haryana. Though, the matter to a great extent had been settled between the respondent-promoter and the appellants-allottees as well as other other plot holders by way of compromise dated 25.02.2019 (Annexure R-1) and 14.03.2019, but instead of paying the EDC, as demanded by the respondent-promoter, as mentioned in the compromise dated 14.03.2019, the present appellants

chose to prefer the complaints before the learned Authority towards the end of March, 2019.

17. The learned Authority in the impugned order has rightly observed that the allottees will not be entitled to any compensation for delay in handing over possession because the delay has been caused for the reasons beyond the control of the respondent. The above stated reasons for delay in offering the possession were treated as force majeure condition. The respondent-promoter has been making its best effort to get the rates of the EDC finalized, but, it is on account of delay in the decision on the part of the State Government that the rates could not be finalized and possession could not be offered. There appears to be no illegality and irregularity in the aforesaid observations made by the learned Authority, and as referred above, the respondent-promoter as per the facts and circumstances of the present case, has been making sincere efforts since the year 2012 to plead with the Government to fix the rates of EDC so that it after receipt of EDC from the appellants-allottees and other plot holders, would hand over the possession of the respective plots to the allottees.

18. During the pendency of the present appeal, as is explicit from the perusal of the interlocutory order dated

16.11.2021, it was informed by the counsel for the appellant that Directorate of Town and Country Planning Department, Haryana had raised the demand of EDC vide letter dated 22.06.2021, and thereafter in pursuance of the said letter, the respondent-promoter had issued the notice for deposit of the EDC to the individual allottees vide letter dated 22.10.2021. Learned counsel for the appellants had admitted the factum of receipt of the demand notice dated 22.10.2021 by the allottees, but had stated that the said letter was not accompanied with the letter dated 22.06.2021. Thereafter, on the next date of hearing i.e. 20.12.2021, the said letter dated 22.06.2021 was also supplied to the learned counsel for the appellants. The said letter dated 22.06.2021 issued by the Chief Accounts Officer of the Director, Town and Country Planning, Haryana, Chandigarh, to the respondent-promoter is also available on the record and as per the contents of the same, the department concerned after implementation of indexation policy dated 11.02.2016 conveyed the revised schedule of payment of EDC. Since, in this letter dated 22.06.2021 consolidated amount was mentioned and it was not clear as to how the amount of EDC was calculated by the respondent-promoter, so, the respondent-promoter was directed to supply the calculation showing that as to how the amount of EDC as

demanded in the letter dated 22.10.201 was arrived at. Reference of this aforesaid aspect has been mentioned in the interlocutory order dated 16.11.2021 and the learned counsel for the respondent was directed to file the calculation with the office of this Tribunal with advance copy to the learned counsel for the appellant. As earlier mentioned, in the interlocutory order dated 20.12.2021, counsel for the respondent has stated that during the course of the day, the respondent-promoter would supply the calculation to show as to how the amount of EDC as demanded in the letter dated 22.10.2021 was arrived at. In the said order, it was also mentioned that after the calculation sheet is placed by the respondent on record during the course of the day, on or before the next date of hearing the appellant was at liberty to deposit the same. Further, as mentioned in the interlocutory order dated 17.03.2022, the respondent had placed on record Annexure R-1, R-2 and R-3 (be read as Exhibits RX, RY and RZ respectively) to comply with the directions issued by this Tribunal vide order dated 16.11.2021, and accordingly, the respondent-promoter had placed on file the calculation chart (Exhibit-RX), letter dated 22.06.2021 (Exhibit-RY) and letter dated 22.10.2021 (Exhibit-RZ) sent to the appellants by the respondent-promoter for depositing the 'External Development Charges'. Admittedly, at

the time of conclusion of the arguments, none of the appellants-allottees, in spite of the specific demand raised by the respondent-promoter, has deposited any amount towards the EDC as demanded by the respondent-promoter in accordance with the EDC rates fixed by the State of Haryana/department.

19. However, a perusal of letter dated 22.06.2021, Exhibit RY, which is regarding implementation of Indexation Mechanism Policy, dated 11.02.2016, in license no.156 of 2014 – Baderwal Infraproject Pvt. Ltd., District Mahendergarh, shows that the office of Director, Town and Country Planning, Haryana, Chandigarh, had made payment schedule regarding payment of EDC under the Indexation Mechanism Policy, on higher side, by taking the rate of EDC @ Rs.76.3807 lacs per acre qua the said project, as per Letter of Intent dated 31.12.2013, up to the period 31.12.2015. In fact, after finalization of the policy of 2016 regarding fixation of rates of EDC of Mahendergarh District, the schedule for payment of EDC should have also been calculated as per the policy of 2016 i.e. @ Rs.52.048 lacs per acre up to the period 31.12.2015.

20. We have thoroughly gone through the directions given by the learned Authority in para no.8 of the impugned

order and are of the considered view that these directions are quite appropriate and would ensure the transparency regarding the deposit for payment of EDC in an escrow account to be opened by the respondent-promoter, with the rider that no money can be used from the said escrow account for any other purpose. In continuation of the aforesaid instructions, as mentioned in para no.8 of the impugned order, it is further clarified that within 30 days of the uploading of this order, the office of the Director, Town and Country Planning, Haryana, Chandigarh, would issue the fresh schedule for payment of EDC in accordance with policy of 2016, vide which the rate of EDC qua district Mahendergarh were fixed. After receipt of the fresh schedule, as ordered above, the respondent-promoter within 15 days would issue demand notice of EDC and balance sale consideration to the allottees/appellants. After receipt of the said demand notice by the allottees/appellants, they would make the payment of so demanded amount, within 30 days to the respondent-promoter. If the said demanded amount is not paid by the allottees/appellants within the said period of 30 days from the date of receipt of the demand letter, in that eventuality, the respondent-promoter would be within its rights under the Act to cancel the allotment and refund the amount deposited by

the allottees/appellants subject to legal deductions. After the demanded amount is deposited by the allottees/appellants, the respondent-promoter would be obligated to give possession of the plots to the allottees/appellants within 90 days plus 30 days grace period after completing the entire development works. In case, the respondent-promoter fails to hand over the possession within the aforesaid stipulated period, it shall be liable to pay interest on the amount paid towards the sale consideration of allotted plots by the appellants, at the SBI highest marginal cost of lending rate (MCLR) +2% i.e. 10% per annum from the date of filing the complaint till the actual physical possession is given to the appellants. It is made clear that the entitlement of the present appellants for interest from the date of filing of the complaint till the actual physical possession is given to them, would not be treated as precedent for the remaining allottees of the project, who have not approached the learned Authority so far by way of filing any complaint. However, the allottees/appellants even after deposit of the amount of EDC, as calculated individually and conveyed by the respondent/promoter, would be at liberty to challenge the said calculation as per law.

21. Thus, keeping in view our aforesaid discussion, the impugned order dated 17.10.2019 passed by the learned

Appeal Nos.12 to 16, 18 to 29 of 2020 & 44 of 2021

Authority is hereby modified in the manner indicated above and all the appeals stand disposed of accordingly.

22. This original order be attached with appeal no.12 of 2020 and certified copy of the same be attached with each of the remaining appeals.

23. The copy of this order be communicated to parties/Ld. counsel for the parties, the learned Haryana Real Estate Regulatory Authority, Panchkula and office of Director, Town and Country Planning Department, Haryana, for compliance.

24. File be consigned to the records.

Announced:
September 30, 2022

Inderjeet Mehta
Member (Judicial)
Haryana Real Estate Appellate Tribunal,
Chandigarh

Anil Kumar Gupta
Member (Technical)

CL