



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint nos.:	377 of 2021
Date of filing:	31.03.2021
Date of first hearing:	17.08.2021
Date of decision:	27.07.2023

1.Jaspreet Kaur Kohli
2.Tejinder Kaur Kohli
R/o T-44, Ground Floor ,
Rajouri Garden,
New Delhi-110027

....COMPLAINANT(S)

VERSUS

Parsvnath Developers Ltd.
through its Managing Director/Chairman
Regd. Office: Parsvnath Towers,
Near Shahdara Metro Station, Shahdara
Delhi – 110032

....RESPONDENT(S)

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

Present: - Mr. Rajan K. Hans, counsel for the complainants through
 video conference.
 Ms. Rupali Verma, counsel for the respondent.

ORDER (Dr. GEETA RATHEE SINGH -MEMBER)

1. This complaint case was decided by the Authority vide order dated 27.04.2022 wherein the same was dismissed. Ld. Counsel for the

complainants has filed an appeal before the Haryana Real Estate Appellate Tribunal. Said appeal was decided on 15.05.2023. The operative part of the said order is being reproduced below:

“On perusal of the aforesaid order, we find that the Authority has not taken into consideration law laid down on the issues raised by the parties. It appears that the judgment delivered by Hon'ble Supreme Court of India in case of Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and others v. DLF Southern Homes Put. Ltd. (now known as Begur OMR Put. Ltd.) and others (2020) 3 R.C.R. (Civil) 544 and judgment rendered by this Tribunal in Appeal no. 79 of 2022 titled as "Amit Gupta Vs. Athena Infrastructure Put. Ltd." have not been considered by the Authority.

Learned counsel for the appellant has prayed for setting aside the order and remand of the same to the Authority below.

We find substance in the pleas of the counsel for the appellant and intend to remit the case to the same authority for decision afresh.

Mr. Balhara, submits, that he has no objection to remand of the matter.

Under these circumstances, the order under challenge is hereby set aside. Matter is remitted to the same Authority for decision afresh as per law, after affording opportunity of hearing to both the parties and taking into account the judgment of the apex court in Wg. Cdr. Arifur Rahman Khan's case (supra) and the decision rendered by this Tribunal in Amit Gupta's case (supra). The present appeal is allowed in these terms”

2. In view of the aforesaid order cases have been taken up again for deciding afresh.

A. UNIT AND PROJECT RELATED DETAILS

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3. The particulars of the unit booked by complainants, the details of sale consideration, the amount paid by the complainants and details of project as mentioned in the complaint are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Present and Future Project
2.	Name of promoter	Parsvnath Developers Ltd.
3.	Date of application by complainant	05.03.2005
4.	Unit area	194 sq. ft.
5.	Date of allotment	28.12.2006
6.	Date of Plot buyer agreement	13.06.2007
7.	Basic Sale Price	₹ 6,10,324/-
8.	Amount paid by complainant	₹ 6,75,250/-
9.	Due date of possession	Not provided
9.	Offer of possession	18.09.2017
10.	Date of executing conveyance deed	09.04.2019

B. FACTS OF THE COMPLAINT

4. In the present case, complainants have applied for the "Present and Future project" in Sonipat by remitting ₹ 1,00,000/- dated 05.03.2005. Copy of the receipt dated 05.03.2005 is annexed as annexure P-1. Complainants

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were allotted plot bearing no. B-0102 admeasuring 194 sq. yards on 28.12.2006 in project named 'Parsvnath City, Sonipat' being developed by the respondent (Annexure p-2).

5. That plot buyer agreement was executed between the parties on 13.06.2007. Complainants vide letter dated 16.06.2007 pointed out that possession clause is missing in said agreement dated 13.06.2007. Respondent in response to said letter sent a letter dated 27.09.2007 thereby stating that the expected date of handing over of plot is August, 2008. Copy of said letter is annexed as Annexure P-5.

6. That against basic sale price of ₹6,10,324/- complainants had paid the respondent a sum of ₹6,75,250/-.

7. That vide letter dated 21.08.2009, respondent informed the complainants that their plot has been shifted from B-0102 to B-2168. Complainants have sent letters dated 11.09.2015, 02.03.2016 and 08.07.2016 for handing over the possession of their plot to the respondent.

8. That proposed date of possession was August 2008, however respondent offered the possession on 18.09.2017 and on 09.04.2019 conveyance deed was executed between the parties. Complainants sent letters dated 03.04.2019 and 08.04.2019 to the respondent thereby demanding delayed possession interest @ 24 % from the respondent. There has been a delay of about 10 years in offering the possession and respondent has not compensated the complainant for the said period.


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9. Therefore, present complaint has been filed seeking interest for the delay caused in offering possession of the plot in the project of the respondent.

C. RELIEF SOUGHT

10. The complainants in their complaint have sought following reliefs:

- a) Pass an appropriate award directing the Respondent to Provide Delayed Possession Charges on Amount of ₹6,75,250/- for the period of 10 years, 9 months, 7 days of 3,873 Days at the Prescribed Rate of Interest. (Justification: - Apex court judgement in Wg. Cdr. Arifur Rahman Khan and DLF Southern Homes Pvt. Ltd; Section 18, 19(4) of the RERA Act, 2016)
- b) Provide Rs. 50,000/- as the litigation charges.
- c) Any other relief which the Honorable Authority deem suitable.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed reply on 16.08.2021 pleading therein:-

11. Respondent in his reply has contended that respondent had handed over the possession of the plot and has also executed the conveyance deed in favour of the complainants on 09.04.2019 and the complainants after being fully satisfied with the possession had come forward and executed the conveyance deed. Now, physical possession has been handed over and conveyance deed has been executed, therefore contract between the parties

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has been concluded and once a contract is concluded no cause of action survives or can be raised at this belated stage.

12. Further, it has been contended that no allegation has been levelled by the complainant that conveyance deed has been got executed under coercion or by any unfair means. Therefore, this complaint may be dismissed.

E. WRITTEN ARGUMENTS SUBMITTED BY COMPLAINANT

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

14. Complainants have further placed reliance on judgment dated 13.01.2021 passed by Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh in Appeal no. 79 of 2020 titled Amit Gupta versus Athena Infrastructure Ltd. wherein it has been held that allottees will not lose their

right to claim interest for delayed possession merely on the ground that conveyance deed had already been executed.

15. Complainants have also referred to judgment passed in complaint no. 2340 of 2019 dated 05.11.2020 passed by Hon'ble Haryana Real Estate Regulatory Authority, Gurugram whereby delay interest has been awarded even after execution of conveyance deed.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

16. Ld. Counsel for the complainants submitted that in the present case delay possession interest may be granted in terms of the Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and others v. DLF Southern Homes Put. Ltd. (now known as Begur OMR Put. Ltd.) and others (2020) 3 R.C.R. (Civil) 544 and judgment rendered by the Hon'ble Tribunal in Appeal no. 79 of 2020 titled as "Amit Gupta Vs. Athena Infrastructure Put. Ltd. He again referred to letters dated 02.03.2016, 11.09.2015, 08.07.2016, 03.04.2019 and 08.04.2019 annexed with complaint paper book wherein complainants are seeking possession and delayed possession interest from the respondent.

17. Ld. Counsel for the respondent referred to last para of the order dated 15.05.2023 passed by Hon'ble Real Estate Appellate Tribunal. She emphasized the words "*remit the case to the same authority for decision afresh*". She submitted that Hon'ble Appellate Tribunal has remitted the captioned cases for fresh decision but has not directed to grant the relief as


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claimed by the complainant. She further stated that in Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and others v. DLF Southern Homes Put. Ltd conveyance deeds were executed under undue influence but in present cases there was no undue influence and conveyance deeds were executed voluntarily. Authority has already taken Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and others v. DLF Southern Homes Put. Ltd in consideration while passing order dated 27.04.2022. She also stated that facts of the judgment rendered by this Tribunal in Appeal no. 79 of 2022 titled as "Amit Gupta Vs. Athena Infrastructure Put. Ltd are distinguishable from the facts of the present cases.

F. ISSUES FOR ADJUDICATION

18. Whether the execution of the conveyance deed extinguishes the right of the allottees to claim delay possession interest.

Whether the complainants are entitled to delayed possession interest as claimed by them in terms of provisions of RERA Act of 2016?

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

19. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:

(i) Respondent has alleged that the complainants had executed a conveyance deed dated 09.04.2019 and therefore, the transaction between the complainant and the respondent has been concluded and



no right or liability can be asserted by respondent or the complainants against the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case. The present complaint is nothing but a gross misuse of process of law.

Now, the main issue to adjudicate before this Authority is whether the conveyance deed extinguishes the right of the allottee to claim delayed possession interest. In this regard it is important to look at the definition of the term ,deed, itself in order to understand the extent of the relationship between an allottee and promoter. A deed is a written document or an instrument that is sealed, signed and delivered by all the parties to the contract (buyer and seller). It is a contractual document that includes legally valid terms and is enforceable in a court of law. It is mandatory that a deed should be in writing, and both the parties involved must sign the document. Thus, a conveyance deed is essentially one wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or movable. In this case, the asset under consideration is an immovable property. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration (usually monetary). Therefore, a, conveyance deed, or 'sale deed' implies that the seller signs a document stating that

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all authority and ownership of the property in question has been transferred to the buyer.

From the above, it is clear that on execution of a sale/conveyance deed, only the title and interests in the said immovable property [herein the allotted plot) is transferred. However, the conveyance deed does not mark an end to the statutory liabilities of a promoter which have accrued before the signing of the conveyance deed since various sections of the Act provide for continuing liability and obligations of a promoter who may not under the garb of such contentions be able to avoid its responsibility. The relevant sections are reproduced hereunder:

"11. Functions and duties of promoter

(1) XXX

(2) XXX

(3) XXX

(4) The promoter shall—

(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:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.


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(b) XXX

(c) XXX

(d) *be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees"*

"14. Adherence to sanctioned plans and project specifications by the promoter—

(1) XXX

(2) XXX

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act....." (emphasis supplied)

This view is affirmed by the Hon'ble NCDRC in case titled as Vivek Maheshwari Vs. Emaar MGF Land Ltd. (Consumer case no. 1039 of 2016 dated 26.04.2019) wherein it was observed as under:

" 7. It would thus be seen that the complainants while taking possession in terms of the above referred printed hand over letter of the OP, can, at best, be said to have discharged the OP of its liabilities and obligations as enumerated in the agreement. However, this hand over letter, in my opinion, does not come in the way of the complainants seeking compensation from this Commission under Section 14(1)(d) of the Consumer Protection Act for the delay in delivery of

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possession. The said delay amounting to a deficiency in the services offered by the OP to the complainants. The right to seek compensation for the deficiency in the service was never given up by the complainants. Moreover, the Consumer Complaint was also pending before this Commission at the time the unit was handed over to the complainants. Therefore, the complainants, in my view, cannot be said to have relinquished their legal right to claim compensation from the OP merely because the basis of the unit has been taken by them in terms of printed hand over letter and the Sale Deed has also been got executed by them in their favour.

8.The relationship of consumer and service provider does not come to an end on execution of the Sale Deed in favour of the complainants."

From above, it can be said that taking over the possession and thereafter execution of the conveyance deed can best be termed as respondent having discharged its liabilities as per the buyer's agreement, however upon taking possession, and/or executing conveyance deed, the complainants never gave up their statutory right to seek delayed possession charges as per the provisions of the said Act.

It has nowhere been mentioned in the conveyance deed that the complainants are left with no right to claim delay interest/compensation of any type from the promoter. It is noteworthy to mention here that in **Appeal no. 272, 273, 274 of 2019 titled as Manju Arya vs M/s TDI Infrastructure Pvt Ltd**, Hon'ble Haryana Real Estate Appellate Tribunal Chandigarh vide order dated 19.01.2021 has observed that the cause of action which had already



accrued to the allottee against the promoter due to non-fulfilment of the obligations as per the agreement for sale shall stand extinguished with the execution of the conveyance deed. Whatever statutory rights had accrued to the allottee prior to the conveyance deed cannot be defeated with the subsequent execution and registration of the conveyance deed. Relevant part of the order is reproduced below:

“18. As far as appeal no.273 of 2019 is concerned, no doubt, the conveyance-deed was already executed and registered on the date of filing the complaint no.718 of 2018. But, in our view the execution and registration of the conveyance-deed will not absolve of the promoter of the liability which had accrued before the execution and 9 Appeal No.272,273 & 274 of 2019 registration of the conveyance-deed. The moment the delay has occurred in the delivery of possession, the statutory right to claim the compensation had occurred to the appellant which cannot be subsequently extinguished with the execution and registration of the conveyance-deed.

19. The learned Adjudicating Officer has referred to Section 11 sub section 4 (a) of the Act to dislodge the claim of the appellants which reads as under: -

“11. Functions and duties of promoter. — (4) The promoter shall— (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: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all

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the apartments, plots or buildings, as the case may be, to the allottees are executed.”

20. As per the aforesaid provision of law, the promoter shall be responsible for all the obligations, responsibilities and functions under the provisions of the Act or the rules and 10 Appeal No.272,273 & 274 of 2019 regulations made thereunder or to the allottees as per the agreement for sale till the conveyance of all the apartments, plots or buildings, as the case may be. This provision does not say that the cause of action which had already accrued to the allottee against the promoter due to non-fulfilment of the obligations as per the agreement for sale shall stand extinguished with the execution of the conveyance-deed. Whatever statutory rights had accrued to the allottee prior to the conveyance-deed, cannot be defeated with the subsequent execution and registration of the conveyance-deed.

*21. The Hon'ble Apex Court in case **Wg. Cdr. Arifur Rahman Khan and Ors. Vs. DLF Southern Homes Pvt. Ltd. and Ors. 2020(3) RCR (Civil) 544** has laid down as under: -*

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

22. Thus, the Hon'ble Apex Court has categorically laid down that the purchasers will not lose their right to claim 11 Appeal No.272,273 & 274 of 2019 compensation for the delayed handing over of the unit on the ground that the possession has been delivered and deed of conveyance has been executed. This authority is squarely applicable to the controversy in hand.

23. Even though this judgment has been rendered by the Hon'ble Apex Court under the Consumer Protection Act, 1986


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but the principle of law laid down by the Hon'ble Apex Court in the aforesaid judgment will also be applicable to the cases under the Act. Thus, we are of the considered opinion that mere execution of the conveyance-deed by the respondent/promoter qua plot no.663, Block no.L, TDI City at Kundli, Sonipat, Haryana (Complaint No.718/2018, Appeal No.273/2019) will not extinguish the right of the appellant/allottee to claim the compensation which had already accrued to her much before the execution of the conveyance-deed."

Authority observes that all the agreements/ documents signed by the allottee reveals stark incongruities between the remedies available to both the parties. In most of the cases, these documents and contracts are ex-facie one sided, unfair and unreasonable whether the plea has been taken by the complainant/allottee while filing its complaint that the documents were signed under duress or not. The right of the allottee to claim delayed possession charges shall not be abrogated simply for the said reason.

The complainants/allottees have invested their hard-earned money and there is no doubt that the promoter has been enjoying benefits and the next step is to get their title perfected by executing a conveyance deed which is the statutory right of the allottee. Also, the obligation of the developer - promoter does not end with the execution of a conveyance deed. The essence and purpose of the Act was to curb the menace created by the developer/promoter and safeguard the interests



of the allottees by protecting them from being exploited by the dominant position of the developer which he thrusts on the innocent allottees. Therefore, in furtherance to the Hon'ble Apex Court judgement this Authority holds that even after execution of the conveyance deed, the complainant cannot be precluded from their statutory right to seek delay possession charges from the respondent-promoter which already stayed accrued from the deemed date of possession till the handover of the possession.

(ii) It is pertinent to mention that time for delivery of possession has not been stipulated in the plot buyer agreement. Authority observes that in absence of clause with respect to handing over of possession in the plot buyer agreement it cannot rightly ascertain as to when the possession of said plot was due to be given to the complainant. It has been observed that period of 3 years is reasonable time by Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr. Therefore, deemed date of possession works out to be **13.06.2010**. Possession got delayed by approx. 7 years. Possession was offered to complainants on 18.09.2017 and thereafter conveyance deed got executed on 09.04.2019. There is delay of 7 years 3 months and 4 days in offering possession by the respondent to the complainants.



Complainants herein are entitled to delayed possession charges which is provided under the proviso to Section 18 (1) of the Act,

Section 18 (1) proviso reads as under :-

“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”.*

(iii) The definition of term ‘interest’ is defined under Section 2(za) of the Act which is as under:

(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;

(iv) 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. 27.07.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

(v) Payment of delayed possession charges at the prescribed rate of interest.

Interest for every month of delay, till the handing over of possession at such rate, as 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”.

(vi) In view of aforesaid observations and reasoning, the Authority hereby concludes that the complainants are entitled for the delay interest from 13.06.2010 (deemed date of possession) to 18.09.2017 (date on which offer was sent to complainants).

(vii) Authority has got calculated the interest on total paid amount from the deemed date of possession till the date of offer of possession at the rate of 10.75% till date and said amount works out to ₹ 4,56,719/- as per detail given in the table below:



Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 18.09.2017
1.	5,74,260	13.06.2010	4,49,044/-
2.	61031.8	19.07.2016	7675/-
	Total= Rs. 635291.8		Rs. 4,56,719

It is pertinent to mention that an amount of Rs. 39,958/- was paid by the complainant after date of offer of possession dated 18.09.2017 on account of sewerage connection charges , water connection charges etc. Since these payments were made post offer of possession, allottee is not entitled to delay interest on this amount. and therefore delay interest cannot be awarded on said amount.

I. DIRECTIONS OF THE AUTHORITY

20. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to pay delayed possession interest of Rs. 4,56,719/- to the complainants towards delay caused in handing over the possession within 90 days from the date of this order.



21. **Disposed of.** File be consigned to record room after uploading on the website of the Authority.



.....
NADIM AKHTAR
[MEMBER]



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