

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM**

Date of decision: 16.05.2023

NAME OF THE BUILDER		RAHEJA DEVELOPERS LIMITED	
PROJECT NAME		"RAHEJA ARANYA CITY"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/821/2022	Pooja Sharma and Aditya Aggarwal V/S Raheja Developers Limited	Shri Sagar Chawla Advocate and Shri Garvit Gupta Advocate
2.	CR/823/2022	Aditya Aggarwal and Pooja Sharma V/S Raheja Developers Limited	Shri Sagar Chawla Advocate and Shri Garvit Gupta Advocate
3.	CR/4949/2022	Seema Rani V/S Raheja Developers Limited	Shri Sanjeev Sharma Advocate and Shri Garvit Gupta Advocate

CORAM:

Shri Ashok Sangwan

Member

ORDER

1. This order shall dispose of all the 3 complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.





2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Raheja Aranya City" (residential plotted colony) being developed by the same respondent/promoter i.e., M/s Raheja Developers Limited. The terms and conditions of the agreement to sell and allotment letter against the allotment of unit in the upcoming project of the respondent /builder and fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, possession along with delayed possession charges along with interest and other.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	Raheja Developers Limited at "Raheja Aranya City" situated in Sector- 11 & 14, Sohna Gurugram.
<p>Possession Clause: -</p> <p>4.2 Possession Time and Compensation</p> <p>That the Seller shall sincerely endeavor to give possession of the Plot to the purchaser <i>within thirty-six (36) months from the date of the execution of the Agreement to sell</i> and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. <i>However, the seller shall be entitled for compensation free grace period of +/- six (6) months in case the development is not completed within the time period mentioned above.</i> In the event of Purchaser's failure to take over possession of the Plot, provisionally ang/or finally allotted, within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable pay to @ Rs.50/- per sq. yd. of the Plot area per month as holding charges for th entire period of such delay. It is made clear to purchaser that the holding charges and the late construction charges are distinct and separate to be payable by the Purchaser to the</p>	



seller. Further, if the seller fails to give possession of the said Plot within Thirty-Six (36) plus aforesaid grace period of six (6) from the date of execution of the Agreement To sell and after providing of necessary infrastructure in the sector by the government or for any reason other than the reason stated above, then the Seller shall be liable to pay the Purchaser compensation @Rs.50/- per sq. yard of the plot area for the entire period of such delay.....”

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of execution of agreement to sell	Due date of possession	Total Consideration / Total Amount paid by the complainants in Rs.	Relief Sought
1.	CR/821/2022 Pooja Sharma and Aditya Aggarwal V/S Raheja Developers Limited Date of Filing of complaint 11.03.2022	Reply received on 10.03.2023	F-132, Tower /block - F area admeasuring 223.880 sq. Yards. (Page no. 53 of complaint)	11.08.2014 (Page no. 50 of the complaint)	11.02.2018 [Note: 36 months form the date of agreement to sell i.e., 11.08.2014 + six months grace period]	TSC: - 71,53,489/- AP: - 67,46,885/- (As per customer ledger dated 06.07.2018 at page no. 90 of complaint)	Possession along with delayed possession charges
2.	CR/823/2022 Aditya Aggarwal and Pooja Sharma V/S Raheja Developers Limited.	Reply received on 10.03.2023	E-118, Tower /block - E area admeasuring 275.810 sq. Yards	11.08.2014 (Page no. 50 of the complaint)	11.02.2018 [Note: 36 months form the date of agreement to sell i.e., 11.08.2014 + six months	TSC: - 94,92,390/- AP: - 89,96,333/- (As per customer ledger dated 06.07.2018 at page no.	Possession along with delayed possession charges



	Date of Filing of complaint 11.03.2022		(Page no. 52 of complaint)		grace period]	92 of complaint)	
3.	CR/4949/2022 Seema Rani V/S Raheja Developers Limited Date of Filing of complaint 22.07.2022	Reply received on 10.03.2023	E-157, Tower /block - E area admeasuring 257.660 sq. ft. (Page no. 20 of complaint)	30.06.2014 (Page no. 17 of the complaint)	30.12.2017 [Note: 36 months form the date of agreement to sell i.e., 30.06.2014 + six months grace period]	TSC: - 88,82,868/- AP: - 84,61,254/- (As per customer ledger dated 29.03.2021 page no. 46 of complaint)	Possession along with delayed possession charges

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation Full form

TSC Total Sale consideration

AP Amount paid by the allottee(s)

4. The aforesaid complaints were filed against the promoter on account of violation of the agreement to sell and allotment letter against the allotment of units in the upcoming project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the

authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/821/2022 titled as Pooja Sharma and Aditya Aggarwal V/S Raheja Developers Limited** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

A. Project and unit related details

7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/821/2022 titled as Pooja Sharma and Aditya Aggarwal V/S Raheja Developers Limited.

S. N.	Particulars	Details
1.	Name of the project	"Raheja Aranya City", Sector- 11&14, Sohna Road, Gurugram, Haryana
2.	Project area	107.85 acres
3.	Nature of the project	Residential Plotted Colony
4.	DTCP license no. and validity status	1. 25 of 2012 dated 29.03.2012 valid up to 28.03.2018 2. 19 of 2014 dated 11.06.2014 valid up to 10.06.2019





5.	Name of licensee	Standard Farms Pvt. Ltd. and 9 Others
6.	RERA Registered/ not registered	Registered vide no. 93 of 2017 dated 28.08.2017
7.	RERA registration valid up to	27.08.2022
8.	Plot no.	F-132, Tower/block- F (Page no. 52 of complaint)
9.	Area admeasuring	223.880 sq. Yards. (Page no. 53 of complaint)
10.	Date of execution of agreement to sell	11.08.2014 (Page no. 50 of the complaint)
11.	Date of allotment letter	11.08.2014 [Page no. 47 of the complaint]
12.	Possession clause	4.2 Possession Time and Compensation "That the Seller shall sincerely endeavor to give possession of the Plot to the purchaser <i>within thirty-six (36) months</i> from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/Regulatory authority's action, inaction or omission and reasons beyond the control



of the Seller. ***However, the seller shall be entitled for compensation free grace period of +/- six (6) months in case the development is not completed within the time period mentioned above.*** In the event of Purchaser's failure to take over possession of the Plot, provisionally ang/or finally allotted, within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable pay to @ Rs.50/- per sq. yd. of the Plot area per month as holding charges for th entire period of such delay. It is made clear to purchaser that the holding charges and the late construction charges are distinct and separate to be payable by the Purchaser to the seller. Further, if the seller fails to give possession of the said Plot within Thirty-Six (36) plus aforesaid grace period of six (6) from the date of execution of the Agreement To sell and after providing of necessary infrastructure in the sector by the government or for any reason other than the reason stated above, then the Seller shall be liable to pay the Purchaser compensation @Rs.50/- per sq. yard of the plot area for the entire period of such delay..... "

(Page no. 58 of the complaint).



13.	Grace period	Allowed As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the part completion certificate by August 2017. As per agreement to sell, the construction and development work of the project is to be completed by August 2017 which is not completed till date. Accordingly, in the present case the grace period of 6 months is allowed.
14.	Due date of possession	11.02.2018 [Note: 36 months form the date of agreement to sell i.e., 11.08.2014 + six months grace period]
15.	Total sale consideration as per customer ledger dated 06.07.2018 at page no. 90 of complaint	Rs.71,53,489/-
16.	Amount paid by the complainant as per	Rs.67,46,885/-

	customer ledger dated 06.07.2018 at page no. 90 of complaint	
17.	Part completion certificate	Not obtained
18.	Offer of possession	Not offered
19.	Delay in handing over the possession till date of this order i.e., 16.05.2023	5 years 3 months and 5 days

B. Facts of the complaint

8. The complainants have made the following submissions in the complaint: -
- a. That in the year 2012, respondent launched a residential plotted colony in approximately 57.68125 acres situated in Sector- 11&14, Sohna Road, Gurugram, Haryana under the name of "Raheja's Aranya City".
 - b. The representatives of the respondent approached the complainant's showing brochures, marketing material and other advertisements luring him to purchase the property in the said project (hereinafter referred to as '**Prospectus**'). The respondent widely publicized the project on the website '<https://www.raheja.com/raheja-aranya.html>' and '<http://www.rahejaaranya.com/>' and also through various other advertisement channels making false claims that every fact of the township is sheer symphony with nature's bounty and shall be



providing high standards of amenities and conveniences. The respondent further made false promises to construct plots, premium apartments, schools and colleges, hospitals dispensaries, nursing homes, retail spaces, community activities and recreational centres.

- c. That based on the representations of the respondent, the complainant was lured into booking a plot which was allotted to him on 11.08.2014 bearing no. F-132 admeasuring 223.880 sq. Yds. in the said project. The advance booking amount of Rs.5,70,740/- was taken by the respondent as early as on 05.04.2012 and the respondent sanctioned the allotment on 11.08.2014. Till the date of allotment, an amount of Rs.14,87,403/- was already paid approximately 20% of the total amount of the unit as per the demand of the respondent.
- d. That on 11.08.2014, an agreement to sell was also executed with respect to the allotted unit for a total sale consideration price of Rs.59,49,511/- which included only the basic sale price of Rs.26,575/- per sq. yds.
- e. That the respondent at the time of booking the plot in the said project had assured the complainants that they have procured all the necessary permissions, licenses and approvals, and further committed that under all circumstances, it would deliver the physical possession of the property within 36 months from '*the date of execution of the Agreement*' in accordance with clause 4.2 of the agreement to sell. In addition to the above-mentioned period, the agreement to sell provided for a grace period of 6 months in the event the construction not completed within the above-mentioned time period.



- f. That the complainants have paid every rupee of demand raised by it. They have apprehensions that the respondent in fact raised demands without actually reaching the milestone. The annexure-A to the agreement to sell suggests that the respondent was to raise the demands in accordance with the milestone reached which have not been reached.
- g. That the representatives of the respondent, at the time of promoting the project, had assured the complainants that unlike other builders, the respondent took the timelines seriously. Considering the strong commitment shown by the respondent, its reputation and getting enticed by the amenities being provided along with the property by the it, the complainant was compelled to purchase the plot. Thus, the respondent succeeded in luring the complainant to part with his hard-earned money by adopting the false marketing strategies. Further, there was no substantial progress in the project and the construction of the allotted plot till the date of actual handover of the plot. They were constrained to approach the respondent to seek the status of the property. At the time, instead of handing over the possession of the property, it once again assured that the plot shall be fit for use within the grace period as stipulated in the agreement to sell.
- h. That the complainants, being already entrenched with the respondent, was left with no option but to give in to its arbitrary demands of high-handedness and was forced to wait more as he had already invested in the project. They had already taken a hefty loan to purchase the unit from ICICI Bank and was hoping of getting the physical possession of



the unit without undue delay. Further, the complainant recently visited the project on 05.05.2022, and they were shocked to notice that even after a delay of more than 5 years, the land is still in shambles and there was no sign of any work going on there.

- i. That the respondent continued to send demand letters for further instalments to the complainants. Since, they had already paid a substantial part of the purchase price to the respondent, the complainants complied with the letters of demand and paid further instalments within due time. At the same time, the representatives of the complainants continuously followed up with the offices of the respondent regarding the possession of the unit but was not given any firm timelines for the same. As such, the complainants had no visibility on the status of progress of the project or the expected date of completion.
- j. That the complainant had made all the payments as per the demand raised by the builder. As evident by the statement of account shared by the respondent, the complainants have paid a total of Rs.67,55,551.36/- till 16.12.2016. The respondent is obligated to refund the excess payment, if any to the complainant along with interest of 24% per annum.
- k. That the project was launched by the respondent and it's the marketing representatives approached innocent and gullible purchasers and collected huge sums as the booking amounts, from a large number of people without allowing them to fully understand the agreement ought to be executed. At the time of booking of the plot in the said project, the





complainant was assured that the possession of the unit would be handed over latest by 10.08.2017. Based on these representations, the complainants sought regular updates and answers from the representatives of the respondent via calls and e-mails. However, the complainants never received a positive response till date.

- i. That in terms of clause 3.12 of the agreement to sell, the respondent itself stipulated that in case of any delays in payments by the complainants, would be liable to pay interest at the rate of 18% per annum to it from the due date of payment of instalments on monthly compounded basis. By the same principle, the respondent ought to pay the same rate of interest on the funds of the complainant enjoyed by the respondent during the period of delay of handover of the unit. However, clause 4.2 stipulates that the respondent shall pay a meagre amount of Rs.50/- per sq. ft. per month if it fails to deliver the possession on time to the complainants.
- m. That the respondent has been brushing aside all requisite norms and stipulations and has accumulated huge amount of hard-earned money of various investors/buyers in the project including the complainants and has delayed the handing over of the physical possession of the unit by 4 years and 7 months calculated till 10.03.2022 and is still delayed. As narrated hereinabove, the respondent has indulged in both "restrictive trade practice" and "unfair trade practice" by its various acts and omissions.
- n. Despite complying with the draconian terms of the agreement to sell due to the wrongful actions of the respondent, the complainants have

incurred substantial losses primarily arising from delay in handover of the possession of the Unit. *Inter-alia* these losses are broadly described as to be in terms of loss by way of interest on amounts paid by the complainant, loss by way of interest paid to the banks for obtaining loans, loss of opportunity and loss of rental income. All losses are attributable to the respondent.

C. Relief sought by the complainants: -

9. The complainants have sought following relief(s)
 - a. Direct the respondent to give the physical possession of the fully developed/constructed unit with all amenities.
 - b. Direct the respondent to give delayed possession interest on the amount paid by the allottee, at the prescribed rate from the due date of possession till the actual physical possession of the unit is handed over as per the proviso to section 18(1) of the Act of 2016.
 - c. To pay an amount of Rs.35,000/- per month being the compensation towards loss of rental income on the unit, for each month of delayed possession as per prevailing market rental rate along with the rate of interest of 24% per annum.
 - d. To pay an amount of Rs.15,00,000/- towards the compensation.
 - e. To pay an amount of Rs.1,00,000/- being refund of amount wrongfully taken towards club house (which has not been constructed and operationalized till date) plus interest @ 24% per annum.
10. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.



D. Reply by the respondent.

11. The respondent contested the complaint on the following grounds: -

- a) That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The agreement to sell was executed between the parties prior to the enactment of the Act, 2016 and the provisions laid down in the said Act cannot be enforced retrospectively. Although the provisions of the Act, 2016 are not applicable to the facts of the present case in hand yet without prejudice and in order to avoid complications later on, the respondent has registered the project with the authority under the provisions of the Act of 2016, vide registration no. 93 of 2017 dated 28.08.2017.
- b) That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e., clause 13.2 of the buyer's agreement.
- c) That the complainants have not approached this authority with clean hands and has intentionally suppressed and concealed the material facts in the present complaint. The complaint has been filed by it maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:
 - That the respondent/builder is a reputed real estate company having immense goodwill, comprised of law abiding and peace-loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered several



prestigious projects such as 'Raheja Atlantis' 'Raheja Atharva', and 'Raheja Vedanta' and in most of these projects large number of families have already shifted after having taken possession and resident welfare associations have been formed which are taking care of the day to day needs of the allottees of the respective projects.

- That the complainant after checking the veracity of the project namely, 'Raheja Aranya City phase-2' sector 11 & 14 Sohna Road, Gurugram had applied for allotment of plot vide their booking application form. The complainants agreed to bound by the terms and conditions of the booking application form. The complainants were aware from the very inception that the plans as approved by the concerned authorities are tentative in nature and that the respondent might have to effect suitable and necessary alterations in the layout plans as and when required.
- That based on the Application for booking, the respondent vide its allotment offer letter dated 11.08.2014 allotted to the complainants plot no. E-132 admeasuring 223.880 sq. yard. The complainants signed and executed the agreement to sell on 11.08.2014 and the complainants agreed to be bound by the terms contained therein.
- That the respondent raised payment demands from the complainants in accordance with the mutually agreed terms and conditions of allotment as well as of the payment plan and the complainants made the payment of the earnest money and part-amount of the total sale consideration and are bound to pay the



remaining amount towards the total sale consideration of the plot along with applicable registration charges, stamp duty, service tax as well as other charges payable at the applicable stage.

- That the possession of the plot is supposed to be offered to the complainants in accordance with the agreed terms and conditions of the buyer's agreement.
- Despite the respondent fulfilling all its obligations as per the provisions laid down by law, the government agencies have failed miserably to provide essential basic infrastructure facilities such as roads, sewerage line, water, and electricity supply in the sector where the said project is being developed. The development of roads, sewerage, laying down of water and electricity supply lines has to be undertaken by the concerned governmental authorities and is not within the power and control of the respondent. The respondent cannot be held liable on account of non-performance by the concerned governmental authorities. The respondent company has even paid all the requisite amounts including the External Development Charges (EDC) to the concerned authorities. However, yet, necessary infrastructure facilities like 60-meter sector roads including 24-meter-wide road connectivity, water and sewage which were supposed to be developed by HUDA parallelly have not been developed.
- That the time period for calculating the due date of possession shall start only when the necessary infrastructure facilities will be provided by the governmental authorities and the same was known

to the complainants from the very inception. Non-availability of the infrastructure facilities is beyond the control of the respondent and the same also falls within the ambit of the definition of 'Force Majeure' condition as stipulated in clause 4.4 of the agreement to sell.

- That the respondent shall hand over the possession of the same to the complainants subject to the complainants making the payment of the due installments amount and on availability of infrastructure facilities such as sector road and laying providing basic external infrastructure such as water, sewer, electricity etc. as per terms of the application and agreement to sell. It is submitted that despite the occurrence of such force majeure events, the respondent has completed the part development of the project and has already been granted part completion certificate on 11.11.2016. Under these circumstances passing any adverse order against the respondent at this stage would amount to complete travesty of justice.

12. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

13. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial jurisdiction



14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

15. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

16. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.



F. Findings on the objections raised by the respondent

F.1 Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.

17. Another objection raised the respondent that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the flat buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of



project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

18. Also, in appeal no. 173 of 2019 titled **as Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

19. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads

shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F. II Objection regarding agreements contains an arbitration clause which refers to the dispute resolution system mentioned in agreement.

20. The agreement to sell entered into between the two side on 11.08.2014 contains a clause 13.2 relating to dispute resolution between the parties.

The clause reads as under: -

"All or any disputes arising out or touching upon in relation to the terms of this Application/Agreement to Sell/ Conveyance Deed including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereof for the time being in force. The arbitration proceedings shall be held at the office of the seller in New Delhi by a sole arbitrator who shall be appointed by mutual consent of the parties. If there is no consensus on appointment of the Arbitrator, the matter will be referred to the concerned court for the same. In case of any proceeding, reference etc. touching upon the arbitrator subject including any award, the territorial jurisdiction of the Courts shall be Gurgaon as well as of Punjab and Haryana High Court at Chandigarh".

21. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the



jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore, by applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.

22. Further, in **Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017**, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:



"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows: -

"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellate Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in *A. Ayyaswamy (supra)*, the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.

...
56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."

23. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the hon'ble Supreme Court **in case titled as *M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018*** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and

accordingly, the authority is bound by the aforesaid view. The relevant paras are of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

24. Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainants are well within their rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

G. Findings on the relief sought by the complainants.

- G. I Direct the respondent to give the physical possession of the fully developed/constructed unit with all amenities.
- G. II Direct the respondent to give delayed possession interest on the amount paid by the allottee, at the prescribed rate from the due date of possession

till the actual physical possession of the unit is handed over as per the proviso to section 18(1) of the Act of 2016.

25. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

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."

26. As per article 4.2 of the agreement to sell provides for handing over of possession and is reproduced below:

4.2 Possession Time and Compensation

*"That the Seller shall sincerely endeavor to give possession of the Plot to the purchaser **within thirty-six (36) months** from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. **However, the seller shall be entitled for compensation free grace period of +/- six (6) months in case the development is not completed within the time period mentioned above.** In the event of Purchaser's failure to take over possession of the Plot, provisionally and/or finally allotted, within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable pay to @ Rs.50/- per sq. yd. of the Plot area per month as holding charges for th entire period of such delay. It is made clear to purchaser that the holding charges and the late construction charges are distinct and separate to be payable by the Purchaser to the seller. Further, if the seller fails to give possession of the said Plot within Thirty-*



Six (36) plus aforesaid grace period of six (6) from the date of execution of the Agreement To sell and after providing of necessary infrastructure in the sector by the government or for any reason other than the reason stated above, then the Seller shall be liable to pay the Purchaser compensation @Rs.50/- per sq. yard of the plot area for the entire period of such delay....."

27. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government /regulatory authority's action, inaction or omission and reason beyond the control of the seller. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the agreement to sell by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

28. Due date of handing over possession and admissibility of grace period:

As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period, in case the development is not complete within the time frame specified. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by August 2017. However, the fact cannot be ignored that there were circumstances beyond the control of the respondent which led to delay in completion of the project. Accordingly, in the present case the grace period of 6 months is allowed.

29. Payment of delay possession charges at prescribed rate of interest:

Proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

30. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
31. Taking the case from another angle, the complainant-allottees were entitled to the delayed possession charges/interest only at the rate of Rs.7/- per sq. ft. per month as per relevant clauses of the buyer's agreement for the period of such delay and whereas the promoter was entitled to interest @ 18% per annum compounded at the time of every succeeding instalment for the delayed payments. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottees or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyer's. The authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumer/allottee in the real estate sector. The clauses of the buyer's agreement entered between the parties are one-sided, unfair, and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the

amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair, and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These type of discriminatory terms and conditions of the buyer's agreement would not be final and binding.

32. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 16.05.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.
33. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

34. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.70%** by the respondent/promoter

which is the same as is being granted her in case of delayed possession charges.

35. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 4.2 of the agreement to sell executed between the parties on 11.08.2014, the possession of the subject unit was to be delivered within 36 months from the date of execution of this agreement. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 11.02.2018. The respondent has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainants as per the terms and conditions of the agreement to sell dated 11.08.2014 executed between the parties. It is pertinent to mention over here that even after a passage of more than 5.3 years neither the construction is complete nor an offer of possession of the allotted unit has been made to the allottees by the builder. Further, the

authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for completion certificate/part completion certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

36. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to delay possession charges at rate of the prescribed interest @ 10.70% p.a. w.e.f. 11.02.2018 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G.III To pay an amount of Rs.35,000/- per month being the compensation towards loss of rental income on the unit, for each month of delayed possession as per prevailing market rental rate along with the rate of interest of 24% per annum.

G. IV To pay an amount of Rs.15,00,000/- towards the compensation.

37. The complainants are seeking above mentioned relief w.r.t. compensation.

Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the

quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

G. V To pay an amount of Rs.1,00,000/- being refund of amount wrongfully taken towards club house (which has not been constructed and operationalized till date) plus interest @ 24% per annum.

38. The complainants are also seeking refund of the club membership charges on account of non-completion of the club facility.
39. The authority observes that the complainants have agreed to pay club membership charges amounting of Rs.2,00,000/- in terms of payment plan annexed A with the buyer's agreement. While deciding the issue of club membership charges in **CR/3203/2020 titled as Vijay Kumar Jadhav Vs. M/s BPTP Limited and anr.** decided on 26.04.2022, the authority has observed as under:

"79. The authority concurs with the recommendation made by the committee and holds that the club membership charges (CMC) shall be optional. The respondent shall refund the CMC if any request is received from the allottee. Provided that if an allottee opts out to avail this facility and later approaches the respondent for membership of the club, then he shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of flat buyer's agreement that limits CMC to Rs.1,00,000/-."

40. In view of the above, the authority holds that the CMC shall be optional.

The respondent shall refund the club membership charges if any request is received from the complainant/allottees. Provided that if they opt out to avail this facility and later approaches the respondent for charges of the club membership, then they shall pay the club membership charges as may



be decided by the respondent and shall not invoke the terms of buyer's agreement that limits CMC to Rs.1,00,000/-.

F. Directions of the authority

41. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):


- i. The respondent is directed to pay interest to the each of the complainant(s) against the paid-up amount at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 11.02.2018 till actual handing over of possession or offer of possession plus two months after obtaining completion certificate from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The arrears of such interest accrued from due date of possession of each case till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The respondent shall not charge anything from the complainant(s) which is not the part of the agreement to sell.



- iv. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining completion certificate from the competent authority. The complainants w.r.t. obligation conferred upon him under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the completion certificate.
- v. The complainant(s) are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and after clearing all the outstanding dues, if any, the respondent shall handover the possession of the allotted unit.
- vi. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- vii. **Club membership charges-** The respondent shall refund the CMC if any request is received from the complainant/allottees. Provided that if they opt out to avail this facility and later approaches the respondent for membership of the club, then they shall pay the club house charges as may be decided by the respondent and shall not invoke the terms of agreement to sell that limit club membership charges to Rs.1,00,000/-.

42. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
43. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
44. File be consigned to registry.

Dated: 16.05.2023



(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram