



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1346 of 2021
Date of filing:	27.12.2021
First date of hearing:	15.02.2022
Date of decision:	22.08.2023

Mrs. Indra Devi

r/o House no. 2054, Sector-13,

Urban Estate, Karnal

.....COMPLAINANT

Versus

Alpha Corp Development Pvt. Ltd.

6th floor, Golf View Corporate Tower,

Tower-A, Sector 42,

Gurugram

.....RESPONDENT

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

Member
Member

Present: - Sh. Rohit Rana, learned counsel for the complainant.

Sh. Vikash Verma, learned counsel for the respondent.

ORDER (NADIM AKHTAR –MEMBER)

1. Present complaint has been filed on 27.12.2021 by complainant 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 there under, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name and location of the project	Alpha International City, Karnal.
2.	RERA registered/not registered	Not registered
3.	Plot no.	1027
4.	Super built up area	346.88 sq. Yards
5.	Allotment letter	01.11.2010



6.	Date of Plot Buyer Agreement	25.01.2011
7.	Deemed date of possession	25.01.2014(3 years from date of execution of plot buyer agreement as mentioned in para 12 of the order)
8.	Total sale consideration	₹41,79,904/-
9.	Basic sale price	₹35,38,176/-
10	Amount paid by complainant	₹46,96,335/-(including interest on delayed payment i.e. ₹5,16,431/-)
11.	Offer of possession	12.01.2012

B. FACTS OF THE COMPLAINT

- i. That in response to the advertisements made by the respondent of its residential project namely "Alpha International City" in sectors 28 and 29, Karnal, Haryana, complainant applied for an allotment of plot vide application dated 23.10.2010, wherein it was mentioned that possession of the booked plot will be handed over to the complainant within 36 months after completion of development and approvals from the competent Authority.
- ii. In pursuance of application dated 23.10.2010, complainant was allotted plot no. 1027, admeasuring 346.88 sq. yards. in respondent's project namely Alpha International City, Sector 29, Karnal, Haryana. Copy of allotment letter dated 01.11.2010 is annexed as "Annexure C-1". The plot buyer agreement was executed between the parties on 20.01.2011 and as per agreement the



complainant had opted for time linked plan for payment of sale price as per schedule. Further, as per clause 9.1 of the agreement the possession of the said plot was to be handed over after completion of development work and subject to obtaining the necessary approvals. However, no specific date or time of handing over of possession was given in said agreement. Copy of plot buyer agreement dated 20.01.2011 is annexed as "Annexure C-2".

- iii. That complainant has paid an amount of ₹46,96,335/- (including amount of ₹5,16,377/- towards interest on delay payments as demanded by respondent). Copy of customer ledger maintained by respondent is annexed as "Annexure C-3". That complainant kept on making payments as per demands raised upto November 2011. Thereafter, complainant stopped making payments as there was no visible progress seen towards completion and development work on the part of respondent.
- iv. Later, on 12.01.2012, respondent offered possession to complainant without completing development works as promised in the agreement as well as in application form. Letter of offer of possession is annexed as "Annexure C-4". Subsequent to offer of possession it transpired that plot allotted to the complainant by respondent falls on land which is under litigation and entire project is being set up on land including the land of other owners with whom respondent were into civil litigation and the development work on the project land could not be done because of the stay orders from the civil court at



Karnal and pendency of Civil Revision no. 4117 of 2012 before the Hon'ble Punjab and Haryana High Court at Chandigarh but the same was dismissed on 11.03.2014.

- v. Thereafter, complainant wrote a letter enquiring about status of development work at the project; same was not replied. On the other hand, respondent sent various demand letters to complainant demanding money towards holding charges without providing any further details. With regard to the payment of holding charges, complainant requested respondent to waive off the said charges vide letter dated 02.08.2016. However said request was rejected by respondent vide reply dated 13.08.2016. Letter dated 02.08.2016 and 13.08.2016 is annexed as "Annexure C-6 and C-7".
- vi. Furthermore, respondent had shown a site plan showing 45m wide road connectivity from national highway on exit and entry point of the project. However, complainant got to know that the said portion belongs to farmers and the same has not been acquired by respondent till date.
- vii. Respondent again demanded an amount of ₹9,11,715/- as holding charges vide letter dated 13.09.2019 which was totally illegal and arbitrary since the property in question is a plot and once a locality has been developed then there remains no point in imposing any sort of holding charges regarding the said property. Moreover, respondent is charging holding charges @ ₹ 25 per sq. yds. per month, which is also illegal. Reference for the same is placed



upon the judgement passed by Hon'ble National Consumer Dispute Redressal Commission in Capital Greens Flat Buyer Association versus DLF Universal Ltd. 2020 (1) CPJ 297, wherein it has been held that developer in any circumstances is not entitled for any holding charges. The said decision was challenged by the developer, i.e., DLF Homes Developers Ltd. before Hon'ble Supreme Court in which decision of Hon'ble National Commission was upheld.

C. RELIEF SOUGHT

3. Complainant seeks following reliefs :

- i. The respondent may be directed to complete the development works and to hand over the possession of the plot to complainant.
- ii. The respondent may be directed to withdraw the illegal demand of holding charges.
- iii. The respondent may be restrained from taking any actions detrimental to interests of the complainant, including cancellation of the plot of complainant.
- iv. Direct the respondent to pay a sum of ₹5 lakhs to complainant towards undue hardship and injury, both physical and mental, caused to the acts of omissions and commissions on the part of the respondent;
- v. Allow the cost of litigation.



vi. Pass such order and further order as this Hon'ble Authority may deem fit and proper in the present complaint.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

4. Learned counsel for the respondent filed detailed reply on 14.07.2022 pleading therein:

- i. That complainant had booked plot no. 1027 in phase-1 of the project being developed by the respondent after obtaining requisite license no. 296-301 of 2005 dated 16.12.2005 and license no. 948-955 of 2006 dated 15.05.2006 from Director General Town and Country Planning Department, Haryana for project in question. Part completion was applied by respondent on 24.08.2009, the same was verified by the Executive Engineer HSVP vide certificate dated 03.02.2010. Copy of the same is annexed as "Annexure R-1". Subsequently, part completion certificate was granted by the Director, Town and Country Planning, Haryana on 28.08.2010, copy of which is annexed as Annexure R-2. The development and construction work of plot in question is complete and many allottees have already taken possession way back in the year 2010-2011. Photographs showing development on the site is annexed as "Annexure R-3 colly".
- ii. Thereafter, respondent offered physical possession of the plot in question to complainant on 12.01.2012. Complainant had deposited sale consideration on 04.04.2013 and interest for delay payment on 31.01.2014. Moreover, the



present petition is filed by the complainant after the lapse of more than 8 years and the same is time barred.

- iii. Complainant never intimated respondent about lack of infrastructure or development activities in plot in question during payment of entire sale consideration. Rather, complainant sought a waiver of holding charges from the respondent vide letter dated 02.08.2016 which was duly answered by the respondent vide letter dated 13.08.2016, so now, there remains no point to raise the same issue again as the same is highly belated. That complainant has raised this issue before Learned District Consumer Commission, Karnal by lodging Complaint no. 19 of 2021 on 11.02.2021 and withdrew the same on 30.11.2021. Therefore, the present complaint is barred on the principle of *res judicata* as no fresh cause of action has accrued thereafter as to enable the complainant to lodge a fresh complaint before RERA on same cause of action.
- iv. Furthermore, the plot in question falls in phase-I of the project and development of phase-II has nothing to do with the development of phase-I. Therefore, the civil litigation referred by the complainant is neither related to the portion of land on which complainant's plot is situated nor the said litigation resulted in any adverse orders against respondent. Moreover, said civil litigation has been dismissed for all practical purposes.



- v. That complainant has misconceived notions about the sector dividing 45 mtr. road which is to be constructed by the Government of Haryana and respondent is only under the obligation to transfer licensed land free of cost to the Government which forms part of this 45 mtr. Sector road. With regard to this, respondent had already deposited ₹38,18,03,018/- towards external developer charges for Phase-I and a sum of ₹4,67,31,100/- for phase II till date and ₹7,23,07,971/- towards infrastructure development charges being one of the prerequisites of the license agreement dated 16.12.2005 executed under rule 11 of Haryana Development and Regulation of Urban Area Rules, 1976. Thus, it is responsibility of the Government authority to construct the sector roads. The only obligation of respondent was to develop road in the licensed area which is developed by the respondent. The same has been annexed as "Annexure R-5".
- vi. That the RERD, Act does not apply to a project wherein part completion certificate has been issued before the commencement of the RERD Act. It is further submitted that the project of the respondent do not fall under the category of ongoing project to attract the provisions of Section 3 of Real Estate Regulation and Development) Act, 2016. Further, Rule 2(1) (o) also defines "Ongoing Projects" and it also does not come to the rescue of the complainant or confer jurisdiction upon the Authority to entertain and take cognizance of the matter in question as alleged in complaint filed by



complainant. It may be pointed out that these rules came into force w.e.f. 28.07.2017. The development activities were completed by respondent for Phase-I of the project and part completion certificate under Rule 16 of Haryana Development and Regulation of Urban Areas Rules, 1976 was granted by the Authorities on 28.08.2010. Since the part completion certificate was granted by the competent authority where the plot in question is situated way back in the year 2010, which is more than seven years before the date of commencement of the RERD Act, the Project cannot be categorized to be "ongoing project" as defined under the RERD Act and the Rules. If the project is duly registered under RERA, only then, question of violation or contravention of provisions of RERD Act arises for determination and therefore the present complaint is liable to be dismissed on this sole ground.

- vii. That complainant has raised the issue of levy of holding charges vide letter dated 02.08.2016. The said contention was not accepted by the respondent and complainant was accordingly informed vide letter dated 13.08.2016 "Annexure C-7". Therefore, the present claim petition for challenging the said demand of holding charges is time barred. Furthermore, the levy of holding charges is governed by Clause 9.3 of the plot buyers agreement dated 20.01.2011. Therefore, the objection raised by the complainant herein



regarding holding charges is unsustainable and devoid of any merit apart from being barred by limitation, estoppel and acquiescence.

viii. That Offer of Possession was followed by repeated reminders/notices dated 24.12.2012, 05.09.2013, 03.05.2014, 19.05.2014, 05.11.2014, 10.03.2015, 09.07.2015, 09.09.2015, copies of which are annexed as "Annexure R-6 to R-13" respectively. However, the complainant did not pay any attention to demands raised by respondent. Further, respondent invited the attention of complainant by indicating reminders as special notice and few such notices dated 18.12.2015, 05.08.2016, 19.12.2016, 15.03.2017, and 20.07.2017 are annexed as "Annexure R-14 to R-18" respectively. Lastly, respondent issued notice dated 25.08.2020 for outstanding dues of ₹10,28,455/- to the complainant towards the plot in question. A copy of the notice dated 25.08.2020 is annexed as "Annexure R-19". However, the complainant again ignored the requests and reminders of the respondent and has instead chosen to file a belated frivolous complaint before this Authority to gain unreasonable gains out of the respondent. It is submitted that the complainant herself is a defaulter as per the terms of the Agreement. Thus, grievance raised by complainant falls within the domain and admits of being "purely private contractual agreement simplicitor in between private parties" and, thus, the same cannot be a dispute maintainable before this Learned Authority. The present complaint is a ploy adopted by complainant to rewrite the terms of



plot buyer agreement which shall not be permitted by this Authority. It is clear that Complainant herself is a defaulter since she did not pay heed to the various notices/ letters/ reminders issued to her from time to time by the respondent.

- ix. That complainant has deliberately chosen to withhold and conceal crucial information and documentation from this Authority including schedule of payment forming part of plot buyer agreement. A copy of the schedule of payment is attached as "Annexure R-20". Therefore, it is evident that complainant has not approached this Learned Authority with clean hands as crucial documents containing relevant information for the adjudication of present matter has been deliberately withheld and concealed with a motive to delude this Authority to get an undue advantage.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

5. Learned counsel for complainant stated that plot no. 1027 was booked by complainant in the year 2010 against total sale consideration of ₹41,79,904/- out of which complainant had paid an amount of ₹46,96,335/- (which includes interest on delayed payments of ₹5,16,377/-) till the year 2014. Respondent offered possession of booked plot on 12.01.2012 to complainant without completing the necessary development work as promised in the agreement. Subsequently, vide letter dated 14.06.2013, respondent was asked about the



status of development of work. However, respondent didn't reply to said letter rather he started demanding money towards holding charges vide reminder letter dated 05.09.2013 wherein, respondent demanded ₹1,45,690/- as holding charges from complainant. Further, complainant requested respondent vide letter dated 02.08.2016 to waive off said charges but to no use, respondent vide letter dated 13.08.2016 rejected the request of complainant. He further referred to the judgement passed by Hon'ble National Consumer Dispute Redressal Commission in "Capital Greens Flat Buyer Association versus DLF Universal Ltd. 2020 (1) CPJ 297", wherein it has been held that developer in any circumstances is not entitled to any holding charges.

6. On the other hand, learned respondent counsel submitted his written submission during the hearing. Authority directed the respondent to submit the same in the registry. While initiating the arguments respondent stated that the booked plot falls in phase-I of the project namely; "Alpha International City, Karnal" and completion and development works of booked plot were completed way back in the year 2009. Part completion certificate was also obtained from the concerned department in the year 2010. Thereafter, possession of booked plot was offered to complainant on 12.01.2012. Since then, the respondent has requested the complainant to take possession of his booked plot. However, complainant has not taken possession till date. Since an enormous amount has been paid by complainant for her booked plot,



respondent has not cancelled her plot even if she has made a long delay in taking possession of her plot. Moreover, the issue raised by complainant with regard to holding charges, respondent referred to clause 9.3 of the plot buyer agreement which specifically allows the respondent to charge holding charges, from the complainant. As respondent obtained part completion certificate on 28.08.2010 and subsequently possession was also offered to the complainant on 12.01.2012 but complainant has not taken possession till date. Thus, clause 9.3 of the agreement comes into picture. As per clause 9.3 of the agreement, *“Upon receiving offer of possession from the Company, the Allottee shall within the time stipulated in the offer letter, take possession of the said Plot. Failure of Allottee to take possession of the said Plot, within the time limit prescribed in the said offer letter shall amount to a default by the Allottee. In that event the Company at its sole discretion may cancel this Agreement or condone the delay by charging holding charges @ Rs. 25/- (Rupees Twenty Five Only.) per sq. yards per month for the entire period of such delay; and to withhold conveyance or handing over possession of the said Plot till the entire holding charges with applicable overdue interest, if any, at the rates as stipulated in this agreement are fully paid. It is made clear and the Allottee agrees that the holding charges as stipulated in this clause, shall be a distinct charge not related to maintenance or any other charges as provided in this Agreement.”* Further, respondent stated that more than fifty

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percent of the allottees have already taken possession in a project which shows that project is complete in all respects as part Completion Certificate for the same was also obtained way back in the year 2012. Therefore, a plea of complainant that she has not taken possession due to some incomplete or pending development work is not sustainable. Furthermore, respondent has stated that there are certain obligations on part of respondent towards the government that respondent has to perform after giving possession to the allottee, which is difficult to perform if any allottee refuses to take possession of the plot even after receiving part completion certificate. Lastly, respondent has referred to the judgment of the Hon'ble Supreme Court titled "Tamil Nadu Electricity Board vs. Raju Reddiar (1996) 4 SCC 551 wherein, it was held that complainant could not challenge any agreement executed between the parties after a decade.

7. During hearing, the Authority has put forth following queries to the complainant for better adjudication of the case:
 - i. As respondent had offered possession to complainant on 12.01.2012, that too after receiving part completion certificate on 28.08.2010, then why did the complainant not take possession there and then when it was offered?
 - ii. Whether or not respondent had asked for maintenance charges from complainant when possession of booked plot was offered?



To which, complainant replied that some development works were pending on the part of respondent, therefore, complainant didn't accept the possession offered by respondent on 12.01.2012. Furthermore, learned counsel for complainant stated that sufficient amount of money had already been paid by complainant for plot in question to respondent and if plot was in a proper condition as per terms of agreement when it was offered in the year 2012, then complainant would have taken the possession of plot from respondent. Further, complainant stated that last payment was made to respondent against booked plot in the year 2014. Thereafter, complainant was asked to pay an additional payment of ₹5,00,000/- and ₹2,00,000/- in name of stamp duty. He further stated that at the time of offer of possession, respondent had not asked for any maintenance charges although complainant had paid the same after an offer of possession to respondent. Now, the complainant has only one issue left with regard to the holding charges.

F. ISSUES FOR ADJUDICATION

- i. Whether the complainant is entitled to possession after completion of development works or not?
- ii. Whether or not the possession offered to complainant by respondent on 12.01.2012 is a legally valid offer of possession?
- iii. Whether the demand raised by the respondent towards holding charges is illegal and to be set aside or not?



G. OBSERVATIONS AND DECISION OF THE AUTHORITY

8. The Authority has gone through the rival contention and the documents placed on record. It is admitted by both parties that the complainant booked a plot no. 1027, admeasuring 346.88 sq. yards. in the real estate project namely, "Alpha International City" located at Karnal, Haryana, being developed by promoter for basic sale consideration of ₹35,38,176/-. Plot buyer agreement was executed between the parties on 25.01.2011.
9. In captioned complaint, complainant is aggrieved by the fact that respondent had offered possession of booked plot to complainant on 12.01.2012 which was not a valid offer of possession as respondent has not complied with all the terms of plot buyer agreement and certain development works were also pending on the part of respondent. Therefore, complainant was bound not to accept said offer of possession made in year 2012. Further, respondent had charged huge amount on account of holding charges which are not payable by the complainant. Hence, the same should be set aside. Lastly, complainant had pleaded for relief of possession of booked plot and requested to quash the demand raised on account of holding charges by the respondent.
10. On the other hand, respondent has orally as well as by filing reply, objected to the maintainability of the complaint on following grounds:
 - i. Respondent has also taken objection that complaint is grossly barred by limitation. Reference in this regard is made to the judgement of Apex Court



Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s
Commissioner of Central Excise.

“A number of decisions have established that the Limitation Act applies only to courts and not to Tribunals. The distinction between courts and quasi-judicial decisions is succinctly brought out in Bharat Bank Ltd. v. Employees of Bharat Bank Ltd., 1950 SCR 459. This root authority has been followed in a catena of judgments. This judgment refers to a decision of the King's Bench in Cooper v. Wilson. The relevant quotation from the said judgment is as follows:- “A true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisites: (1) The presentation (not 18 Page 19 necessarily orally) of their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal argument by the parties, and (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law. A quasi-judicial decision equally presupposes an existing dispute between two or more parties and involves (1) and (2), but does not necessarily involve (3) and never involves (4). The place of (4) is in fact taken by administrative action, the character of which is determined by the Minister's free choice.

18. Under our constitutional scheme of things, the judiciary is dealt with in Chapter IV of Part V and Chapter V of Part VI. Chapter IV of Part V deals with the Supreme Court and Chapter V of Part VI deals with the High Courts and courts subordinate thereto. When the Constitution uses the expression “court”, it refers to this Court system. As opposed to this court system is a system of quasi-judicial bodies called Tribunals. Thus, Articles 136 and 227 refer to “courts” as distinct from “tribunals”. The question in this case is whether the



Limitation Act extends 19 Page 20 beyond the court system mentioned above and embraces within its scope quasi-judicial bodies as well.

19. A series of decisions of this Court have clearly held that the Limitation Act applies only to courts and does not apply to quasi-judicial bodies. Thus, in Town Municipal Council, Athani v. Presiding Officer, Labour Court, (1969) 1 SCC 873, a question arose as to what applications are covered under Article 137 of the Schedule to the Limitation Act. It was argued that an application made under the Industrial Disputes Act to a Labour Court was covered by the said Article. This Court negatived the said plea in the following terms:-

“12. This point, in our opinion, may be looked at from another angle also. When this Court earlier held that all the articles in the third division to the schedule, including Article 181 of the Limitation Act of 1908, governed applications under the Code of Civil Procedure only, it clearly implied that the applications must be presented to a court governed by the Code of Civil Procedure. Even the applications under the Arbitration Act that were included within the third division by amendment of Articles 158 and 178 were to be presented to courts whose proceedings were governed by the Code of Civil Procedure. As best, the further amendment now made enlarges the scope of the third division of the schedule so as also to include some applications presented to courts governed by the Code of Criminal Procedure. One factor at least 20 Page 21 remains constant and that is that the applications must be to courts to be governed by the articles in this division. The scope of the various articles in this division cannot be held to have been so enlarged as to include within them applications to bodies other than courts, such as a quasi judicial tribunal, or even an executive authority. An Industrial Tribunal or a Labour Court dealing with applications or references under the Act are not courts and they are in no way governed either by the Code of Civil Procedure or the Code of Criminal Procedure. We cannot, therefore, accept the submission made that this article will apply even to applications made to an Industrial Tribunal or a Labour Court. The alterations made in the article and in the new Act cannot, in our opinion, justify the interpretation that even applications presented to





bodies, other than courts, are now to be governed for purposes of limitation by Article 137." Similarly, in Nityananda, M. Joshi & Ors. v. Life Insurance Corporation & Ors., (1969) 2 SCC 199, this Court followed the judgment in Athani's case and turned down a plea that an application made to a Labour Court would be covered under Article 137 of the Limitation Act. This Court emphatically stated that Article 137 only contemplates applications to courts in the following terms: "3. In our view Article 137 only contemplates applications to Courts. In the Third Division of the Schedule to the Limitation Act, 1963 all the other applications mentioned in the various articles are 21 Page 22 applications filed in a court. Further Section 4 of the Limitation Act, 1963, provides for the contingency when the prescribed period for any application expires on a holiday and the only contingency contemplated is "when the court is closed." Again under Section 5 it is only a court which is enabled to admit an application after the prescribed period has expired if the court is satisfied that the applicant had sufficient cause for not preferring the application. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963."

20. *In Kerala State Electricity Board v. T.P*

The promoter has till date failed to fulfil his obligations because of which the cause of action is re-occurring. RERD, Act is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act 1963 would not apply to the proceedings under the RERD Act, 2016 as the Authority set up under that Act being quasi-judicial and not a Court.

- ii. Another objection taken by the respondent is that the provisions of RERD Act, 2016 cannot be applied retrospectively. Reference can be made to the case



titled M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP &Ors.

Etc. (supra), wherein the Hon Apex Court has held as under:-

“41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.

45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the pre existing contract and rights executed between the parties in the larger public interest.

53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under



the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016.”

The provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the Rules applicable to the acts or transactions, which were in the process of the completion though the contract/ agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

- iii. Further, the issue as to where project shall be considered as “ on-going project” has been dealt with and settled by the Hon’ble Supreme court in **Newtech Promoters and developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021** herein reproduced:

“ 37. Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all “ongoing projects” that commence prior to the Act and in respect to which completion certificate has not been issued are covered



under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority."

Wherein Hon'ble Apex 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 RERD 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.

- iv. Lastly, respondent has objected that captioned complaint is barred by the principle of "*res judicata*" as complainant has already agitated the issue before Learned District Consumer Commission, Karnal by lodging Complaint no. 19 of 2021 on 11.02.2021 with regard to the same subject matter as stated in captioned complain. Said complaint was withdrawn vide order dated 30.11.2021. Relevant part of order dated 30.11.2021 of Complaint no. 19 of 2021 is reproduced below:

"File taken up today on the application moved by Id. counsel for complainant for withdrawal of present



complaint. Ld. counsel for complainant suffered his separate statement to the effect that he does not want to pursue with the present complaint and withdraws the same and sought permission to file afresh on fresh cause of action, if any accrue. In view of statement of ld. counsel for complainant, the present complaint is dismissed as withdrawn. However, the complainant is at liberty to file fresh complaint on the fresh cause of action, if any accrue. The original documents annexed with the complaint, if any, be returned to the complainant by placing on record photocopies thereof.

Parties concerned be communicated of the order accordingly and file be consigned to the record room."

Authority is of the view that complainant had withdrawn his earlier filed complaint before learned District Consumer Commission, Karnal, which was allowed to be withdrawn with a liberty to file a fresh complaint. However, respondent has stated that complainant had got the matter already adjudicated by learned District Consumer Commission, Karnal. Now, complainant cannot come before Authority on same cause of action for adjudication of the captioned case as same is barred by principle of *res judicata*. Authority observes that the matter withdrawn before learned District Consumer Commission, Karnal was not even heard on merits and was simply withdrawn by the complainant. Therefore, captioned complaint is not covered under the ambit of *res judicata*.

11. In view of the aforementioned reasons, the present complaint is maintainable and the Authority has complete jurisdiction to adjudicate on present



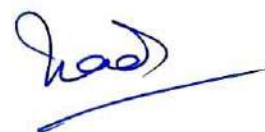
complaint. It is observed that as per Section 11(4)(a) of the RERD Act 2016, the promoter shall be responsible for all obligations, (responsibilities) and function under the provisions of this Act or the rules and regulations made thereunder or to the allottees, as per the agreement for sale. In present case, clause 9.1 of plot buyer agreement states that *“the possession of the said plot shall be delivered by the company to allottee on completion of development work and subject to obtaining necessary approvals from the Authorities including but not limited to NOC/ clearance from the Ministry of Environment & Forest and the allottee making payment of entire amount as per schedule of payment and complying with all its obligations under this agreement.”* Perusal of above stated clause clearly shows that above clause is vague in nature as it does not specify a particular date or time period in which respondent had to handover possession of booked plot to complainant. Further, neither complainant in his pleadings nor respondent in his reply has mentioned the deemed date of possession. Authority observes that in absence of deemed date of possession in pleadings as well documents relied upon in the captioned case, Authority cannot adjudicate upon the issue that whether the offer of possession made in year 2012 was valid or not.

12. To ascertain a tentative date for handing over of possession, reference has been made to observation of the Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) and anr.



for reckoning the deemed date of possession 3 years from the date of agreement. Therefore, the deemed date of possession in captioned complaint is taken 3 years from the date of execution of plot buyer agreement, i.e., 25.01.2011 which turns out to be 25.01.2014.

13. Now, first issue which is to be adjudicated by the Authority is related to validity of offer of possession made by respondent on 12.01.2012 to complainant. As it could be gathered from above para no. 12 that respondent was under an obligation to handover possession of booked plot to complainant within 3 years from date of execution of agreement which comes to 25.01.2014 and it is an admitted fact that respondent had already offered possession on 12.01.2012, i.e, almost 2 years before deemed date of possession to complainant that too after obtaining part completion certificate from competent Authority. However, complainant has alleged that said offer of possession was not valid on account of deficiencies in certain development works. On perusal of documents placed on record, Authority observes that complainant has neither filed any document nor has put forth any arguments during hearing in specific which proves that there were some deficiencies in development works that were to be carried out by respondent as per terms of plot buyer agreement when possession was offered to her in year 2012. Therefore, Authority decides to upheld the offer of possession given in year 2012 by respondent to complainant as valid. Complainant in his complaint has



also sought relief of possession of her booked plot from the Authority. Therefore, Authority is of the view that respondent has made a legally valid offer of possession on 12.01.2012 to complainant as the same is an adjunct to valid part completion certificate and is also within a period promised by respondent.

14. Lastly, complainant has raised issue with regard to holding charges demanded by respondent for plot in question. Perusal of documents revealed that respondent demanded an initial amount of ₹1,45,690/- payable as holding charges from complainant vide letter dated 05.09.2013. With regard to payment of holding charges, complainant requested respondent vide letter dated 02.08.2016, to waive off her holding charges in full as complainant is also paying maintenance charges for booked plot. Respondent vide letter dated 13.08.2016 rejected the request made by complainant with regard to waiving of holding charges and further demanded ₹10,28,455/- as holding charges vide letter dated 25.08.2020. Authority is of the view that since respondent is taking maintenance charges from complainant after an offer of possession in the year 2012 and complainant is also paying the same, so respondent cannot charge separately the holding charges from complainant, as complainant had booked a plot for which he is paying maintenance charges to respondent since 2012. Respondent has also not produced any documents which differentiate the charges to be taken on account of maintenance and

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account of holding charges. It is a general practice in real estate sector that for a plot, maintenance charges include the holding charges as there is nothing else to maintain in a plot except basic services provided in the colony for which respondent is already taking maintenance charges from the complainant. Further, to support this view, Authority refers to a judgment passed by the Hon'ble NCDRC in its order dated 03.01.2020 in case titled as *Capital Greens Flat Buyer Association and Ors. V. DLF Universal Ltd., Consumer case no. 351 of 2015* held as under:

*"36. It transpired during the course of arguments that the OP has demanded holding charges and maintenance charges from the allottees. As far as maintenance charges are concerned, the same should be paid by the allottee from the date the possession is offered to him unless he was prevented from taking possession solely on account of the OP insisting upon execution of the Indemnity-cum-Undertaking in the format prescribed by it for the purpose. If maintenance charges for a particular period have been waived by the developer, the allottee shall also be entitled to such a waiver. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, **the developer shall not be entitled to any holding charges** though it would be entitled to interest for the period the payment is delayed."*

The said judgment of NCDRC was also upheld by the Hon'ble Supreme Court vide its judgment dated 14.12.2020 passed in the civil appeal nos. 3864-3889 of 2020 against the order of NCDRC (supra). Thus, in view of

28.6.20



above, the respondent shall not charge holding charges from the complainant in the present case.

15. The complainant is seeking compensation of Rs. 5,00,000/- on account of undue hardship and injury both physical and mental caused to the complainant due to the acts of omissions and commissions on the part of respondent along with compensation on account of litigation costs. It is observed that 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 U.P. & ors.", 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 learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaint in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of compensation harassment, mental agony and undue hardship to complainant and litigation cost.

H. DIRECTIONS OF THE AUTHORITY

16. 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

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promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to give fresh statement of account of receivables and payables to complainant.
- (ii) Complainant is at liberty to take possession from respondent by paying balance consideration, if any, to respondent.
- (iii) The respondent shall not charge anything from the complainant which is not part of an agreement to sell.
- (iv) Respondent shall not charge holding charges from the complainant

17. This complaint is, accordingly, **disposed of**. Files be consigned to the record room after uploading order on the website of the Authority.



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



.....
NADIM AKHTAR
[MEMBER]