



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>11of 2023</b>
<b>Date of filing:</b>	<b>11.01.2023</b>
<b>First date of hearing:</b>	<b>25.01.2023</b>
<b>Date of decision:</b>	<b>31.10.2023</b>

Devi Singh Dahiya through  
Special Power of Attorney Amarjeet  
House no. 1185, sector-23,  
Sonipat-131001, Haryana

.....COMPLAINANT

Versus

M/s Jindal Realty Pvt Limited  
DSM 648, 6<sup>th</sup> Floor, DLF Tower,  
Shivaji Marg (Najafgarh road), Moti Nagar,  
New Delhi-110015

.....RESPONDENT

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

**Present:** - Mr. Subhash Chand , learned counsel for the complainant.  
Mr. Drupad Sangwan, learned counsel for the respondent.

**ORDER (NADIM AKHTAR -MEMBER)**

1. Present complaint was filed on 11.01.2023 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 thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil 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, proposed date of handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	Sonipat Global City, Sonipat
2.	Name of the Promoter	Jindal Realty Limited
3.	RERA registered/not registered	Registered.
4.	Unit no.	Villa bearing no.9, Block-B
5.	Unit area.	1517 sq.ft to be constructed on plot size of plot of 254 sq. yard
6.	Date of builder buyer agreement	13.09.2012



7.	Deemed date of possession	13.03.2015
8.	Possession clause in BBA clause-9(i)	“Developer proposes to hand over possession of said unit to the allottee within a period of 30months from the date of execution of this agreement with further grace period of 180 days.”
9.	Total sale consideration	₹78,51,487/-
10.	Amount paid by complainant	₹19,97,000/-

**B. FACTS OF THE CASE AS STATED IN THE COMPLAINT**

3. That complainant on 27.08.2012 booked a residential villa bearing no. 63, Block-C, having build up area of 1517 Sq. feet proposed to be constructed over plot size of 254 Sq. yards, located at Sonipat Global City, Sonipat, Haryana for a total sale consideration of ₹78,51,487/- inclusive of EDC & IDC. Complainant made a payment ₹7,80,000/- vide receipt no. 0969 dated 30.08.2012. Later on buyer's agreement was executed on 13.09.2012.
4. Further, payments of ₹11,67,000/- vide receipt No. 1011 and of ₹50,000/- vide receipt No. 1612 were made by complainant the on 12.10.2012 and 23.06.2016 respectively as demanded by the respondent from time to time according to the payment plan.
5. That as per the clause 9 of the buyer's agreement the respondent was supposed to handover the possession of the Villa within 30 months of



the signing of the buyer's agreement with further grace period of 180 days.

6. Thereafter, complainant applied for the change of villa from villa no.63, block C to villa no.9, block-B in the same project vide application dated 17.9.2014. The allotment was changed and confirmation of change of unit in the same project "Sonipat Global City" was sent by the respondent vide e-mail dated 19.9.2014 with all terms and conditions as per the original agreement. That respondent executed a supplementary agreement with complainant on dated 03.05.2016 for unit no. B-9 in Sonipat Global City, Sonipat.
7. That on 26.6.2016, complainant visited the site. He was shocked to find that even excavation work was not carried out and there was no hope of starting the construction work. Four years had already passed and the respondent failed to even start construction work.
8. Thereafter, complainant filed a complaint bearing C-974-2016 before the Hon'ble State Consumer Disputes Redressal Commission, New Delhi. During hearing on 06.02.2017 to the query raised by the Hon'ble Bench to the respondent as to why refund of the amount to the complainant not be allowed as respondent failed to complete the project on time, respondent stated that respondent has no funds to refund the amount of the complainant. The respondent neither



refunded the amount nor handed over the possession of the villa and dragged the complaint up to the year 2022.

9. That complainant wants the possession of the villa. Hence, the complainant applied for withdrawal of the complaint with liberty to file a complaint before the Hon'ble Authority. Permission to withdraw the complaint was granted by the Hon'ble State Consumer Disputes Redressal Commission, New Delhi vide order dated 20.12.2022.
10. Though respondent has shown in its letter dated 06.12.2016, termination of plot buyer's agreement dated 13.09.2012, however, villa still stands in the name of complainant as the respondent demanded ₹29,939/- for HVAT for villa no.9, through demand letter dated 20.02.2017 at page no.56, forwarded to the complainant through email dated 22.02.2017 at page no.55. Again the respondent sent an e-mail dated 24.11.2020 and demanded Rs.59,000/- including GST amount of Rs.9000/- at page no.57. Again the Respondent sent an e-mail dated 14.12.2020 and demanded the aforesaid amount at page no.58. Copy of the e-mails is annexed as annexure 6.
11. That complainant demanded the statement of account of his unit no. B-9 which was provided by the respondent on 09.05.2022 which shows ₹9,68,455/- as penal charges. These penal charges are illegal as there is no fault of the complainant. Copy of the statement of the account of Unit no. B-9 is annexed at page no.59. The above facts



show that the respondent has filed the false letter dated 06.12.2016 showing the termination of buyer's agreement whereas the villa still stands in the name of complainant as respondent has raised demand letters thereafter also.

**C. RELIEF SOUGHT**

12. Complainant sought following relief :

- i. The act of cancellation of the unit of the complainant by the respondent vide letter dated 06.12.2016 be declared as illegal, null and void and not binding upon the rights of the complainant in any manner.
- ii. That respondent may be directed to restore allotment of a residential villa unit no. B-9, measuring 257.5 Sq. Yards situated in the Project 'Sonipat Global City', Sonipat, Haryana in favour of the complainant.
- iii. That respondent be also directed to execute the requisite documents i.e. conveyance/sale deed in respect of the said villa in favour of the complainant by receiving balance amount of sale consideration and also by handing over its possession to him after completing the construction of the villa in all respects as per rules.
- iv. That respondent be also restrained from creating any third party right over the villa in question by way of its re-allotment in favour of any other person in any manner.



- v. That respondent be also directed to waive off any penal charge regarding due payment on unit no. B-9 because there is no fault on the part of complainant.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

13. In reply dated 25.04.2023, respondent admitted booking of villa bearing no.63, Block-C; payment of booking amount and execution of builder buyer agreement dated 13.09.2012. A copy of allotment letter is annexed as Annexure R/2 and a copy of buyer agreement dated 13.09.2012 annexed as Annexure R/3.
14. The allotment was made on the basis of construction linked plan. The construction was to be commenced on the payment of installments by the complainant on achieving certain milestones.
15. In the meanwhile the complainant applied for the change of unit from Block C-63 to unit number B-09 stating personal religious reasons vide application dated 17.09.2014 and respondent considered the request made by the complainant and agreed to replace the old Unit with the new unit.
16. That the new unit was located on 24 mtrs wide road and had a better location in comparison to the old one. Respondent requested the complainant to execute a fresh agreement in respect of the new unit, and accordingly supplementary agreement was issued on 23.06.2016 which was not signed by the complainant. That complainant initially



agreed to complete all required documentation of the new unit at the earliest, but after the change of unit, intentional delay was caused on part of complainant and due to that construction got delayed. Copy of application for change of unit dated 17.09.2014 is annexed as Annexed R/4 and letter for issuance of supplementary agreement is annexed as Annexed R/5.

17. That subsequent to issuance of the supplementary agreement, respondent had sent demand letter on 13.06.2016 for ₹10,30,451/- which included the installment amount of ₹10,27,679/- and previous interest amount of ₹2772/-, in accordance with the buyer agreement on the commencement of construction, which was payable on 27.06.2016. However, the complainant with complete mala fide intention did not pay the required installment and paid only ₹50,000/- out of the pending ₹9,62,087/-. Again reminder letter dated 13.06.2016 was issued on 01.07.2016 demanding a total sum of ₹29,79,861/-, but the complainant did not pay any amount.

18. Thereafter, final termination notice dated 06.12.2016 was issued and the allotment right was cancelled for the said unit. Even though the answering respondents did not receive the due installment from the complainant, the respondent at their own risk got the building plan sanctioned for the villa no. B-9. A copy of the demand letter is annexed as Annexure R/6.





19. That it is important to highlight that complainant instead of paying the required instalment sent legal notice to the respondent on 27.06.2016, whereby the complainant in illegal and arbitrary manner demanded complete refund of his deposited amount. A copy of the legal notice is annexed as Annexure R/7.
20. That the complainant was asked to pay the due amount as per the buyer agreement vide the demand letter dated 13.06.2016 and two reminder letters dated 01.07.2016 and 15.07.2016 were sent requesting the complainant to make the requisite payment. However, even after repeated asking, the complainant did not make the required payment and finally the answering respondent was constrained to terminate the allotment by cancelling the agreement vide letter dated 06.12.2016. A copy of the reminder letters is annexed as Annexure R/8 (Colly) and a copy of the termination letter is annexed as Annexure R/9.
21. That in line with the termination notice dated 06.12.2016 and in accordance with the terms of the buyer agreement, the answering respondent duly refunded amount of ₹17,26,965/- which includes interest @ 9.8% from 06.12.2016 to 12.01.2023 to the complainant after deducting earned money on 12.01.2023. Copy of the said refund transaction is annexed as Annexure R/10.



22. That the complainant instead of paying the requisite amount of installment as demanded post issuance of the supplementary agreement, decided to file a case against the answering respondent before the Hon'ble State Commission Dispute Redressal Commission (SCDRC), New Delhi in August 2016 seeking refund of a sum of ₹38,41,440/- along with interest @ 24% p.a as per the payment made by the complainant to the respondent till realization and ₹1,00,000/- towards mental agony and other relief for the damage and cost.
23. Moreover, complainant had admitted on record that complainant had only made a payment of ₹19,97,000/- to the respondent instead of paying 78,67,456/-.
24. That complainant thereafter filed application I.A 523/2022, after a lapse of 6 years in May, 2022, before Hon'ble State Commission Dispute Redressal Commission (SCDRC), New Delhi for amending the prayer clause seeking to pass an order/direction, directing the respondent company to handover the possession of the Villa B-9, in alternate, possession of the aforesaid plot minus construction cost of the villa be handed over to the complainant, after receiving the balance amount; in alternate the complainant be compensated in terms of the present value of the villa at present market value of villa ₹3crore and the letter of termination/cancellation of the plot buyer agreement dated 13.09.2012 vide dated 06.12.2016 may be declared



as null and void and the same be set aside, and restore the plot buyer agreement dated 13.09.2012. A copy of the petition filed by the complainant before SCDRC and reply filed by the answering respondent and amended applications and reply to applications filed is annexed as Annexure R/11.

25. That the conduct of the complainant is highly suspicious.

Complainant had not approached the Hon'ble State Consumer Dispute Redressal Commission, Delhi with clean hands at all. As part of his well-designed calculated strategy on false and frivolous facts and grounds in order to gain undue advantage with dishonest intention in order to take chance, had also filed an application I.A 523/2022 for amendment of complaint before the "Hon'ble Commission" on 09.05.2022 on vague, misleading and false grounds and tried to set up all together new case on different cause of action and imaginary grounds contrary to his own pleadings as set up in the complaint and evidence filed by the complainant when the matter was listed for final stage and hearing since long after pleading had been completed, evidence and written arguments had been filed by the parties since long.

26. That respondent had filed a detailed reply to amendment application exposing the dishonest and contemptuous conduct and intention of complainant which is on court record. However, after more than 6



years of filing of case, complainant again moved an application on 27.10.2022 before the Hon'ble State Consumer Dispute Redressal Commission, Delhi for withdrawal of complaint with the liberty to file the same before RERA Authority. The same was withdrawn by the complainant with liberty to approach this Hon'ble Authority.

27. In the light of the above stated facts, it can be clearly seen that as on today, the allotment of the complainant has been duly cancelled and refund of the excess money deposited has also been paid in line with the cancellation. The buyer agreement dated 12.09.2012 has been terminated due to default of the complainant as no timely payments were made by the complainant.

28. That in the view of the above default committed by the complainant, the complainant cannot be allowed to blow hot and cold at the same time. The complainant has himself communicated change of unit which was accepted by the answering respondent and supplementary agreement was issued on 23.06.2016. Where after demand raised for commencement of construction was not paid by the complainant, rather only one month past the date of receiving of the supplementary agreement, legal notice demanding refund was sent by the complainant on 27.06.2016 on false and concocted facts, which was duly replied by the respondent company vide reply dated 20.07.2016. At this stage, the complainant cannot be allowed to claim possession



by payment of the remaining amount especially in light of the fact that allotment has been cancelled.

29. That respondent after cancelling the said allotment and terminating the buyer agreement is under no obligation to complete the construction of the said unit. It is further stated that respondent is neither liable nor in a position to construct the said villa rather the respondent has already refunded the amount due to the complainant after cancellation in accordance with the provisions of the buyer agreement, which provides that delay shall entail cancellation of allotment and forfeiture of earnest money and other amounts as set out under the buyer's agreement.

30. That at the time of initiation of developmental works, it is pertinent to mention that after approval of layout plan the Department of Town and Country Planning, Haryana unilaterally changed the Sectoral Plan of Sector 35, Sonipat, in which the licensed project land is situated without giving any notice and intimation or opportunity of hearing to the respondent, in gross violation of principle of natural justice. This had adversely affected the licensed land of the respondent though the demarcation and zoning was sanctioned by the department itself on 21 September 2011 on the basis of old Sectoral Plan of Sector 35, Sonipat.



31. That such change of sectoral plan adversely affected the area of 13.77 acres of the township and it mandated revision and submission of fresh layout for the township, which resulted in frustrating the entire work done till that day at the site. The route of 65 M road passing through sector 34 and 35 was diverted and shown to be passing through the licensed area adversely affecting the respondent's plotted area. The 24 mtrs sectoral road which was passing through the licensed area has been shifted rendering the 24 mtrs sector road unusable and a new 12 M road was carved out with dead ends on both sides. It was specifically pleaded that changes had caused heavy financial losses to Respondent in order to reorganize, restructuring planning the entire project. Thus being aggrieved a representation was made highlighting the fact that the delay in approval of demarcation and zoning plan had delayed the project and request was made to DGTCP to withdraw the revised sectoral plan and restore the old sectoral plan. Thereafter, the respondent filed representation with the DGTCP and continued its efforts to pursue its representation and held various meeting with the officials and finally it was accepted and required changes were made in the revised sectoral plan. However, despite those changes, the respondent was required to make some modification in the lay out and ultimately the final layout was sanctioned on 19.02.2016.



32. That entire lay out plan was disturbed; the respondent was unable to execute work on the balance area also. Respondent had to re-plan the entire project without being at default and this action which resulted in the delay, which was not under the control of the respondent and hence, no delay has been caused at the behest of the respondent. It is therefore, submitted that the period until issuance of revised lay out plan cannot be considered towards commitment period under the buyer agreement.
33. That alleged delay even if any, is due to force majeure circumstances and reasons and circumstance absolutely beyond reasonable control of respondent as stated herein. The respondent reserve its rights and crave leave of Hon'ble Authority to call for the records and various other relevant documents, to verify the facts from DGTCP and Govt. authorities in this regard to prove the prevailing circumstances.
34. That the present complaint is not maintainable before the Hon'ble Authority because the provisions of the Real Estate (Regulation and Development) Act, 2016, are not applicable to the facts of the present case and the said Act is prospective in nature. It is to be duly noted that the agreement of the concerned/disputed property, took place prior to the coming into force of the said Act and even the cancellation was done prior to the coming enforce of the Act. Thus, the provisions contained therein and the reliefs envisaged cannot be applied to



respondent project and agreements which already commenced prior to coming into force of the said Act. Also, for this same reason, the provisions contained therein and the reliefs envisaged under the said Act, which fully came into force w.e.f. 01.05.2017, cannot be applied to transactions executed (Agreement), Application, Assignment Indemnity etc.) executed prior to the said date which is the date on which the provisions of the said Act came into force. The provisions of the said Act cannot operate retrospectively and imposed upon the respondent, for any of the actions done prior to coming into force of the said Act and prior to registration under the said Act. The provisions of the said Act have prospective operation, especially wherein inter alia seeks to impose new burden. It is well settled law that a statute shall operate prospectively unless retrospective operation is clearly made out in the language of the Statute. Only a procedural or declaratory law operates retrospective as there is no vested right in the procedure. In the absence of any express legislative intent of the retrospective application of the said Act, and by virtue of the fact that the said Act creates a new liability, the said act cannot be construed to have retrospective effect.

35. That the complainant cannot be allowed to contest this complaint as the same is in complete contravention with the reliefs sought in the earlier complaint filed by the complainant before State Consumer





Dispute Redressal Commission (SCDRC), New Delhi. The present complaint is a mere after thought and a tool to harass the answering respondent to extort more money which is totally legally illegal.

36. That the present complaint is time barred and hence the complaint is liable to be dismissed on this ground alone.

37. That it is submitted that the complainant has defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualization and development of the project in question. Furthermore, when the allottee default in his payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of the allottee, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainant.

38. It is vehemently denied that the respondent was supposed to hand over possession within 36 months of signing of the agreement. The complainant deliberately and with mala fide intent is concealing the true facts that the complainant himself approached the respondents to



change his unit from the earlier allotted unit, hence the time limit for construction and hand over of the unit will start afresh from the date of the issuance of the supplementary agreement.

39. That the said email regarding demand of HVAT is for the period prior to the cancellation and the subsequent emails regarding club membership and payment are system generated email which were sent due to default on the part of the software.

40. That the account statement is system generated and the same does not confer any right or title to the complainant over the said unit as the same was duly cancelled and the amount has also been duly returned to the complainant and since the cancellation of the unit has been rightly done, no penal charges as per the statement which was computer generated are now payable.

41. It is submitted that the complainant is not entitled to any relief of possession as the answering respondent has not violated the buyer's agreement and cause of action for demanding possession charges does not arise as the agreement was cancelled due to the default of the complainant.

**E. ARGUMENTS OF LEARNED COUNSEL FOR  
COMPLAINANTS AND RESPONDENT**

42. Ld counsel for complainant reiterated the facts of the case and stated that complainant has sought the relief of possession of villa and to



restore the allotment of villa in the name of complainant as it is clear from the emails dated 22.02.2017 at page no. 55 , 24.11.2020 at page no.57 and statement of account dated 09.05.2022 at page no. 59, that villa still exist in the name of complainant. On the other hand ld. counsel for respondent reiterated the submissions made in the reply and stated that complainant failed to adhere to the payment plan and did not make payment as and when demanded by the respondent and resultantly respondent was constrained to cancel the allotment and refund the amount of ₹17,26,965/- to the complainant. Ld counsel for respondent further stated that earlier complainant was seeking the relief of refund before the Hon'ble State Consumer Dispute Redressal Commission, Delhi and thereafter due to escalation of price after Covid, complainant decides to withdraw the complaint from the Hon'ble Commission and filed present complaint seeking possession of villa. Also, complainant nowhere either in his pleadings or before Hon'ble Commission mentioned about why the complainant did not pay the amounts as per reminders sent by respondent nor challenged them invalid or illegal. Ld counsel further stated that as per order dated 25.01.2023 of the Authority, status quo has been maintained w.r.t the villa and no further third party rights have been created.

43. During the course of hearing, it was admitted by both the parties that earlier complainant had filed a case before Hon'ble State Consumer



Dispute Redressal Commission, Delhi for refund of the paid amount and the same was later on withdrawn by the complainant with liberty to file before the appropriate Authority. To this, Authority posed a specific question to the complainant regarding the status of refunded amount. To this complainant stated that status quo is maintained w.r.t amount as respondent had transferred the amount in the account without the knowledge and consent of complainant. Further, Authority asked the respondent as to why respondent had not refunded the amount earlier after cancellation of villa in year 2016? To this ld counsel for respondent stated that as matter regarding refund was subjudice before the Hon'ble Commission that's why respondent was not able to refund the amount. On the other hand, ld counsel for complainant stated that refund of amount is an after-thought, consequent upon filing of complaint by the complainant before the Hon'ble Authority. Ld. counsel for respondent refuted the allegation and stated that it is not after thought as complaint was filed on 11.01.2023 whereas respondent refunded the amount on 12.01.2023 to the complainant, and till this time neither was any notice regarding institution of complaint before RERA was served on it nor was the respondent aware about the complaint in any way. Moreover, if complainant had made the payments earlier, respondent would had offered possession, as offered to other allottees of the project as



project is complete and occupation certificate is received by the respondent in year 2018.

**F. ISSUE FOR ADJUDICATION**

44. Whether the complainant is entitled to relief of possession of the villa no.B-9 in the project "Sonipat Global City"?

**G. OBSERVATIONS OF THE AUTHORITY**

45. Authority had gone through documents on record and heard the arguments of the ld. counsels for the parties. Upon perusal of file, Authority observes that it is not disputed by the parties that complainant Shri Devi Singh Dahiya booked a residential villa bearing No.63 in block-'C', having built-up area of 1517 sq.ft. to be constructed over a plot size of 254 sq.yards. in the real estate project namely "Sonipat Global City", Sonipat, Haryana, being developed by the respondent, M/s Jindal Reality Pvt. Ltd.; the total sale price of the villa was ₹78,51,487/- and complainant made a payment of ₹7,80,000/-, vide receipt no.0969 dated 30.08.2012; provisional allotment of villa no.63 was made in favour of the complainant on 06.09.2012; builder buyer agreement was entered into between the complainant and respondent on 13.09.2012; complainant had opted for a construction link payment plan whereby he was to make payment as per stage of constructions, complainant made payment of ₹11,67,000/- on 12.10.2012 vide receipt no.1011 and also paid a sum of ₹50,000/-



on 23.06.2016; complainant vide letter dated 17.09.2014 requested for change of villa C-63 due to religious belief, and allotment of alternate unit in B block on 24 mtr. wide road; request for change of villa number was allowed by the respondent promoter and the factum of change of villa from C-63 to B-9 in the project "Sonipat Global City" was conveyed to the complainant through e-mail dated 16.09.2014.

46. It is the case of the complainant that a supplementary agreement dated 03.05.2016 was executed between the parties with respect to villa no. B-9 and as per clause-2 at page-5 of the supplementary agreement, "villa no.63, block-C at all places in the buyer's agreement stands amended and substituted with villa no.9, block-B. Thus, at all places where the reference is made in respect of villa no.63, block-C, the same shall now read as villa no.9, block-B." Further, clause-7 of the said supplementary agreement provided that "this supplementary agreement forms integral part and parcel of the buyer's agreement. The buyer's agreement stands modified, amended and agreed in terms thereof and to the extent of this supplementary agreement only, rest of terms and conditions of the buyer's agreement shall remain same and unchanged." Meaning thereby that there was no change/modification with respect to the timeline for handing over of possession. As per clause-9(i) which provides for possession and holding charges, respondent was obligated to hand over possession of the said unit



within a period of 30 months from the date of execution of this agreement with further grace period of 180 days. Thus, respondent was obligated to hand over possession of villa no. B-9 by 13.03.2015. However, allegedly respondent failed to hand over the possession of the said villa by 13.03.2015 and arbitrarily raised a demand of ₹10,30,451/- vide letter dated 13.06.2016 to be paid on 27.06.2016. Complainant in its complaint has further stated that in order to ascertain the status of construction work before making any further payment, he visited the villa site on 26.06.2016 and was astonished to see that there was no trace of any construction work at site, in fact, respondent had not even started with the excavation work. In such appalling circumstances, complainant lost all hope to receive possession of the villa and instead of adhering to making payment of arbitrary amount, he chose to serve a legal notice dated 27.06.2016 upon the respondent demanding refund of his amount with interest.

47. Complainant in its complaint had further stated that since the respondent neither started construction of the villa nor refunded the amount paid by him, he was constrained to file a complaint for refund vide no.CC-974-2016 before the State Consumer Dispute Redressal Commission, New Delhi, in August 2016. Complainant has alleged that respondent had illegally issued a letter dated 06.12.2016



terminating buyer's agreement dated 13.09.2012 during pendency of the complaint before the Consumer Commission.

Subsequently upon, The Real Estate (Regulation & Development) Act, 2016 came into force, complainant chose to withdraw its complaint from the State Consumer Dispute Redressal Commission, New Delhi and filed afresh complaint before the Authority for possession of the villa.

48. Per contra, respondent in its reply has averred that the present complaint is not maintainable as complainant has not approached this Authority with clean hands and intent. Respondent has taken two preliminary objections, challenging the maintainability of complaint on two grounds (i) present captioned complaint is barred under Indian Limitation Act, 1963 as buyer's agreement already stands terminated on 06.12.2016. Further, the amounts due towards complainant have been refunded on 12.01.2023, thus, no relief against respondent stands survived (ii) the buyer's agreement under challenge was entered into between the parties before RERD Act 2016 coming into force, thus provisions of RERD Act 2016 cannot be made applicable retrospectively.

49. With regard to the issue of maintainability, Authority observes that on the date of filing of copy of complaint in the registry of the Authority on 11.01.2023, respondent had neither handed over possession of the





villa B-9 to the complainant nor had he refunded the amount paid. Dispute between complainant and respondent subsisted on the date of filing of complaint. Thus, complaint is apparently not touched by the limitation law. Further, the Hon'ble Apex Court in *Civil Appeal No.4367 of 2004 titled as "M.P. Steel Corporation vs Commissioner of Central Exercise"* had held that the Indian Limitation Act 1963 applies only to Courts and not to the Tribunals. Relevant para is reproduced herein below :-

*"19. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to Court, and that the Labour Court is not a court within the Indian Limitation Act 1963."*

Authority observes that The Real Estate (Regulation & Development) Act 2016 is a special enactment with particular aim and objective covering certain issues and violations relating to housing sector, thus the ratio of law laid down by the Hon'ble Apex Court in the above mentioned case shall also be applicable to the present complaint and provisions of the Indian Limitation Act would not apply to proceedings under The Real Estate (Regulation & Development) Act 2016 as the Authority established under the Act is a quasi-judicial body and not a court.

To adjudicate upon the second objection of respondent that The Real Estate (Regulation & Development) Act 2016 cannot be applied



retrospectively to contracts entered before The Real Estate (Regulation & Development) Act 2016 coming into force, reference has been made to the case title *M/s Newtech Promoters and Developers Pvt. Ltd. vs State of UP and Others etc. (supra)*, wherein Hon'ble Apex Court had 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."*

*"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 preexisting 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.”*

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.

50. Deciding the case on merits, Authority observes that the main grouse of the complainant is that despite making payments as per construction link-plan, respondent had failed to hand over the possession within the time line stipulated in the buyer's agreement dated 13.09.2012. Whereas, respondent has contended that it is due to default of payment on part of complainant that the villa could not be constructed. Respondent has further contended that it had issued a letter dated 23.06.2016 wherein complainant has been requested to sign two sets of supplementary agreement for unit no. B-9, however, the same was not signed by the complainant. Authority observes, that respondent at para-2 (preliminary submissions) of reply has admitted that subsequent to issuance of supplementary agreement vide letter dated 23.06.2016, respondent had sent a demand letter dated 13.06.2016 for ₹10,30,451/- which included the installment of ₹10,27,052/- and previous interest of ₹2772/-, due at commencement of construction, payable on 27.06.2016. Subsequently, first reminder



letter was issued on 01.07.2016, second reminder letter was issued on 15.07.2016 and finally, due to non-payment of due amounts, termination letter dated 06.12.2016 was issued whereby plot-buyer agreement dated 13.09.2012 was cancelled. However, on perusal of record, it is observed that contrary to the stance of respondent, supplementary agreement for villa no. B-9 was executed between the complainant allottee, land owners and respondent on 03.05.2016, same has been relied upon and annexed by complainant at Annexure-4 of complaint. The factum regarding the date of execution of supplementary agreement stands corroborated by the admission on part of respondent in its reply that the next installment dated 13.06.2016, due at the time of start of construction was raised subsequent to issuance of supplementary agreement. Further, the respondent in its reply has nowhere denied or disputed the supplementary agreement annexed at Annexure-4 of the complaint.

51. Now, the question is whether the demand raised vide letter dated 13.06.2016 for start of construction work was a valid and a legal demand or not? And whether the complainant had defaulted in making this payment of ₹10,30,451/- on the due date, i.e., 27.06.2016. In this regard, Authority observes that complainant vide buyer's agreement dated 13.09.2012 had opted for a construction link-plan. Further, clause-7 of the supplementary agreement dated 03.05.2016 executed



between the parties provided that the supplementary agreement forms integral part and parcel of buyer agreement and stands amended/modified only to the extent of the supplementary agreement, rest of the terms and conditions shall remain same and unchanged. Since, the supplementary agreement did not provide for any change in the payment plan, the schedule of payment at Annexure-D of the buyer agreement dated 13.09.2012 remain binding on the parties. There is no dispute between the parties with respect to the demands raised at the time of booking and within 45 days from the date of booking. The dispute arose after issuance of demand letter dated 13.06.2016, whereby respondent demanded payment of ₹10,30,451/- on commencement of construction. Complainant has admitted that he made a payment of ₹50,000/- on 23.06.2016, receipt annexed at Annexure-1, page-18 of complaint. However, complainant has pleaded that he visited the villa site on 26.06.2016 and found no trace of any start of construction work, therefore, instead of making further payments as demanded vide letter dated 13.06.2016, he communicated his intention to respondent vide legal notice dated 27.06.2016 and sought refund of his amounts with interest. Respondent failed to refund the amount to the complainant, instead issued reminders dated 01.07.2016 and 15.07.2016. Under such compelling circumstances, complainant filed a complaint before the Hon'ble State Consumer



Redressal Commission, New Delhi, in August 2016. Here, Authority observes that in order to start the construction of villas, respondent as per the Haryana Development and Regulation of Urban Areas Act, 1975 is required to get the building plans approved. In order to ascertain whether the payment demand raised by respondent vide letter dated 13.06.2016 was a valid/legal one or not, it is to be seen whether on that date, i.e., on 13.06.2016, respondent had valid approved building plans or not? Respondent at page-10 of the reply has itself stated the fact that final layout plan was sanctioned on 19.02.2016. Further, at para-2 (preliminary submissions) page-4 of reply, respondent has stated that "final termination notice dated 06.12.2016 was issued and allotment right was cancelled for the said unit. Even though answering respondent did not receive the due installment from the complainant, the respondent at their own risk got the building plans sanctioned for villa no. B-9." Respondent has not placed on record any proof/copy of approved building plan. In absence of such proof, it cannot be ascertained whether building plans for the villa ever got approved or not? Even if for the sake of argument, it is presumed that the building plan for the villa got approved, bare reading of the language of above written submissions only leads to one logical conclusion that the respondent got the building plans approved post the termination of buyer's agreement dated 13.09.2012.



In absence of valid approved building plan, the demand due on "start of construction" could not have been raised by respondent on 13.06.2016. Respondent has failed to place on record any document/photographs of site taken around the time of issuance of demand letter to show start of construction at the time of issuance of demand letter dated 13.06.2016. In fact, respondent has placed on record legal notice dated 27.06.2016 issued by complainant at Annexure-R7 whereby at para-4 & 5, it is stated "*that though my client applied for change of unit from C-63 to unit no. B-9 in the same project with all terms and conditions as per original agreement on your assurance that construction will start in the month of June 2016 and also paid a sum of ₹50,000/- on 23.06.2016 on 28.06.2016, my client visited the site and was shocked to find that no excavation has been carried out and there is no hope of starting of construction work in near future*", which strengthens and corroborate the claim of the complainant that it did not pay the amount raised vide letter dated 13.06.2016 as there was no construction at the villa site. For reasons cited above Authority observes that in absence of any proof of start of construction of Villa no. B-9, complainant cannot be held to be at default for non-payment of amounts demanded by respondent vide letter dated 13.06.2016.





Further, on perusal of record, it is evident that respondent, post termination of villa no. B-9, continued to raise payment demand from the complainant. Respondent vide letter dated 20.02.2017, annexed at page-56 of complaint, raised a demand of Rs.29,939/- towards HVAT till 31<sup>st</sup> March 2014. Respondent also, vide email dated 24.11.2020 and 14.12.2020 raised a demand of Rs.50,000/- each for club etc. Subsequently, demand of Rs.9,68,455/- was raised on 09.05.2022. Argument of respondent is that demands raised post-termination vide letter dated 06.12.2016 are auto generated and were sent to complainant by mistake. Such argument on the face of it is not convincing and devoid of merit and substance as there is no scope of issuance of an auto generated demand letter after the status of unit/villa is updated as cancelled in the record of respondent promoter. The very fact that demand letters were issued subsequent to issuance of termination letter dated 06.12.2016 proves the fact that in the records of the respondent, complainant stood as an allottee even in 2022. Thus, termination letter dated 06.012.2016 issued on account of non-payment of dues is held arbitrary, illegal and null and void.

52. Authority further observes that complainant after withdrawing his complaint from State Consumer Dispute Redressal Commission, New Delhi on 20.12.2022, filed online complaint, seeking possession of the villa B-9, before the Authority on 03.01.2023 and submitted the hard



copy/paper book of complaint in the registry of Authority on 11.01.2023. However, on 18.01.2023, complainant filed an application for urgent hearing in the matter. Complainant vide this application submitted that post filing of complaint in the Authority on 03.01.2023 and submission of copy in Authority on 11.01.2023, respondent deposited an amount of ₹17,26,965/- out of the total paid amount of ₹19,97,000/- in the bank account of complainant on 12.01.2023 and that too without his knowledge. Complainant also expressed his apprehensions that respondent may dispose of the above said villa and create third party rights to wriggle out of his obligations towards complainant. Authority on 19.01.2023 issued notice of appearance to respondent and the matter was listed for hearing on 25.01.2023. The fact regarding refund of an amount of ₹17,26,965/- out of the total paid amount of ₹19,97,000/- has also been admitted by respondent in its reply and respondent has place on record copy of email dated 12.01.2023 at 5.23 pm depicting refund via RTGS for villa no. B-9. On perusal of this email, Authority observes that the same has been forwarded to different individuals who appears to be employees of the respondent as all email IDs end with "@jindalreality.com". There is no reference of any communication to complainant regarding refund of amounts to him via RTGS. The proximity of dates of filing of paper book of complaint in the Authority on 11.01.2023 and refund of



₹17,26,965/- to complainant on 12.01.2023 appears to be much more than a mere coincidence. Respondent by its own admission had cancelled the villa vide termination letter dated 06.12.2016, however, never refunded the amount to complainant even when the complainant was before the State Consumer Dispute Redressal Commission for seeking refund of his paid amount.

Authority observes that it is a general market practice whenever a builder/developer cancels/terminates agreement or when an allottee seeks refund, builder before refunding the amount sends written communication to the allottee requesting for return of all original documents signed/executed qua the property. Only on receiving such documents in original and taking signatures of allottee on refund documents, builder refund/transfer the amount and that too generally by way of issuing cheques. The Authority finds it hard to believe that the respondent who neither handed over the possession nor refunded the amount for more than six years suddenly transferred the same on 12.01.2023, i.e., exactly the next day of submission of copy of complaint in the Authority and that too without informing the complainant. Such conduct of respondent raises suspicion in the mind of the Authority. Authority is not hesitant to note that the act of transferring the amount was a misadventure on part of respondent to evade from its obligations towards the complainant allottee.



53. Furthermore, as a settled principle of law, since the complaint with respect to the subject matter, i.e., villa no. B-9 in the real estate project namely, "Sonipat Global City" Sonapat, Haryana was filed on 11.01.2023, any act or transaction with respect to the same shall be subject to the outcome of the complaint. Authority, in the above paragraphs, has already observed and held the cancellation/ termination of the buyer's agreement by respondent vide letter dated 06.12.2016 as null and void. Thus, the refund of amount to complainant without intimation shall have no bearing qua the contractual obligations on part of respondent to hand over possession of villa no. B-9 in terms of timeline as provided in clause-9 (i) of buyer's agreement dated 13.09.2012 and respondent shall remain liable to hand over possession of the said villa no. B-9 to complainant after receiving the total sale consideration.

#### **H. DIRECTIONS OF THE AUTHORITY**

54. Hence, the Authority hereby passes this order and issues the following directions under section-37 of the Act to ensure compliance of obligations cast upon the promoter as per functions entrusted to the Authority under Section-34 of the Act of 2016:-

- i) Respondent is directed to restore the allotment of residential villa no. B-9 measuring 257.5 sq.yd. in the real estate project "Sonipat Global City" Sonipat, Haryana in favour of complainant with



immediate effect and raise payment demand as per buyer's agreement dated 13.09.2012.

- ii) Respondent shall offer valid legal possession of villa to complainant after obtaining Occupation Certificate from the competitive Authority.
- iii) Respondent is further directed to execute the conveyance deed/sale deed in respect of the said villa in favour of complainant within 60 days of offer of possession and subject to receiving the total sale consideration as per the buyer's agreement.
- iv) Complainant is also directed to make complete payment of amounts as and when demanded by the respondent in consonance with the payment schedule annexed with the buyer's agreement dated 13.02.2012.

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



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**DR. GEETA RATHEE SINGH**  
**[MEMBER]**



.....  
**NADIM AKHTAR**  
**[MEMBER]**