HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in **Date of decision: 20.04.2023**

Sr. No.	Complaint No.	Complainant
1.	856 of 2020	Dr. Viney Kumar, S/o Sh. Umed Singh, age around 47 years, R/o House no. 241 B, Ram Gopal Colony, Rohtak, 124001
2.	857 of 2020	Mr. Davender Singh, S/o Sh. Raghbir Singh, age around 54 years, R/o House no. 65 A, Block Gali No. 6, Prem Nagar, Najafgarh, South West Delhi, New Delhi, 110043
3.	1006 of 2020	Mrs. KiranW/o Mr. Pradeep Kumar, age around 45 years, R/o House no. 157/34 Janta Colony, Rohtak, 124001
4.	1009 of 2020	Mr. Naveen Kumar, S/o Sh. Ranbir Singh, age around 36 years, R/o House no. 1643, HSVP, Sector 3, Rohtak, 124001
5.	1043 of 2020	Ms. Jyoti Phogat, W/o Lt. Col. Manu Balraj Deswal, age around 35 years, R/o House no. 129, Sector 14, Rohtak, 124001 through Sh. Udai Singh Phogat S/o Lachhman Singh having registered Power of Attorney
6.	1090 of 2020	Mr. Surender Singh, S/o Sh. Lachhman Singh, age around 52 years, R/o House no. 129, Sector 14, Rohtak, 124001
7.	1170 of 2020	Mr. Sanjay Singh Sehrawat, S/o Sh. Mahender Singh Sehrawat, age around 39 years, R/o 833A/28 Bharat Colony, Near Sheela Bye Pass, Rohtak, 124001
8.	1259 of 2020	Mr. Hari Om, S/o Sh. Kripa Ram, R/o Near Shiv Mandir, Aath Panna Bhaproda (22), Village Bhaproda, Jhajjar, Haryana, 124501

Rattee

9.	1147 of 2021	Ms. Sunita, W/o Sh. Hem Chander, R/o Village Gandhra, Gandhra (44), Rohtak, Haryana, 124501

VERSUS

1. Parsvnath Developers Ltd. through its Chairman,
   Regd. Office: Parsvnath Towers, Near Shahdara Metro Station, Shahdara, Delhi – 110032
2. Mr. Sanjeev Jain, M.D. Parsvnath Developers Ltd.,
   Regd. office: Parsvnath Towers, Near Shahdara Metro Station, Shahdara, Delhi – 110032

....RESPONDENT(S)

CORAM: **Dr. Geeta Rathee Singh** **Member**
Nadim Akhtar **Member**

Present: - Mr. Sushil K. Malhotra, counsel for complainants (in all complaints)

Ms. Isha, counsel for the respondent (in all complaints)

ORDER (Dr. GEETA RATHEE SINGH - MEMBER)

1. Present complaints have been filed by complainants under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations,

Rathee

responsibilities and functions towards the allottee as per the terms agreed between them.

2. Captioned complaints are taken up together as facts and grievances of both the complaints are identical and relate to the same project of the respondent, i.e., 'Parsvnath City, Rohtak'. The fulcrum of the issue involved in all these cases pertains to failure on part of respondent promoter to deliver timely possession of units in question. Therefore, Authority by passing this common order shall dispose of all the 9 captioned complaints. Complaint No. 1006 of 2020 titled Kiran versus Parsvnath Developers Ltd. has been taken as lead case for disposal of all matters.

A. UNIT AND PROJECT RELATED DETAILS OF THE LEAD CASE

3. The particulars of the units booked by complainant, the details of sale consideration, the amount paid by the complainant and details of project are detailed in following table:

(i) Complaint no. 1006 of 2020

S.No.	Particulars	Details
1.	Name of the project	Parsvnath City, Rohtak
2.	Name of promoter	Parsvnath Developers Ltd.
3.	Project registered/unregistered	Unregistered

Rattee

4.	DTP license no.	36 of 2010 dated 07.05.2010
5.	Date of booking by complainant	September 2009
6.	Unit no. and area	A-167 , 359 sq. yards (old) A-091, 299 sq. yards (new)
7.	Date of builder buyer agreement	14.08.2012
8.	Basic sale price	₹18,84,750/-
9.	Amount paid by complainant	₹27,01,207/-
10.	Deemed dated of possession	13.08.2014
11.	Offer of possession	30.06.2020

B. FACTS OF THE COMPLAINT NO. 1006 OF 2020 AS STATED BY COMPLAINANT

4. Facts of the complainant's case are that in September 2009 complainant booked plot a bearing no. A-167 measuring 359 sq. yards in a project named 'Parsvnath City, Rohtak' being developed by respondent. Complainant had paid an amount of ₹27,01,207/- to the respondent by the year 2013 against basic sale price of ₹18,84,750/-. Builder buyer agreement was executed between the parties on 14.08.2012 (Annexure C-2) and as per clause 8(a) of said agreement, respondent promised to complete the internal development works of the colony within twenty four months from the date of signing of the agreement. Therefore, respondent was under an obligation to hand

over possession of the plot within a period of 24 months i.e. by 13.08.2014. Complainant has alleged that respondent did not give possession of the plot by stipulated date of 13.08.2014 despite making payment of substantial amount of ₹27,01,207/- to respondent. However, after lapse of approximately 11 years from the date of booking, offer of possession of a new plot bearing no. A-091 admeasuring 299 sq. yards was made to the complainant vide letter dated 30.06.2020 in lieu of old plot no. A-167 having area of 359 sq. yards along with final statement of accounts which covers the demand under various heads. Copy of said offer of possession along with final statement of accounts is annexed with complaint as Annexure C-3.

5. It has also been submitted that no infrastructure has been provided by the respondent at site. Even the basic amenities such as electrification, water supply, road, and green belt, park, sewerage treatment plant etc have not been provided and more than 60% work is pending. Furthermore, respondent has not incorporated interest for the period of delay in offering of possession in the final statement of accounts issued by respondent along with letter of offer of possession. Complainant has been offered plot having an area of 299 sq. yards i.e. the area has reduced by 60 sq. yards but respondent neither refunded the amount already paid for said area nor compensated for the same.

Rathee

6. It has been submitted that there are various illegal demands in final statement of accounts issued by respondent on 30.06.2020 which are as under:

(i) Respondent has wrongly charged preferential location charges of ₹78,487.50/- from the complainant whereas the plot is not a preferential one. No reason has been cited by respondent for claiming preferential location charges and declaring the particular piece of land as preferential one.

(ii) Respondent has also demanded water connection and sewerage connection charges which according to the complainant are not only wrong but also exponent is also very high as compared to actual prize. This demand is to be executed only at the time of submission of application for these services.

(iii) Respondent has charged interest for delay in making payments @24% which is against the RERA provisions.

(iv) Respondent has also charged GST from the complainant and the same is not payable on the ground that delay of possession is on the part of respondent and had possession been given on time, then GST would have not been paid by the complainant.

(v) Respondent has also demanded Interest Free Security Charges and Maintenance Charges and said demands are baseless as

there is no ground to deposit Interest free Security as no one will pick the piece of land and run away.

(vi) Professional and incidental charges demand of ₹8,000/- is also unjustified and exponent is very high as compared to actual expenditure.

C. RELIEF SOUGHT

7. The complainant in her complaint has sought following reliefs:

(i) Hon'ble Authority may kindly be pleased to pass an order or direction to respondent to arrange the offer of possession of the same plot for which allotment and agreement was carried out.

(ii) Complainant needs to be properly compensated for reduced area with refund and interest accordingly current market rate.

(iii) Respondent may be directed to develop the project site to required specification.

(iv) Allow delay possession interest to complainant from deemed date of possession to actual date of possession.

(v) Final statement of account dispatched by respondent need to be rectified as almost every demand is wrong and unjustified.

(vi) Authority may pass any order in favour of complainant in the interest of justice?

Rattee

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 22.02.2021 pleading therein:

8. Complaint is neither tenable nor maintainable before Hon'ble Authority as the project is at the verge of completion and possession of the respective plot has already been offered to the complainant. Hence, the complaint must be liable for dismissal and scrap instantaneously solely on this ground.

9. In August 2010, complainant was allotted plot bearing no. A-167 admeasuring tentatively 359 sq. yards in the project namely 'Parsvnath City, Rohtak'.

10. Plot buyer agreement was executed between the parties on 14.08.2012 as per which basic selling price of the plot was fixed at ₹18,84,750/- against which complainant has paid an amount of ₹27,01,207/- till date.

11. The complainant was duly informed about the non-payment of instalments or having committed default on making the payments of instalments/overdue repeatedly through various reminders dated 04.09.2010. It is pertinent to state that in spite of the fact that the original allottee had been sent many reminder letters regarding the overdue payments, original allottee neither replied nor paid the overdue amounts to the respondent with respect to the said booking. It

is submitted that original allottee had been chronicle defaulter in making timely payments.

12. Due to certain modifications and approvals of the revised layout plan by the competent authority, DTCP, Haryana, the plot was initially allotted to the complainant has been changed from A-167 to A-091. Complainant was given offer of possession of new plot no. A-091 having area admeasuring 299 sq. yards from area admeasuring 359 sq. yards after the approval of revised layout and demarcation cum zoning plan from the competent authority, DTCP, Haryana in the same project.

13. It has been submitted that time is not the essence of the contract.

14. Complainant had purchased the said plot from secondary or open market. It has been submitted that complainant was well versed and informed about the status and allotment of the said project. Therefore, the complainant cannot be allowed to gain from its own wrong.

15. Respondent has also submitted that delay caused in handing over of possession was not intentional rather due to reasons beyond his control. Respondent has also placed following submissions vide its said reply:

(i) Respondent promoter applied for grant of license to develop a plotted colony over land measuring 118.188 acres in village Bohar, District Rohtak, Haryana. Respondent obtained the

Pattee

license bearing no. 36 of 2010 dated 07.05.2010 from the Director Town and Country Planning, Haryana for the promotion and development of a residential plotted colony on the above said land.

(ii) Application for renewal of license with required fee has already been applied before the competent authority from 07.05.2014 upto period 06.05.2020 and still pending at the end of the competent authority.

(iii) Subsequently, on 07.11.2014, DTCP de-licensed an area admeasuring 14.15 acres as the said land was acquired by HSIDC, Haryana. Therefore, respondent company was forced for filing the application for renewal of the said license for the area admeasuring 104.038 acres on 07.10.2015 and submitted its revised layout plan and demarcation cum zoning plan. Thereafter, the respondent company has already applied for the renewal of the licences for further period from 07.05.2014 to 06.05.2020 with required license renewal fee.

(iv) Respondent company has applied for registration of the said project under RERA, Act 2016 and the proceedings have been going on for the registration It is pertinent to state that issues pending with DTCP regarding the said project has been

resolved of the approval of revised layout plan and demarcation cum zoning plan.

16. Respondent company has already developed the basic infrastructure and the internal development works at the project site and project area is completely developed and fit for human habitation. Respondent company has made all the compliance and requirements for the development of the project. The plots could not be offered to the respective customers due to delay in renewal of the license, the revised layout plan and demarcation cum zoning plan. It has been submitted that revised layout plan and demarcation cum zoning plan has already been approved by the competent authority and respondent has already given the offer of possession of the plots to all the respective buyers.

17. That in terms of clause 8(a) of the plot buyer agreement executed between the parties, there is no default on the part of the respondent in handing over the possession of the plot as the delay which has been caused is just because the competent authority who failed to renew the licence timely and also did not resolve the issue of the respondent company for which the respondent company has chased the competent authority eagerly and promptly.

18. Respondent has submitted that the demand sheet has been raised as per the terms of the plot buyer agreement executed between the parties.

19. Respondent has requested that complainant be directed to take over the possession of the plot and after getting the NOC, proceed for sell deed/conveyance deed.

20. It has been contended that RERA Act of 2016 is prospective in nature rather than retrospective.

21. Respondent has submitted that any increase/decrease in plot area may have been done due to the acquisition of the land area by HSIDC and as per clause 7(a) of plot buyer agreement, the location and area of the plot is provisional and tentative and subject to change. The developer shall have the right to effect suitable and necessary alternations in the layout plan at any stage, even during the course of development, if considered necessary by the developer, or on its own or on advice of the architects/planners and/or as may be required by any authorities, which alternations may result into change of location and/or area of plot.

22. It has also been submitted that clause B(iv) of the financial statement of accounts which is reflected on interest on delay payment upto 31.05.2020 has been completely waived off. Hence, the allegation of

the complainant regarding raise of interest@24% p.a. is vehemently denied.

23. It has also been contended by respondent that earlier service tax was enforced now it has been converted into GST which is the liability of the complainant to pay as per the agreed terms of the plot buyer agreement.

24. Respondent has also submitted that professional and incidental charges are required for the registration of the sale deed of the said plot in favour of the buyer in the name of the advocate itself and the said payment is not being charged in the name of the respondent company.

25. The respondent has prayed that the complaint may kindly be dismissed in view of above said submissions.

E. APPLICATION SUBMITTED ON BEHALF OF RESPONDENT

26. Learned counsel for the respondent has also submitted an application on 13.08.2021 to apprise the Authority about the status of the project and further prayer to accept the plea of force majeure. In said application respondent has reiterated the contentions as were submitted in reply and has sought plea of force of majeure. It has been submitted that possession has been offered to the complainant @₹5,250/- per sq. yard for basic selling price whereas the present market value of the same plot in the Rohtak City is ₹20,000/- to

Rathee

₹22,000/- per sq. yards excluding EDC and IDC. Therefore, this additional factor actually obviates the need and necessity to claim any compensation for the alleged delay. It has been prayed that claim for compensation etc raised by complainant may kindly be rejected for the reasons placed in said application.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

27. Learned counsel for both the parties reiterated their arguments as were submitted in writing. Learned counsel for complainants argued that offer of possession made on 30.06.2020 was merely a symbolic offer of possession as such offer was not a valid offer of possession in the absence of infrastructural deficiencies at site as reported by Local Commissioner in his report dated 18.10.2021 submitted in complaint case no. 1253 of 2020. Copy of said report dated 18.10.2021 has been placed on record. He further stated that even if said offer of possession is presumed as valid, there has been delay of several years and respondent is liable to pay delay interest for the same as per Rule 15 of HRERA Rules, 2017 being followed by the Authority in rest of the cases. He prayed that since there has been delay of more than 11 years from the date of booking, respondent may be directed to pay interest for delay to the complainant allottees in handing over the possession.

Learned counsel for the respondent argued that respondent is not liable to pay delay interest to the complainants as delay in handing over possession is due to delay in renewal of license by the DTCP and non-approval of revised layout plan which was pending with the Authority since 2014. She further argued that respondent has offered possession to the complainants under guidance of this Authority. It was never directed by the Authority to give delay interest to the complainants and therefore, delay interest was not incorporated in final statement of accounts issued by respondent along with offer of possession made on 30.06.2020. She also argued that in case, Authority is of the opinion that delay interest has to be paid to the complainants, it shall be awarded only till 30.06.2020 i.e. the date on which offer of possession was made to the complainants and for the purpose of calculating delay interest, amount received by respondent towards EDC, IDC and service taxes etc shall not be included as the same is to be paid to concerned authorities. Lastly, she also argued that allegations of complainants that infrastructure facilities are not available, are not tenable since internal development works are complete and basic infrastructure has already been developed at site since 2013.

To this learned counsel for the complainant placed reliance on judgment rendered by Hon'ble High Court of Punjab and Haryana in

RERA Appeal No. 95 of 2021 titled Emaar India Ltd. (formerly known as Emaar MGF Land Ltd.) versus Kaushal Pal Singh alias Kushpal Singh wherein it has been held that when an allottee does not intend to withdraw from the project, he is entitled to be paid by the promoter the interest for every month of delay till the delivery of possession at such rate as may be prescribed. Such interest for every month of delay is payable on the entire amount paid by the allottee. Copy of said judgment of Hon'ble High Court has been placed on record.

G. ISSUES FOR ADJUDICATION

28. (i) Whether the complainant is entitled to relief of interest for delay in handing over the possession in terms of Section 18 of Act of 2016?

(ii) Whether the complainant is entitled for relief of rectification of final statement of accounts issued by the respondent along with offer of possession dated 30.06.2020?

H. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

(a) Findings on objections taken by respondent

29. On perusal of record and after hearing both the parties, Authority observes that the respondent has taken a stand that present complaint is not maintainable for the reason that project is at the verge of completion and possession of the respective plot has already been

Rathee

offered to the complainant. In this regard it is observed that since respondent has failed to fulfil all his obligations of handing over the possession of the flat, cause of action is re-occuring and ground that complaint is not maintainable stands rejected.

30. Another objection taken by respondent is that RERA Act of 2016 is prospective in nature rather than retrospective i.e provisions of the RERA Act cannot be applied retrospectively. In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. **113 of 2018 titled as Madhu Sareen v/s BPTP Ltd. decided on 16.07.2018**. Relevant part of the order is being reproduced below:

> *"The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written*

after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a 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. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller."

Further, as per recent judgement of Hon'ble Supreme court in Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021 it has already been held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act,2016 shall be applicable to such real estate projects, furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaint.

Execution of builder buyer agreement is admitted by the respondent. Said builder buyer agreement is binding upon both the

parties. As such, the respondent is under an obligation to hand over possession on the deemed date of possession as per agreement and in case, the respondent failed to offer possession on the deemed date of possession, the complainant, on demand, is entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

(b) Findings on relief claimed by complainant regarding payment of delay interest

31. Respondent has submitted that delay interest as sought by the complainant shall not awarded as delay in handing over the possession was due to reasons beyond the control of respondent company and has pleaded that due to force majeure conditions it was not possible for them to offer possession in time even though they had developed the project well in time and were in a position to offer possession within the agreed time frame. Said issue was heard at length on 30.11.2021 whereby after hearing the parties, Authority had declined the plea of force majeure raised by respondent and had observed that complainants are entitled to interest on the amount paid by them from the due date of offering possession upto the actual date of offer of possession. It was also held that in none of the BBAs placed before the Authority precise due date of delivery of possession has been mentioned. Clause 8(a) of the agreement however, stipulates that development works would be completed within 24 months. It can

therefore be presumed that due date of delivery should be calculated as two years from the date of executing BBAs. Said order dated 30.11.2021 is reproduced here for reference:-

> "1. This is a bunch of 13 matters pertaining to project Parsvnath City, Rohtak. Large number of contentious issues have been raised in the complaints, most important of which being admissibility of interest claimed by complainant allottees on account of delay caused by respondent promoters in offering possession of the plots. Respondents have been pleading that because of force majeure conditions it was not possible for them to offer possession in time even though they had developed the project well in time and were in a position to offer possession within the agreed time frame. The complainants have been arguing it otherwise stating that due date of possession was in the years 2014-15 and it is entirely on account of defaults committed by respondent company that their license was not renewed and revised layout, demarcation and zoning plans were not approved which has resulted into delay in offering the possession.
>
> 2. The facts of different cases are different because area of plots, cost of plots and amounts paid by each individual allottee complainant are different, therefore, keeping in view the facts of each case separate orders may have to be passed in each respective case. However, one common question in all the cases is whether respondent promoter has indeed defaulted in offering possession in time due to their fault or was not able to offer possession in time for no fault of theirs and due to prevailing force-majeure conditions. To decide this question, today this hearing of the Authority was held.
>
> 3. In complaint no. 1253 of 2020 tilted as Naresh Kumari V/s Parsvnath Developers Ltd., vide orders dated 17.08.2021, Authority had sought certain information from the promoters to enable it to decide the aforesaid questions. The respondent-promoters have submitted an affidavit annexing therewith certain information sought by the Authority.
>
> Since onus is upon promoters to prove existence of force-majeure conditions therefore, Sh. Shekhar Verma, learned counsel for the respondent promoters was allowed to open the proceedings with his arguments.

Rathee

4. Sh. Shekhar Verma, learned Counsel submitted as follows:

(i) The respondent promoter applied for grant of license to develop a plotted colony on land measuring 118.188 acres in Sector-33 and 33A, Rohtak vide application dated 22.06.2006 and application dated 07.05.2007. Against the said applications license no. 36 of 2010 dated 07.05.2010 was granted which was valid upto 06.05.2014.

(ii) State Government Haryana commenced certain land acquisition proceedings by issuing notification dated 03.02.2008 under Section 4 of Land Acquisition Act,1894 for development of industrial colony by HSIIDC. The respondent promoter filed objections under Section 5(a) of the Act. After the said notification declaration under Section 6 was issued on 13.12.2008 and 14.15 acres land of the project belonging to respondent promoter was also acquired. It has been submitted in writing by respondent promoters that they were expecting that their said land under acquisition would be released by the State Government under Land Release Policy. A Civil Writ Petition No. 6196 of dated 02.04.2012 was also filed by the respondent-promoter which was dismissed in limine for the reasons of delay and laches.

(iii) Since, 14.15 acres land could not be released, the same was de-licensed vide Town & Country Planning Department on 31.10.2014.

(iv) Now after de-licensing of 14.15 acres, total project area reduced to 104.038 acres. On 08.01.2015 respondent-promoter submitted revised layout plan. Since their license was valid upto 06.05.2014. They also applied for its renewal on 07.10.2015, 29.09.2017 and 22.04.2019. On 19.06.2018 their pending application for approval of revised lay out plan and renewal of the license were considered by the department, and on 23.12.2019 a revised layout plan was approved followed by approval of zoning plan dated 28.02.2020 and demarcation plan dated 17.03.2020. For three months due to outbreak of Covid-19 they could not commence the process of offering possession to the allottees which they did on 30.6.2020 after withdrawal of COVID restrictions.

Rathee

(v) It has been averred that 295 conveyance deeds have already been executed and 550 allottees have settled their accounts.

(vi) Next argument of respondents is that they had completed all the development works by the year 2013-14. Sh. Shekhar Verma, learned counsel for the respondent promoters contested the observations made by Authority in para 6 (ii) of order dated 17.08.2021 passed in complaint no. 1253 of 2020 that 135 crores of EDC had been collected from allottees which the respondent failed to pay to the department. Learned counsel stated that the amount of EDC collected was ₹54.20 crores only. He further stated that the promoters had given a bank guarantee of ₹17.00 crores to Town & Country Planning Department as security for non-deposition of the EDC. IDC however, has been fully paid.

(vii) Learned counsel Sh. Shekhar Verma further argued that it was because of aforesaid force-majeure conditions when despite repeated applications filed with Town & Country Planning Department for renewal of license and for approval of revised lay out, demarcation and zoning plans that possession of plots could not be offered to allottees in time despite having completed all works of the colony in the year 2013-14 itself. According to Sh. Verma, delay was entirely un-intentional and is on account of the time taken by Town & Country Plan Department.

5. Learned counsel Sh. Verma referred to certain clauses of builder buyer agreement executed by builders and allottes to emphasise that such unforseen eventualities are covered in various provisions of agreements and both parties had agreed to act accoridngly. He specifically referred to clause 7 and clause 8 of the builder buyer agreement (in complaint no.1253 of 2020), a gist of both these clauses as emphasised by learned counsel Sh. Verma is as follows:

(i) Only a stipulation was made that developer shall endeavour to complete internal development works of the colony within 24 months from the date of signing the agreement, and no specific date of handing over of possession was ever stipulated in the agreement or otherwise understood between the parties.

(ii) The said period of 24 months was subject to force majeure restriction or restraint from any courts, authorities or circumstances beyond the control of the developer. The date of submission of application for grant of completion certificate was agreed to be determined as the date of completion of development of the colony. No claim by way of damages or compensation could lie against the developer in case of delay in handing over possession on account of any delay for reasons beyond their control.

(iii) In clause 8 (c), it has been stipulated that in the event of delay in offering possession subject to force majeure and other circumstances, the developer had agreed to pay buyers compensation at the rate of ₹12 per sq. mtr. per month.

(iv) Clause 7 (a) provides that location and area of the allotted plot is provisional and tentative and subject to change. Developer shall have the right to change lay out plans or other development plans and they were entitled to allot plots with changed location and area to the allottees.

(v) Clause 7 (b) provides that in case allotted plot gets omitted/deleted from layout plan and no alternate plot is offered, or if the project is abandoned for any reason other than acquisition of land then developer shall be liable only to refund actual amount along with simple interest at the rate of 10%. Clause 7(c) further provides that at present there is no subsisting notification or order by Central Government or State Government regarding acquisition or requisition or otherwise for taking over of the area in which plot is located. In case any such development takes place hereafter the same shall be at the cost and risk of buyers.

6. Sh. Shekhar Verma, learned counsel further argued that it was the responsibility of Town & Country Planning Department to ensure that before grant of license land of the project is completely free from any lien or acquisition process. Under normal procedure and practice Town & Country Planning Department gets clearance about title etc. of the land from the District Administration/District Revenue Officer. Without such a certificate issued by a District Revenue Officer license is not granted. He argued that it was on account of lapses on the part of Town & Country Planning Department that

Rathee

license was granted and lay out plans etc. were approved despite the fact that 14.15 acres of land of the project was notified for acquisition.

7. Sh. Ramesh Malik, Advocate, learned counsel appeared for complainants in complaint nos. 1207 of 2020, 1208 of 2020 and 309 of 2021. He submitted as follows:

(i) That when respondent company applied for grant of license and pursued their application for grant of license, they were very much aware that a portion of the project land has been notified for acquisition by the State Government. They had even filed their objections against the said land acquisition. Despite being fully aware of land acquisition process, they continued to pursue their application filed in the year 2006-2007 for grant of license, which they eventually received on 07.05.2010.

(ii) The respondent promoter was duty bound to inform the department that certain portions of their land was under acquisition. They should have requested for amendment of the application for grant of license.

(iii) More seriously they started sale of plots in the year 2009 i.e. much before the actual grant of license. In complaint no.1207 agreement was executed on 14.12.2012 fully knowing at that time the land on which plot of the complainant was situated was a disputed piece of land being a part of the acquisition process. Despite being aware that said piece of land on which the plot is located was under acquisition they went ahead with allotment. They specifically mentioned in clause 7(c) of the agreement that at present the land is free from any acquisition or dispute. Respondent therefore, completely concealed the material facts and even misrepresented to the allottee-complainant.

(iv) Concluding his arguments learned counsel Sh. Ramesh Malik stated that when promoters were fully aware of land acquisition process they should not have sold the plots. Instead, they kept accepting money from allottees and kept executing builder-buyer agreements, therefore, they cannot be granted any benefit of claimed force majeure conditions.

8. Sh. Sushil Malhotra, Advocate, learned counsel appeared in co..aplaint nos. 856, 857, 1006, 1009, 1043, 1090, 1170, 1259, 1265 of 2020. He reiterated the

Rathee

arguments as have been submitted by learned counsel Sh. Ramesh Malik. He further referred to judgement of Hon'ble High Court passed in CWP No. 6196 of 2012. Sh. Malhotra specifically referred to the orders passed by Hon'ble High Court that respondent-promoters have obtained the license by way of deliberate concealment of facts. Further the department of Town & Country Planning had started proceedings for revocation of license on the ground that petitioners had not notified the process of acquisition initiated vide the notification in question. He accordingly, reiterated that the respondents are guilty of misleading and misrepresenting to the complainant allottees.

For the aforesaid reasons Sh. Sushil Malhotra, learned counsel argued that the respondent cannot be given benefit of force majeure conditions. They have deliberately misled the complainants. They had no authority or right to allot apartments when part of the land was under acquisition. Further, it is the respondents who had defaulted in payment of EDC because of which their license was not renewed and resulted in delay in offering possession to the complainants and other allottees. Now the respondents cannot claim benefit of their own wrongs.

9. The Authority has gone through facts and circumstances of the matter. It has gone through the affidavit dated 18.10.2021 filed by respondents in complaint no.1253 of 2020. It observes and orders as follows:

(i) As already observed, separate final orders may have to be passed in each captioned complaints depending upon the date of booking, due date of offering possession, the amount of money paid and/or if any default have been committed by any of the parties towards making payments etc. This order is being passed only to settle the question whether benefit on account of force majeure conditions prevailing for several years claimed by the respondent is admissible or not. Accordingly, this question of law and facts, which is common to all captioned cases is being decided by this order.

(ii) Relevant facts of the matter as revealed by respondents themselves in their affidavit dated 18.10.2021 submitted in complaint no.1253 of 2020 are

that an application for grant of license was filed on 22.06.2006 and 07.05.2007. Barely, 7-8 months after submitting the application for grant of license, land acquisition process was initiated by State Government authorities in respect of 14.15 acres land of the project. Respondents submitted their objections under Section 5(a) of the Land Acquisition Act. Even though the date of filing of such objections has not been stated in the affidavit declaration under Section 6 of the Act was issued on 13.12.2008. Accordingly, it is to be presumed that objections were filed prior to that. Finally, the land acquisition award was issued in the months of July and August, 2009. The license to the project was granted in May, 2010 i.e. 9-10 months after announcement of award. Despite acquisition of part of project land, respondents did not make any effort to revise their application for grant of license, because now the area in their ownership had reduced from 118.188 acres 5o 114.038 acres.

(iii) Respondents have stated that they were expecting release of their land from the process of acquisition. It is observed that release of acquired land cannot be claimed as a matter of right. Expectations of the respondent therefore were unfounded. Denial of the request would necessarily require amendment of license and amendment of the of the layout plans etc.

(iv) Despite being fully aware of the above facts and circumstances, respondents kept selling the plots and kept executing BBA. The date of execution BBAs in the captioned complaints is tabulated below:

S.No.	Complaint no.	Date of Builder Buyer Agreement
1.	856 of 2020	10.07.2012
2.	857 of 2020	20.03.2012
3.	1006 of 2020	14.08.2012
4.	1009 of 2020	20.03.2012
5.	1043 of 2020	14.06.2012
6.	1090 of 2020	31.12.2012
7.	1170 of 2020	16.11.2011
8.	1259 of 2020	10.10.2012
9.	1265 of 2020	25.07.2012
10.	1253 of 2020	28.06.2012

11.	1207 of 2020	14.12.2012
12.	1208 of 2020	14.12.2012
13.	309 of 2021	Not executed

(v) The Authority observes that respondent-promoters executed aforesaid agreements being fully aware that part of the project land in question was acquired and it would necessarily lead to revision of approved plans. More seriously plots were even allotted in the land which was finally acquired by the Government. No possible justification can be found for such an act on the part of respondents.

(vi) As also admitted by respondent-promoter 14.15 acres acquired land was de-licensed by Town & Country Planning Department on 31.10.2014 and consequentially respondent-promoter submitted revised lay out plans for land measuring 104.038 acres on 08.01.2015. The promoters have not clearly stated reasons for non-approval of their revised layout etc. plans till 23.12.2019, but from the various orders passed by the Authority, both in this complaint matter as well as in registration matter relating to this colony, Town & Country Planning Department did not approve revised lay out plans because the license of the colony had expired on 06.05.2014 and the license was not renewed on account of default in making payment of External Development charges. More seriously the payable external development charges had been collected by respondents from allottees. Even though Authority in its orders dated 17.08.2021 passed in complaint 1253 of 2020 had observed that ₹135 crores are due to be paid by respondent towards EDC, respondent promoter in their affidavit has admitted that ₹54.20 crores was payable as EDC and was collected as a part of sale consideration from allottees. The Authority observes that no justification whatsoever is available for not depositing amount of EDC charges collected from allottees, to State Government. This money never belonged to promoters. This money is akin to taxes of State Government and after having been collected from allottees has to be promptly deposited with authorities concerned.

(vii) It is on account of the default in making payment of EDC that the license of colony was not renewed and consequently layout, zoning and demarcation plans were not approved.

(viii) In the face of aforesaid facts and circumstances Authority is unable to accept the arguments of respondent-promoter that they should be given benefit of force majeure conditions because it was on account of delay caused by Town & Country Planning Department that their revised lay out plan were not approved and accordingly offer of possession could not be made to the allottees. This argument squarely stands refuted in the face of facts narrated above.

10. On account of aforesaid findings, Authority would consider it just and appropriate that complainants are entitled to interest on the amount paid by them from the due date of offering possession upto the actual date of offer of possession.

In none of the BBAs placed before the Authority precise due date of delivery of possession has been mentioned. Clause 8(a) of the agreement however, stipulates that development works would be completed within 24 months. It can therefore be presumed that due date of delivery should be calculated as two years from the date of executing BBAs.

11. Now, the Authority will take up facts of each individual case to determine the amounts receivable and payable by respective parties by duly incorporating therein delay interest admissible. Both the parties are directed to submit their calculation of payable delay interest. The respondents shall also issue a revised statement of accounts to the complainants duly incorporating therein delay interest admissible to them. Respective parties are directed to take action accordingly.

12. Cases are adjourned **20.01.2022."**

Authority confirms its decision taken on 30.11.2021 and declines the plea of force majeure taken by the respondent in respect of delay caused in offering possession. Further it is observed that complainant shall be entitled to interest on entire amount paid by her in terms of observations made by Hon'ble High Court of Punjab and

Haryana in RERA Appeal No. 95 of 2021 titled Emaar India Ltd. versus Kaushal Pal Singh alias Kushpal Singh. Hence, complainant is entitled to interest on the entire amount paid by her from deemed date of possession till the date of valid offer of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.70% (8.70% + 2.00%).

32. Respondent had offered possession of the plot to the complainant on 30.06.2020. At that time, provisions of RERA Act were applicable. Hence respondent was liable to pay delay interest to the complainant. The same was to be incorporated as an amount of delay interest in the final statement of accounts issued by the respondent. Since, respondent did not incorporate delay interest in its final statement of accounts issued along with offer of possession made on 30.06.2020 as per Rule 15 of HRERA Rules, 2017, said offer can't be said to be a valid offer of possession. Therefore, complainant will be entitled for delay interest till fresh legal offer of possession is to be made to the complainant with fresh statement of accounts of receivable and payable amounts mentioning exact amount of delay interest payable to the complainant as per Rule 15 of HRERA Rules, 2017.

33. Complainants have not annexed copies of receipts of payments made by them but have annexed respective customer ledgers issued by the respondent.

Authority has got calculated interest payable to the complainants in all captioned complaints based customer ledgers attached by complainants and accordingly amount of upfront delay interest payable to these complainants calculated as per Rule 15 of HRERA Rules, 2017 which as on date works out to 10.70% (8.70% +2.00%) from deemed date of possession till date and further monthly interest payable to complainants till fresh offer of possession is made to the complainants is depicted in table below:

S.No.	Complaint no.	Amounts paid by complainants	Date of builder buyer agreement/ Deemed date of possession	Date of offer of possession	**Upfront interest calculated till 20.04.2023**	**Further monthly interest**
1.	856 of 2020	₹32,40,268/-	10.07.2012/ 09.07.2014	30.06.2020	**₹30,47,237/-**	**₹28,497/-**
2.	857 of 2020	₹18,17,883/-	23.05.2012/ 22.05.2014	30.06.2020	**₹17,35,167/-**	**₹15,987/-**
3.	1006 of 2020	₹27,01,207/-	14.08.2012/ 13.08.2014	30.06.2020	**₹25,12,574/-**	**₹23,756/-**
4.	1009 of 2020	₹26,32,937.68 /-	10.12.2012/ 09.12.2014	30.06.2020	**₹23,57,994/-**	**₹23,155/-**

5.	1043 of 2020	₹28,13,540/-	14.06.2012/ 13.06.2014	30.06.2020	**₹26,67,375/-**	**₹24,744/-**
6.	1090 of 2020	₹23,39,823/-	31.12.2012/ 30.12.2014	30.06.2020	**₹20,81,083/-**	**₹20,578/-**
7.	1170 of 2020	₹19,48,376/-	16.11.2011/ 15.11.2013	30.06.2020	**₹19,67,102/-**	**₹17,135/-**
8.	1259 of 2020	₹18,19,000/-	10.10.2012/ 09.10.2014	30.06.2020	**₹16,61,579/-**	**₹15,997/-**
9.	1147 of 2021	₹18,20,807.90 /-	16.04.2013/ 15.04.2015	14.07.2020	**₹15,62,882/-**	**₹16,013/-**

(c) Findings on relief claimed by complainant regarding compensation for reduction in area of plot

33. Complainant in complaint no. 1006 of 2020 has prayed that she should be properly compensated for reduced area with refund and interest. In this regard it is observed that complainant had booked a plot admeasuring 359 sq. yards in the year 2009 and had been offered plot admeasuring 299 sq. yards in the year 2020. Admittedly there is reduction in size of plot and complainant shall be refunded the same. Accordingly, it is directed that respondent while issuing fresh statement of accounts of receivable and payable amounts, shall refund/adjust the excess amount paid by the complainant for the reduced area.

Similarly in complaint nos. 1043 of 2020, 1090 of 2020, 1170 of 2020, 1259 of 2020 and 1147 of 2021 area of the plots offered to the complainants have been reduced. Similarly, in these cases as well, respondent while issuing fresh statement of accounts of receivable and payable amounts, shall refund/adjust the excess amount paid by the complainants for the reduced area.

(d) Findings on relief claimed by complainant regarding the rectification of final statement of accounts issued by respondent

34. Another relief sought by the complainant is that final statement of accounts issued by the respondent may be rectified as almost every demand made in said statement is illegal. Said demands which are claimed by complainant as illegal as dealt as under:

(i) **Preferential location charges** – In complaint nos. 856 of 2020, 1006 of 2020, 1009 of 2020, 1043 of 2020, 1090 of 2020 and 1170 of 2020 complainants have claimed that preferential location charges demanded by respondent are illegal. Complainant in complaint no. 1006 of 2020 has alleged that respondent has charged a sum of ₹78,487.50/- as preferential location charges whereas the plot offered to her is not preferential. In this regard it is observed that clause 2(c) of plot buyer agreement executed between the parties deals with

Rathee

preferential location charges. Said clause is reproduced below for reference:

> "2(c) – Charges for preferential locations of the Plot shall be payable additionally to the Basic Price as follows:-
> **Preferential Locations**
> (i) Plot facing or adjoining park.
> (ii) Plot facing or adjoining a commercial/shopping centre.
> (iii) Plot facing or adjoining green belt/open space
> (iv) Plot abutting 18 mtr. And above wide (Sector roads)
> (v) A corner plot
> **Charges for preferential Locations**
> (i) One preferential location : 5% of the sale price
> (ii) Two preferential locations: 7.5% of the sale price."

Accordingly, it is held that respondent will be entitled to charge preferential location charges from the complainants at the rate provided in clause 2(c) of the plot buyer agreement executed between them for those plots which are preferential as per terms of above referred clause. For the plots which are not preferential as per said clause, respondent shall not charge any amount for the same. The authority further observes that in such cases where the apartment/unit has ceased to be preferentially located, the amount charged for preferential location shall be refunded/adjusted. The same should be refunded to the allottee along with interest at the prescribed rate w.e.f. the date of payment made by the allottee till the amount is repaid/adjusted.

(ii) **Water and Sewerage Connection Charges** – In all the captioned complaints, complainants have alleged that respondent has charged water sewerage connection charges from them which is illegal and should be charged only at the time of submission of application for these services. Authority has gone through clause 3(b) of the plot buyer agreements executed the parties which reveals that charges for providing sewer and water connection from the mains laid along the road serving the plot shall be payable by complainants in addition to basic price agreed between them, as and when demanded by respondent.

Since the agreements are pre-RERA agreements, it is held that said charges will remain payable by complainants as per terms of agreements executed between the parties and objection raised by complainants stands rejected.

(iii) **GST Charges** – In all the captioned complaints, complainants have alleged the respondent has charged GST from them but same is not payable as delay of possession is on the part of respondent and had possession been given on time, then GST would have not been payable by the complainants. As far as issue of GST being charged by respondent is concerned, it is observed that the Government of India introduced GST in the

year 2017. Since the deemed date of possession in these cases was prior to coming into force of GST, respondent has no justification in demanding GST charges from the complainants. Accordingly, said amount is not payable by the complainants.

(iv) **Professional and Incidental Charges** – In all captioned complaints complainants have alleged the professional and incidental charges charged by the respondent are unjustified and are very high. However, no proof has been placed on record to prove that said charges are unjustified. Hence, said objection of complainants stands rejected.

(v) **Interest Free Maintenance Security (IFMS) and Maintenance Charges** – In all the captioned complaints, it has been alleged that respondent has charged IFMS and maintenance charges from them but same is illegal and is not payable by them.

IFMS is a lump sum amount that the home buyer pays to the builder which is reserved/accumulated in a separate account until a residents' association is formed. Following that, the builder is expected to transfer the total amount to the association for maintenance expenditures. The system is useful in case of unprecedented breakdowns in facilities or for planned future developments like park extensions or tightening security.

The same is a onetime deposit and is paid once (generally at the time of possession) to the builder by the buyers. The builder collects this amount to ensure availability of funds in case unit holder fails to pay maintenance charges or in case of any unprecedented expenses and keeps this amount in its custody till an association of owners is formed. IFMS needs to be transferred to association of owners (or RWA) once formed.

Authority has perused clause 12(a) and 12(b) of the plot buyer agreement executed between the parties which deals with maintenance charges and IFMS. Said clause is reproduced below for reference:

> "12(a) – The maintenance and upkeep of the common areas and facilities within the periphery of the colony and shall be done by the Developer and/or its nominee Maintenance Agency till these are handed over to any Authority/Local Body. The Buyer shall pay necessary charges as determined by the Developer or the Maintenance Agency for maintaining common areas and facilities and providing value added services like watch and ward, street lighting, insurance of common facilities, structures, installations in the colony as determined by the Developer or the nominee Maintenance Agency. The Buyer will be required to pay maintenance charges for the first one year in advance at the time of offer of possession of the Plot. Thereafter, such charges shall be paid quarterly by the Buyer. Delay in payment of maintenance charges will make the Buyer liable to pay interest @24% of the amount due.
> (b) The Buyer shall deposit with the developer a sum @Rs.100/- per sq. yard of the area of the Plot by way of interest free security deposit to ensure timely payment of maintenance charges by him. The amount will be payable

by the Buyer at the time of taking possession or execution of sale deed of the plot, which be earlier."

After careful examination of above referred clause, it is observed that the fact of paying IFMS and maintenance charges has been in the knowledge of the complainants right from the time of booking and has been duly agreed to and accepted by the complainants. Thus, it cannot be said that these charges are illegal, arbitrary or unilateral as alleged by the complainants and it is held that same will remain payable the complainants as per terms agreed between the parties. Hence, objection of complainants in this regard stands rejected.

In the opinion of the Authority, the promoter may be allowed to collect a reasonable amount from the allottees under the head "IFMS". However, the authority directs and passes an order that the promoter must always keep the amount collected under this head in a separate bank account and shall maintain the account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFMS amount and the interest accrued thereon, the promoter must provide details to the allottee. It is further clarified that out of this IFMS, no amount

Rattan

can be spent by the promoter for the expenditure he is liable to incur to discharge his liability under section 14 of the Act.

(vi) **Interest on delayed payment** – Complainants in all captioned complaints have claimed that respondent has charged interest from them for delay in making payments @24% per annum which is against provisions of RERA. Respondent on the other hand has submitted that said interest charged for delay in making payment has been completely waived off by respondent in final statement of accounts issued by him. In this regard it is observed that this Authority has time and again in its various judgments has held that respondent will be entitled to charge interest from its allottees for delay in making payments at the same rate which he will be liable to pay to them for delay in handing over the possession. Respondent is liable to pay interest to the allottees for delay in handing over the possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.70% (8.70% + 2.00%). Hence, it is held that respondent is entitled to charge interest from the complainants for delay in making payments at the rate 10.70%.

Ratnee

(vii) **Miscellaneous Charges** – In complaint no. 856 of 2020 and 1009 of 2020, complainant has claimed that respondent has charged miscellaneous charges from them but said amount is not payable by them as same was never claimed by respondent earlier. Said objection was not pressed by complainants during arguments. Hence, no relief is being granted in this regard. However, complainants are at liberty to file fresh complaint with better particulars, if any grievance survives.

I. DIRECTIONS OF THE AUTHORITY

35. Hence, the Authority hereby passes this common order in all nine captioned complaints and issues following directions under Section 37 of the Act:

(i) Respondent is accordingly directed to make fresh offer of possession along with fresh statement of accounts of all receivable and payable amounts with regard to new plots offered to complainants as per the directions of the Authority; specifically incorporating therein the delay interest so calculated by this Authority .

(ii) Respondent is directed to pay monthly interest to the complainants so calculated by the Authority till fresh valid offer of possession is made to them.

(iii) Respondent while issuing fresh statement of accounts of receivable and payable amounts, shall refund/adjust the excess amount paid by the complainants for the reduced area.

(iv) Respondent will be entitled to charge preferential location charges from the complainants at the rate provided in clause 2(c) of the plot buyer agreement executed between them for those plots which are preferential as per terms of above referred clause. For the plots which are not preferential as per said clause, respondent shall not charge any charges for the same. The authority further observes that in such cases where the apartment/unit has ceased to be preferentially located, the amount charged for preferential location shall be refunded/adjusted. The same should be refunded to the allottee along with interest at the prescribed rate w.e.f. the date of payment made by the allottee till the amount is repaid/adjusted.

(v) Water and sewerage connection charges will remain payable by complainants as per terms of agreements executed between the parties.

(vi) Since the deemed date of possession in captioned cases was prior to coming into force of GST, respondent has no justification in demanding GST charges from the complainants. Accordingly, said amount is not payable by the complainants.

(vii) IFMS and maintenance charges will remain payable as per the terms agreed between the parties.

(viii) Respondent will be entitled to charge interest from its allottees for delay in making payments at the same rate which he will be liable to pay to them for delay handing over the possession which is at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.70% (8.70% + 2.00%).

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

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

.....
NADIM AKHTAR
[MEMBER]

.....
Dr. GEETA RATHEE SINGH
[MEMBER]