



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	292 of 2020
Date of filing.:	25.02.2020
First date of hearing.:	27.08.2020
Date of decision.:	31.10.2023

New Era Educational Consultancy India Ltd
205, Govardhan Building,
Nehru Place,
New Delhi-19

....COMPLAINANT

VERSUS

1. M/s BPTP Ltd.
2. M/s Countrywide Promoters Pvt Ltd.
3. Kabul Chawla, Director, BPTP.
4. Sudhanshu Tripathi, Director, BPTP
5. Rajeev Gupta, Director, Countrywide promoters Pvt Ltd.
6. Jawahar Chawla, Director, Countrywide promoters Pvt Ltd.
7. Rakesh Roshan, Director, Countrywide promoters Pvt Ltd.
8. Gobind Gulati, Director, Countrywide promoters Pvt Ltd

All having registered office address at:
M-11, Middle Circle, Connaught Circus,
New Delhi -110001

....RESPONDENT

CORAM:	Dr. Geeta Rathee Singh	Member
	Nadim Akhtar	Member
Present: -	Mr. Nitin Kant Setia, Counsel for the complainant through VC Mr. Hemant Saini, Counsel for the respondent.	

ORDER (NADIM AKHTAR- MEMBER)

1. Present complaint has been filed 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, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project.	Parklands, Phase- 1, Sector-76, Faridabad.
2.	Nature of the project.	Plotted.



4.	RERA Registered/not registered	Not Registered
5.	Details of unit.	U-20, 502 sq yds (Later changed to W-23, 503 sq yds)
6.	Date of builder buyer agreement(with original allottee)	25.08.2007
7.	Date of endorsement in favour of complainant	31.07.2008
8.	Due date of possession	24 months from sanctioning of service plans.
8.	Possession clause in BBA (Clause 22) Sanctioning of service plans-11.04.2007	That the possession for the said plot as proposed to be delivered seller/confirming party to the purchaser(s) within about 24 month sanctioning of the service plans of the entire colony, simultaneous execution of sale deed subject however to force majeure and purchaser(s) making all payments within the stipulated period complying with the terms and conditions of this agreement.
9.	Basic sale consideration	₹ 33,89,500/-
10.	Amount paid by complainant	₹ 65,56,576/-
11.	Offer of possession	20.10.2008
12.	Part completion certificate	09.09.2010

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT



3. Facts of complaint is that the predecessor of the complainant, i.e, Mrs. Kavita Gupta had applied for a plot in the project of the respondents namely; "Parklands" situated at Sector-76, Faridabad, Haryana vide application dated 26.11.2005. Original allottee was allotted plot bearing no. U-20, admeasuring 520 sq. yds (correct area as per agreement is 502 sq yds but complainant in its pleadings has stated it to be 520 sq yds) in the project in question. A plot buyer agreement was executed between the original allottee and the respondents promoters on 25.08.2007. A copy of plot buyer agreement is annexed as Annexure A-5. As per clause 22.1 of the agreement, possession of the unit was to be delivered within a period of 24 months from the date of sanction of service plans. The basic sale price of the unit was fixed at Rs 33,89,500/-. That the respondent no.1 vide letter dated 04.04.2008 unilaterally and arbitrarily changed the plot allotted to the original allottee from U-20 to W-23. The freshly allotted plot was reduced in size from 520 sq. yds to 503 sq. yds (correct figure as mentioned in offer of possession dated 20.10.2008 is area got increased from 502 sq yds to 503 sq yds). Copy of letter dated 04.04.2008 is annexed as Annexure A-6. Subsequently, during July 2008, complainant purchased the plot in question from the original allottee and stepped into her shoes qua the rights of plot bearing no. W-23. Respondents endorsed the nomination of the unit in favour of the complainants on 31.07.2008. A copy of nomination letter is annexed as Annexure A-7 in the complaint file. It is pertinent to mention



that no fresh plot buyer agreement was executed between the parties. Therefore, the timeline for offering possession to the complainant remained the same, i.e, within 24 months from the date of sanctioning of the service plans of the entire colony.

4. That in the year 2008, respondents vide letter dated 20.10.2008 offered possession of the allotted plot bearing no. W-23 admeasuring 503 sq. yds in Parklands, Sector-76, Faridabad to the complainant along with a copy of statement of accounts. A copy of the offer of possession dated 20.10.2008 along with statement of account is annexed as Annexure A-8. The complainant has made the entire payment of the sale consideration to the respondents. That the respondents vide letter dated 19.01.2011 had issued a no objection certificate to the complainant. Copy of the no objection certificate issued by the respondent is annexed as Annexure A-10.
5. It is submitted by the complainant that the alleged offer of possession dated 20.10.2008 issued by the respondent to the complainant was not a legal offer of possession. Said offer was incomplete and not valid as it was issued without obtaining occupation certificate/completion certificate from the competent Authority to show that the project is complete and habitable for living. Complainant has further alleged that the statement of account issued along with offer of possession dated 20.10.2008 suffered from material irregularities that are as follows:



- i. The respondents have wrongly charged an amount of Rs. 2,23,835/- from the Complainant towards the Infrastructure Development Charges (IDC) at the rate of 445/- per sq. yds. That in the year 2014, it came to the knowledge of the complainant through a reply to the RTI Application dated 16.04.2014 by SPIO, cum Accounts Officer, Director Town & Country Planning, Haryana, that the rate for charging IDC amount for the plotted colony is 200/- per sq. yds, as against 445/- per sq. yds actually charged by the Respondents. Hence, the total amount of IDC that should have been charged by the respondents from the complainant should be Rs. 1,00,600/- as against Rs: 2,23,835/- actually charged by Respondents. A copy of Reply to RTI Application dated 16.04.2014 is annexed and marked as Annexure-A-11 (Colly).
- ii. The respondent has charged an amount of Rs. 5,15,072/- towards External Development Charges' from the complainant. The rate at which EDC has been charged by the respondents from the Complainant is 1024/ per sq. yds. They are charging EDC on higher rate.



- iii. The respondent has charged 'Enhanced External Development Charges (EEDC)' from the complainant of an amount of Rs. 7,81,662/-. The respondents at no point of time raised such a demand and the same was raised only in the year 2012 (almost after the four year of possession). Moreover, the complainant was never at any point of time being intimated by the respondents about such charging of the Enhanced EDC. Therefore, it is submitted that the Complainant was taken at surprise by the Statement of Account dated 05.03.2012 where the Complainant was asked to pay the Enhanced EDC amount of Rs. 7,81,662/-. The EEDC charge is stayed by the DTCP. The DTCP had ordered respondent to deposit the amount charged as EEDC or refund the amount but respondent neither deposited the amount nor refunded the amount to the complainant
- iv. Further the respondent has charged an exorbitant amount from the complainant without actually providing Sewage Treatment Plant and 220KV Grid Sub-Station in the Project despite having received the entire amount of Rs, 500,485/-. As per the information



received from HUDA under the provisions of Right to Information Act, grid substation and also STP are to be provided by HUDA and the cost is already included in EDC . The NCDRC in Case No. 265 of 2014 titled as "M/s. Parklands Owner Association v. M/s. BPTP Ltd. & 2 Ors". has clearly held that the cost of construction of 220 KV substation is in preview of HVPNL and there has been no demand by the Governmental Authorities to the respondents for constructing and providing electricity services. It is beyond the understanding of the Complainant that when no amount has been charged by the governmental authorities from the respondents and when the services with regard to electricity and its infrastructure cost are being borne by government, then why the respondents are charging such an exorbitant amount of Rs. 500,485/- towards Electrification Charges-and STP. Such amount is liable to be refunded to the complainant with interest. Even as on date, the Respondents have failed to provide for a proper electricity connection nor there is any electricity infrastructure in the project. The said



fact is clearly held by the NCDRC in its order dated 11.09.2019 in case no. 265 of 2014. A copy of the Order dated 1.02.2016 passed by the Hon'ble NCDRC in Case No. 265 of 2014 is annexed and marked as Annexure- "A-12". (Colly).. A copy of the Order dated 11.09.2019 passed by the Hon'ble NCDRC in Case No. 265 of 2014 is annexed herewith and marked as Annexure-"A-13". (Colly).

- v. Respondents in addition to the above, have also failed to provide a valid and running 220KV sub-station needed for electricity in the project. It is most respectfully submitted that as on date there is no electricity connection in the project. It is interesting to note that the DTCP vide its same order dated 8.05.2014 noticed the said deficiency with regard to failure of the respondents to provide a valid electricity sub-station and thus as a result, the DTCP held that since the respondents are unable to construct and provide a valid electricity connection, directed the respondents to refund the amount along with 12% interest charged by it towards electrification from the allottees since it has failed to provide 220 KV sub-



station. Till date, the respondents not only have failed to provide a valid electricity connection and a 220KV sub-station but also have failed to refund the amount @ 12% interest to the complainant. The Respondents have neglected the order dated 8.05.2014 passed by the DTCP. Respondents have deliberately chosen not to abide by the order dated 8.05.2014 passed by the DTCP. A copy of the order dated 8.05.2014 passed by the DTCP is annexed as Annexure--"A-14". (Colly).

- vi. That the Complainant on 4.12.2008 has paid an amount of Rs. 90,000/- towards stamp duty to the respondents and again paid stamp duty of Rs 3,77,750/- on 24.01.2013- (total amount paid is Rs 4,67.750/-). Complainant also paid Rs 15000/- as utility connection charge on 19/12/2008. It is most respectfully submitted that the said amount towards stamp duty was paid by the complainant under an impression that the unit will be registered by the respondents and the complainant can enjoy peaceful possession of its unit. However, to the extreme astonishment of the complainant, the respondents have



till date failed to register the unit in favour of the complainant.

6. That it was in the year 2018, the complainant came to know through an RTI application that the respondent had received occupation certificate/part completion certificate itself in the year 2013 only which is after 5 years of offer of possession dated 20.10.2008. Further, it is imperative to mention that the competent Authority had only approved the layout plan for the project on 30.11.2011. Moreover, the revised zoning plan for the project was approved on 09.06.2014.
7. The act and conduct of the respondent is in complete contravention to the provisions of the RERA Act. Despite a lapse of more than 15 years from the execution of the plot buyer agreement, respondent is still not in a position to deliver possession of the unit to the complainant. The project is still incomplete and the respondent has yet to issue a legal and valid offer of possession to the complainant. Hence, the complainant is left with no other option but to approach the Authority seeking possession of the booked unit along with delay interest till the date a fresh offer of possession is issued to the complainant

C. RELIEF SOUGHT

8. That the complainant seeks following relief and directions to the respondent:-



- i. Issuance of appropriate directions to the respondents to offer a legal and valid possession to the complainant after showing the occupation certificate and the completion certificate which it had obtained from the Competent Authority.
- ii. Direct the respondents to immediately hand over the possession of the plot in question to the complainant and execute the conveyance deed in favor of the complainant;
- iii. Direct the respondents to pay compensation to the Complainant in form of interest @18 p.a. over the amounts already paid to the Respondent Company for the period of delay calculated from 30.10.2010 to actual date of handing over of possession and sale / conveyance deed with respect to the plot in question not executed in favour of the complainant;
- iv. Direct the respondents to refund the excess amount charged with interest by it towards EDC, IDC, Enhanced EDC; Cost of Grid Sub Station, etc, as wherever prayed in the Complaint;
- v. Penalise the respondents under the relevant provisions of the RERA Act, 2016 for the following: -



- a. Accepting bookings from the allottees of the project including the Original Allottee in the instant matter in the absence of a valid license from the Competent Authority;
- b. Offering possession to many of the allottees including the Complainant in the year 2008, in the absence of a sanctioned layout / zoning plan of the Project in question from the Competent Authority;
- c. Offering possession to many of the allottees including the Complainant in the year 2008, in the absence of Occupation Certificate and Completion Certificate from the Competent Authority;
- d. Penalize the Respondents for false advertisement and making false representation to the allottees of the Project including the Complainant;
- e. Penalise the Respondents for any other default committed by them as pointed out



by the Complainant at the time of arguments;

- vi. Direct the Respondents to pay compensation to the complainant of an amount of Rs. 10,00,000/- on account of unfair trade practice, negligence, harassment, deficiency in service, breach of commitments / agreements etc. for such other sum as per the provisions of the RERA Act, 2016 and the Rules made there under;
- vii. Direct the Respondents to pay compensation amounting to Rs. 1,00,000/- for illegally offering possession of the unit in question to the Complainant without obtaining requisite Occupation Certificate / Completion Certificate from the Competent Authority;
- viii. Direct the Respondents to pay compensation amounting to Rs. 1,00,000/- for not intimating to the Complainant illegally offering possession of the unit in question to the Complainant that the said Occupation Certificate as obtained in the year 2013, got cancelled / revoked on 19.09.2018 by the Competent Authority;



- ix. Direct the Respondents to pay compensation @ 10.75 % p.a. from date of payment till the date of actual registration on the amount of Rs. 4,67,650/- to the Complainant for non-registering the unit of the Complainant;
 - x. Direct the Respondents to pay compensation amounting to Rs. 1,00,000/- to the Complainant for not providing Sewage Treatment Plan despite charging a huge amount from the Complainant;
 - xi. Direct the Respondents to refund an amount of Rs. 5,00,485/- for not providing a proper electricity infrastructure and connection in the project with interest;
 - xii. Direct the Respondents to pay compensation amounting to Rs. 1,00,000/- for its failure to provide a proper electricity connection and infrastructure despite receiving the full amount in the year 2008 with regard to the same;
 - xiii. Award cost of the present proceedings in favor of the complainant and against the Respondents.
9. During the course of arguments, learned counsel for the complainant submitted that the complainant in the present complaint had purchased a



unit in the project of the respondent in the year 2008. As per clause 22 of the plot buyer agreement, possession of the unit was to be delivered within a period of 24 months from the date of sanctioning of service plans. The respondent had got approval of the sanctioned plans in the year 2014. However, an incomplete offer of possession was issued to the complainant on 20.10.2008 along with an arbitrary statement of accounts. He alleged that the said statement of accounts suffered from huge discrepancies and respondent had unilaterally raised illegal demands from the complainant. He reiterated his averments as elaborately mentioned in para 5 of this order with regard to the alleged irregularities. Complainant was never conveyed anything in respect of the part completion certificate until the year 2018. Complainant was offered an illegal offer of possession without obtaining occupation certificate/completion certificate and further the plot was incomplete and uninhabitable as clearly mentioned above. Therefore the said offer of possession was unacceptable to the complainant being deficient.

10. Further as per clause 22.1, respondent had to obtain approval of service plans of the entire colony of the project which was only granted in the year 2014. Therefore, the averment of the respondent that it had obtained part completion certificate in the year 2010 does not hold weight. Complainant was issued an offer of possession in the year 2008. Thereafter, complainant was never intimated with regard to the part completion and no fresh offer of



possession was issued to the complainant after 2013. It is important to note that there is no clarity that the said partial completion certificate which is for an area of 154.30 acre includes block 'W' in which the plot of the complainant is situated.

11. Learned counsel further submitted that as per aforementioned submissions and documents placed on record, it becomes abundantly clear that the respondent had failed to validly offer possession of the plot to the complainant and has over charged the complainant on account of IDC, amount collected on account of EEDC. Further, the site of the project is still devoid of basic amenities to make it habitable for possession. In these circumstances, learned counsel for the complainant prayed that the offer of possession dated 20.10.2008 be declared invalid and respondent be directed to issue a fresh offer of possession to the complainant along with delay interest for the delay caused in delivery of possession.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply in the matter pleading therein:

12. That the captioned complaint relates to the project which is not registered with the HRERA as the completion certificate/occupancy certificate of the project was obtained by the respondents before the inception of HRERA. Any project for which completion or occupancy certificate has been applied



or already obtained before the applicability of the Act and Rules, are beyond the purview of the RERA Act, 2016.

13. That builder buyer agreement was signed between the parties on 25.08.2007, i.e., before the RERA came into force and even the possession was offered to complainant on 20.10.2008 before the enactment of RERA Act, the complainant cannot approach Ld. Authority for adjudication of its grievances. The said project does not fall under the ambit of RERA. That the provisions of RERA Act are to be applied prospectively. Therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act.
14. That complaint is not maintainable on ground of mis-joinder of parties. It is submitted that apart from the respondent no. 1 and 2 all the other respondents no. 3 to 8 to the complaint are wrongly joined. Entire transaction has been conducted with respondent no. 1 and 2 only. Hence, respondents no. 3 to 8 to this complaint ought to be deleted from array of parties, being unconcerned with the dispute.
15. That the complaint is barred by limitation as offer of possession was made on 20.10.2008 to the complainant.
16. The project in question was being developed by the respondent in the year 2008-2010. The original allottee had booked a unit in the year 2005. A plot



buyer agreement was executed between the parties on 25.08.2007. The original allottee was initially allotted unit bearing no. U-20 which was later on changed to W-23. It is submitted that the original allottee was duly informed about the reason for the said change.

17. The plot buyer agreement was executed prior to the implementation of RERA Act and the same shall be binding on the parties and cannot be reopened. Thus, in present complaint both parties being signatory to the floor buyer agreement dated 25.08.2007 are bound by the terms and conditions per se.
18. That as per clause 22.1 and 22.2, it has been clearly mentioned that the possession of the plot will be delivered within 24 months from the date of sanctioning of the service plans. The parties had agreed under clause 2.2 of the agreement to pay the external development charges and any other future increase in EDC as and when demanded. The parties had also agreed under clause 2.4 to pay infrastructure development charges; VAT; any fresh incidence of tax as and when levied by the government of Haryana or competent Authority.
19. That the complainant made huge defaults in making timely payments of called amount. It is submitted that the interest charged from the complainant was as per the agreed terms.



20. The respondent has already issued an offer of possession to the complainant for the said unit on 20.10.2008. Respondent through various letters has requested the complainant to execute the conveyance deed. However, the delay is on the part of the complainant as the respondent has been duly sending the reminder letters. The offer of possession dated 20.10.2008 was legal and valid offer of possession.
21. It has further been submitted that the service plan/estimates of the residential plotted colony in Sector 75 and 76 were approved on 11.04.2007. A copy of said approval has been placed on record vide application dated 28.04.2023. Thereafter, the zoning plan of block-W was approved on 20.02.2008. The respondents had offered possession to the complainant on 20.10.2008. Hence, the respondent issued a legal and valid offer of possession to the complainant. Part completion certificate in respect of Block-W was issued to the respondent on 09.09.2010.
22. Mr. Hemant Saini, learned counsel for the respondent further argued that the unit of the complainant is situated in Block 'W' of the project. Said block consists of 316 plots, of which offer of possession has been issued to 292 units till date and further for 259 plots conveyance deeds have also been executed between the parties. However, the complainant in present case has failed to come forward and accept offer of possession dated 20.10.2008 under misconceived grievance that the possession was offered before



approval of revised sanction plan. As per statement of account dated 20.10.2008, complainant had to make payment of remaining amount of ₹ 5,01,037/- in respect of the said plot. Respondent had duly issued demand/reminder letters to the complainant for making payment of remaining amount but complainant failed to come forward.

23. Respondent had subsequently issued the complainant letter dated 09.12.2011 for execution and registration of conveyance deed upon payment of remaining charges which was again ignored by the complainant. Complainant was yet again issued final demand notice dated 30.05.2012 for clearing of outstanding amount. After payment of due amount, complainant was again issued a reminder notice for execution of sales deed and payment of delay payment interest and holding charges. Vide email dated 20.12.2013 complainant was duly informed that the respondent was in possession of the requisite documents which entitled the respondent to offer possession and register the plot in the name of the complainant but complainant failed to proceed with the formalities.
24. Mr. Hemant Saini, learned counsel for the respondent drew the attention of the Authority towards the offer of possession issued to the complainant on 15.03.2017 annexed as annexure R-17 of reply. Complainant had been duly issued offer of possession/reminder letters for execution of sale deed but chose not to accept the same for reasons best known to the complainant.



25. Respondent has duly completed development works at the site. The same has been accredited to vide part completion certificate dated 09.09.2010 in which it has been clearly certified that required development works in residential colony for area measuring 154.30 acres have been completed. A copy of the part completion certificate is annexed as Annexure R/4 of reply filed on 24.08.2023. He also submitted that vide instructions of Chief Administrator, HSVP, dated 13.11.2007, approval of zoning plan is sufficient to offer possession of a plot to an allottee. Thus, in this case zoning plan for the site in question has been approved on 20.02.2008 and only thereafter an offer of possession has been issued to the complainant on 20.10.2008.

26. In view of above submissions, it is clear that offer of possession dated 20.10.2008 was validly issued to the complainant. Complainant had no ground to reject the said offer of possession. Complainant has been raising frivolous allegations against the said offer of possession. It is pertinent to mention that the complainant was issued a letter for execution of sale deed in the year 2012. Thereafter, complainant failed to respond to the said letter or communicate with the respondent regarding any grievances. Complainant has filed present complaint after a gap of more than 8 years without justifying delay on his part for failure in execution of conveyance deed.



27. During the course of the arguments, learned counsel for the respondent placed reliance on judgement passed by Hon'ble Supreme Court in case titled as '**Bharati Knitting Co. Vs DHL Worldwide Express Courier Division**' 1996 SCC (4) 704 wherein it has been observed that when there is a specific term in the contract, the parties are bound by the terms in the contract. He pressed that the complainant had willingly accepted the terms of the plot buyer agreement dated 25.08.2007 and are now bound by the same. Complainant had accepted to make payments towards the booked unit as per the agreement. Learned counsel further submitted that the complainant in this case is seeking relief in terms of specific performance. However, as per judgement passed by Hon'ble Supreme Court in *Desh Raj Vs. Rohtash Singh, Civil Appeal No.921 of 2022*: decided on 14.12.2022, it is held that where there was clear intention of the parties to treat time as essence of the contract and where there was undue delay on behalf of the respondent to institute the suit, the relief of Specific Performance cannot be granted. Therefore, the relief claimed by the complainant cannot be accepted upon.
28. Learned counsel for the respondent further pressed that the complainant has been blowing hot and cold over its allotment in the project in question and stopped making payments as per its choice. Now that the prices of the property in question have gone up, complainant has taken to this Authority



after not pressing for its right for so many years. He placed reliance on judgement passed by Hon'ble Supreme Court in case titled **Saradmani Kandappan Vs S Rajalakshmi AIR 2011 SCC 3234** and others where it is observed that time is of essence of contract in matters pertaining to sale of immovable property. He further stated that the complainant in this case has failed to perform its part of the contract within reasonable period of time and that the silence of the vendee for a long time will make it inequitable to give relief of specific performance.

29. In view of the aforementioned observations, learned counsel for the respondent submitted that the complainant is not entitled to seek relief of possession after keeping silent for more than 12 years. Complainant is only entitled to seek refund of the paid amount along with interest after forfeiture of earnest money.

E. ISSUES FOR ADJUDICATION

- (i) Whether the Authority has jurisdiction to entertain the present complaint?
- (ii) Whether the Complainant is entitled to the reliefs claimed by it particularly possession alongwith delay interest?



F. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

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

30. Respondent has raised an objection that the Authority does not have jurisdiction to decide the complaint on following grounds:-

(i) That the project had already received completion certificate on 09.09.2010 so the project does not get covered into definition of 'on-going project' and is not within purview of RERA Act,2016.

(ii) That the builder buyer agreement executed between parties is a pre-RERA contract and as such provisions of RERA cannot be applied to it retrospectively.

(iii) Present complaint is barred by limitation as complaint has been filed after 12 years of cause of action which is issuance of offer of possession dated 20.10.2008.

(iv) That complaint is bad for mis-joinder of parties. Transactions were carried out between complainant and respondent no. 1 and 2 but respondent no. 3 to 8 have been wrongly arrayed as parties.

(v) Reliefs sought by the complainants are in form of specific performance which flows from Specific Relief Act, 1963 only and therefore, complaint cannot be decided before this forum.

With respect to objection raised by respondents that the jurisdiction of the Real Estate Regulatory Authority, Panchkula, is barred because the project in



question is not an 'on-going project' for the reason that project was completed before the RERA Act, 2016 came into force and had also received completion certificate on 09.09.2010. In this regard, it is observed that the issue as to whether 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 Court held that the projects in which completion certificate has not been granted by the competent authority, only such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects. Furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder.

In light of aforesaid observations, Authority observes that respondent had received part completion certificate on 09.09.2010 not the completion



certificate. Moreover, the receipt of part completion certificate does not absolve the respondent of its obligations cast upon it pertaining to handing over of possession of plot and execution of conveyance deed. The RERA Act, 2016 was enacted to ensure that both parties, i.e., respondent-promoter as well as complainant-allottee duly fulfil their respective obligations as per agreement for sale executed between them. Herein, the obligation of respondent to actual handover possession of plot still remains which is reoccurring cause of action and the allottee is well within its right to avail relief/remedy under the RERA Act, 2016.

One of the averments of respondent is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act, 2016. Accordingly, respondent has argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the same cannot be examined under the provisions of RERA Act. In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements



executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in *complaint no. 113 of 2018 titled as Madhu Sareen v/s BPTP Ltd* decided on 16.07.2018. Relevant part of the order is being reproduced below:

"The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller."

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



rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaint. Completion certificate for the project in which the allottee-complainant was allotted a plot has still not been received by the respondent-promoter, thus, the project is well within the ambit of definition of the on-going project.

With respect to the objection of respondent that the complaint is barred by limitation, the reference 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. It is to mention here that the promoter has till date failed to fulfil his obligation pertaining to delivery of possession of plot in question because of which the cause of action is re-occurring. RERA 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 be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not Courts. In the present complaint, stage of actual handing over of possession or final settlement has not been reached. Complainant had filed complaint for seeking relief of actual handing over of possession alongwith execution of conveyance deed which has not yet been delivered/executed by respondent. So, objection raised by respondent on ground of limitation does not have any merit and is therefore rejected.



Complainant and respondents no 1 and 2 are in relation of allottee and promoter. In support, definition of allottee, promoter and real estate project is referred. As per S.2(d) of the RERA Act, "allottee" is defined as follows:

9. (d) "allottee" in relation to a real estate project, means the person to whom a plot apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent:

Definition of "promoter" under section 2(zk) is provided below:

(zk) "promoter" means,—

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

Further, as per Section 2(zj) & (zn) of the RERA Act, 2016, "project" & "real estate project" are defined respectively as follows:

(zj) "project" means the real estate project as defined in clause (zn):

(zn) "real estate project means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;



A conjoint reading of the above sections shows that respondent-BPTP is a promoter in respect of allottees of units/plots sold by it in its real estate project-Parklands and therefore there exists a relationship of an allottee and promoter between the parties. Since, relationship of an allottee and promoter between complainants and respondent is established and the issues/transaction pertains to the real estate project developed by respondent, hence, provisions of RERA Act, 2016 apply to the matter and Authority has the exclusive jurisdiction to deal with the matter. Furthermore, the preamble of the Real Estate (Regulation and Development) Act, 2016 provides as under.

An Act to establish the real estate regulatory authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the appellate tribunal to hear appeals from the decisions, directions or orders of the real estate regulatory authority and the adjudicating officer and for matters connected therewith or incidental thereto;

The Real Estate (Regulation and Development) Act, 2016 basically regulates relationship between buyer (i.e., allottee) and seller (i.e., promoter) of real estate, i.e., plot, apartment or building, as the case may be and matters incidental thereto. So, the issues involved in complaint and relief sought are well within the ambit of the Authority. Plea of respondent



that reliefs sought are in form of specific performance which flows from Specific Relief Act, 1963 only and therefore, complaint cannot be decided before this forum does not have merit even on the ground that Section 79 of RERA Act exclusively bars the jurisdiction of civil courts with respect to any matter which is the subject matter (real estate transaction) under the Act and falls within the purview of the Authority, or the Real Estate Appellate Tribunal.

31. W.r.t mis-joinder of parties, it is observed that complainant has impleaded respondent no. 3 to 8 being Director of respondent-company but no relief in particular has been sought against each of them. Moreover, all transactions have been carried out between complainant and respondent no. 1 and 2, so no direction is being passed against respondent no 3 to 8 in this order. Accordingly, the objections raised by respondent on ground of maintainability which are mentioned in para 30 clause (i), (ii), (iii), (iv) and (v) of this order stands dealt with and are declared devoid of merit.
32. Factual matrix of the case is that the original allottee Ms. Kavita had purchased a plot in project of respondent by way of plot buyer agreement dated 25.08.2007. Vide said agreement, plot no. U-20 having area 502 sq yds was allotted to her. Later on in year 2008, respondent had changed the plot no. from U-20, 502 sq yds to W-23, 503 sq yds. Original allottee was duly informed about change of plot vide letter dated 04.04.2008 and thereafter, complainant being a subsequent allottee had purchased booking



rights qua the plot bearing no. W-23, 503 sq yds W-Block, Parklands, Faridabad from original allottees Mrs. Kavita Gupta in July,2008. Perusal of builder buyer agreement dated 25.08.2007 and letter dated 04.04.2008 reveals that there is no decrease in area rather area has been increased from 502 sq yds to 503 sq yds. Further, the unit was endorsed in the name of complainant by the respondent vide endorsement letter dated 31.07.2008. Meaning hereby that the complainant stepped into the shoes of the original allottees. On perusal of the documents placed on file, it is noted that no fresh plot buyer agreement was signed between the complainant and the respondent promoter, hence the complainant who is a subsequent allottee was bound by the terms and conditions stipulated in plot buyer agreement dated 25.08.2007. As per clause 22.1 of the buyers agreement possession of the unit was to be delivered within a period of 24 months from the date of sanction of service plans. Plea of respondents is that service plans for project got approved on 11.04.2007, subsequent to which zoning plan of W-block got approved from competent authority on 20.02.2008 whereas submission of complainant is that as per RTI enquiry dated 23.11.2021, it came into picture that service plan of entire colony got approved on 21.03.2014 and zoning plan on 07.12.2011. Be the case as it may be, part completion certificate for project in question inclusive of 'block-W' was obtained by respondent way back on 09.09.2010. Said certificate cannot be granted by the department of town and country planning without approving



the necessary plans/estimates. Part completion certificate has not been challenged by any party in any court so said certificate is taken on record being relevant document to adjudicate the issues involved in present complaint. Moreover, no objection of any sort was raised by complainant to said plans during years 2008 to 2020, complainant chosen not to agitate upon these issues till filing of present complaint. Accordingly, taking period of 24 months from approval of service plan i.e. 11.04.2007, possession of the plot should have been delivered to the complainant on 11.04.2009. Therefore, the deemed date of delivery of possession works out to 11.04.2009.

33. Fact remains that respondents had issued an offer of possession to the complainant on 20.10.2008 alongwith demand of Rs 5,01,037/-. It is alleged by the complainant in the complaint that said offer of possession was not a valid offer for the reasons; first, it was not supported with completion certificate from the competent authority; second, deficiency in basic services; third, offer of possession was accompanied with illegal demand on account of IDC,EDC, STP and electricity charges. It is to mention here that perusal of file reveals that said objections has been raised by complainant by way of present complaint only, no objection by way of mail/letter was raised by complainant to the offer of possession dated 20.10.2008. Rather complainant duly made payments of Rs 90,000/- on 04.12.2008 and Rs 1,84,837/- on 19.12.2008. In pursuance of receipt of



outstanding dues from complainant, respondent on 19.01.2011 issued a 'no objection certificate for giving possession of plot no. W-23' to complainant. Relevant content of said letter is reproduced below for reference:-

'We hereby confirm that you have deposited all the due amounts as per the statement of accounts sent to you vide our letter dated 20.10.2008 under which we offered possession of the aforesaid plot to you and you have duly executed indemnity cum undertaking and maintenance agreement with us. You are requested to take possession of the aforesaid plot from our site office at Setcor-76, Parklands, Faridabad and contact Mr. Rakesh Sharma (Mobile no. 93XXXXXX07) who will handover the possession of the aforesaid plot on submitting this NOC in original to him. As mentioned in the offer of possession letter dated 20.10.2008 the sale deed shall be executed only after the revised external development charges and stamp duty charges as calculated by us, are paid'

Said letter is annexed by complainant itself in complaint as Annexure A-10. Meaning thereby that complainant accept its delivery upon it nevertheless no objection to it was raised by complainant then. Coming to the issue of validity of offer of possession, it is the stand of the respondents that the offer of possession had been issued after approval of zoning plans on 20.02.2008, which as per the instructions of Chief Administrator, HSVP, dated 13.11.2007 was sufficient to offer possession of a plot to an allottee. Further, the block-W in which the plot of the complainant is situated had received part completion certificate on 09.09.2010.



34. A bare perusal of the letter dated 13.11.2007 containing the instructions of Chief Administrator, HSVP, regarding zoning plan would reveal that the said instructions pertain specifically to projects being developed under the competent Authority, which is Haryana Shehri Vikas Pradhikaran. Further, as per said instructions, it is required to provide a copy of the zoning plan alongwith letter of possession. In present complaint, firstly the project of the respondent does not fall into the category for which the aforementioned specifications have been issued by Chief Administrator, HSVP. Secondly, though the respondent had issued an offer of possession to the complainant after obtaining approvals of zoning plan but a copy of the same was not provided to the complainant along with letter of possession. Therefore, this plea of the respondent to ascertain that the offer of possession dated 20.10.2008 made on basis of instructions dated 13.11.2007 was a legally valid offer, cannot be accepted. Fact of the matter is that at the time when respondent had issued offer of possession dated 20.10.2008 to the complainant, respondent had not received completion certificate/part completion certificate for the said plot. Therefore, the offer of possession dated 20.10.2008 cannot be called a valid offer of possession.
35. It is to mention here that the part completion certificate was received by respondent for the block-W on 09.09.2010. Plea of complainant herein is that said part completion certificate is not a valid document as service plans of the project got approved in year 2014 and zoning in year 2011 so how



can part completion certificate be obtained prior to said approval. Part completion certificate dated 09.09.2010 placed on record is approved from the competent authority and no challenge of any sort has been made by any allottee/other party to it before any forum. Said certificate is granted by competent authority, no assumption against it can be accepted as such. So, complainant, if wants may challenge said part completion certificate before DTCP. Without any legal stay/objection to certificate, the plea of complainant does not hold any merit.

36. The principal argument of the respondent is that it had time and again approached the complainant to come forward for taking possession and for execution of conveyance deed upon payment of remaining charges. However, the complainant failed to do so. Complainant was again issued reminder for offer of possession dated 15.03.2017 with respect to the plot in question, i.e, after already having the knowledge of receipt of part completion certificate but the complainant again failed to pay heed to the same.
37. Most contentious issue in this plaint is that according to complainant, offer of possession made to the complainant in 20.10.2008 was not a proper offer of possession as it was supposed to have been offered after receiving part completion certificate in the year 2010 and thereafter, the various communications issued by the respondent qua possession of the plot in question are incomplete as there was deficiency in basic services at the site



of the project. Complainant has placed reliance on observations of Hon'ble National Consumer Dispute Redressal Forum in **Case No. 265 of 2014** titled as "**M/s. Parklands Owner Association v. M/s. BPTP Ltd. & 2 Ors** wherein it has been observed that the cost of construction of 220 KV substation is in preview of HVPNL and there has been no demand by the Governmental Authorities to the respondents for constructing and providing electricity services. Further the respondent has failed to provide a valid and running 220KV sub-station needed for electricity in the project. It is the argument of the complainant that the site is devoid of electricity connection. In support of their argument, complainants have placed on record copy of order dated 08.05.2014 passed by the DTCP directing the respondent to refund the amount collected on account of providing electricity infrastructure at the site.

38. The facts set out in the preceding paragraph demonstrate that the complainant in present complaint is principally arguing the fact that the respondent company is not in a position to deliver proper possession of the plot in question to the complainant as the respondent had failed to provide electricity infrastructure at the site of the project. The complainant has time and again refused to take possession of the plot on grounds that the respondents were initially not in possession of completion certificate to enable the respondent to issue a valid offer of possession and further that the respondent had failed to provide electricity infrastructure at the site.



39. Authority observes that sequence of events in the matter is that respondent had obtained series of licences for development of this colony over land measuring 339.682 acres. The respondent acquired land through several sister concerns. The bottom line, however, is that on 09.09.2010 a partial completion certificate was issued by Department of Town and Country Planning in respect of 154.30 acres land out of their colony which includes the land parcel on which the plot of the complainant is situated. A presumption of truth is attached to the part completion certificate granted by Town and Country Planning Department. Such a part completion could have been granted only after due diligence on the part of concerned department. Meaning thereby that at the time of grant of part completion certificate it has been certified that the required developmental works in residential colony at Faridabad for residential area measuring 154.30 acres were available at site. In said certificate it has been specifically mentioned that the development works for which the certificate is being issued are water supply, sewerage, storm water drainage, roads, horticulture and electrification are complete. In view of the part completion certificate, the unmistakable conclusion is that the land parcel on which the plot of the complainant is situated, was available for habitation since 09.09.2010.
40. Objection raised by the complainant with regard to the statement of accounts dated 25.08.2007. Complainant in this case has alleged that the statement of account issued along with the offer of possession dated



20.10.2008 suffered from material irregularities. That the respondent has wrongly charged amount on account of IDC, EDC, EEDC, charges on account of STP and 220 KV Grid sub-station, stamp duty charges and utility charges. The Authority has examined the issue in this regard and observes as follows:

(i) Infrastructure Development Charges: IDC has been charged from the complainant for an amount of Rs 2,23,835/- at the rate of Rs 445/- per sq yds. Whereas as per the submission of the complainant the rate for charging IDC amount for the plotted colony is 200/- per sq. yds, as against 445/- per sq. yds actually charged by the respondents. In response, learned counsel for the respondent has submitted that the respondent company has charged IDC amount as per the applicable rate for the project in question and the same has been deposited to the concerned Authority. Respondent has not wrongfully charged any excess amount from the complainant. The complainant has made allegations with regard to IDC amount on the basis of an RTI application not specific to the plot in question. IDC rates are calculated on basis of various services which may differ for different projects. In case respondent has paid the entire amount to the concerned Authority, respondent shall provide the proof of the same at the time of issuing fresh statement of accounts to the complainant. If the respondent has charged in excess from the complainant, the differential amount shall be refunded to the complainant along with interest @ SBI MCLR + 2%.



(ii) External Development Charges: The respondent has charged an amount of Rs. 5,15,072/- towards External Development Charges' from the complainant which is alleged to be on the higher side. These charges are statutory development charges to be paid to the government in the department of Town and Country Planning by the respondent promoter. Prima facie the amount of ₹ 5,15,072/- towards External Development Charges' appears to be exorbitant. To the best of the understanding of this Authority, EDC and IDC charges are 10-15 % of the basic cost of the plot. In case respondent has paid the entire amount to the concerned Authority, respondent shall provide the proof of the same at the time of issuing fresh statement of accounts to the complainant. If the respondent has charged in excess from the complainant, the differential amount shall be refunded to the complainant along with interest @ SBI MCLR + 2%.

(iii) Enhanced External Development Charges: With regard to EEDC, it is observed that when the demand was raised from the complainant, the charges were payable to the concerned Government Authority. However, the same were stayed in November 2013 by a Government Notification. Thereafter, the matter is subjudice with the Hon'ble Punjab and Haryana High Court. This demand has been paid by the complainant to the respondent. In case in future, Hon'ble High Court declares that this amount is not payable by the allottee, the respondent shall return the said amount to the complainant. In case the respondent has not deposited the said



amount with the concerned Authority, any penalty on account of deposit shall be borne by the respondent.

(iv) Electrification and STP Charges: With regard to electrification and STP charges, it is observed that these charges shall be regulated as per the provisions of the agreement executed between the complainant and respondent promoter. As per the part completion certificate dated 09.09.2010 services on account of sewerage and electrification were available at the site. With regard to Grid sub-station, learned counsel for the respondent has submitted that provision of Grid substation is the obligation of the promoter. Respondent company has provided sufficient infrastructure at site to provide running electricity connection more than the current load. In these circumstances it is observed that whatever amount is agreed as per the agreement, it shall be payable, anything beyond the agreement will not be payable by the allottee/complainant. Respondent is directed to specify separately the amount which has been charged for electrification and amount charged for STP.

41. On evaluation of aforesaid discussion, it is observed that contention of the complainant is that complainant was not made aware of receipt of part completion certificate by the respondent. On perusal of documents placed on record, it is observed that after receipt of outstanding due from complainant and part completion certificate, respondent had issued a No Objection Certificate to the complainant for taking possession of the plot in



question vide letter dated 19.01.2011. To said letter, complainant did not raise objection/any revert to it. Thereafter, respondent had issued letter dated 09.12.2011 to the complainant with a subject-*'request for execution and registration of conveyance deed upon payment of revised external development charges EDC and other charges'*. However, the complainant did not respond to said letter. Thereafter, respondent had issued reminder dated 30.05.2012. Complainant in lieu of acceptance of said demand/reminder letter, made payment of Rs 5,00,485/- on account of EEDC and Rs 7,81,662/- on account electrification and STP charges on 07.06.2012 without raising any objection to it. Thereafter, respondent had issued a letter raising demand of Rs 3,77,750/- as outstanding due from complainant. Said demand was honoured by complainant on 24.01.2013 on account of stamp duty charges. Thereafter, respondent had issued letter dated 14.05.2013 stating that *'this is in reference to the offer of possession sent to you for your unit W-23 at our project Parklands, Faridabad. We have been waiting inordinately for sales deed execution of your unit. However, we have observed that there is following outstanding against your unit-BPTP-Rs 1,48,042/- and BPMS -Rs 39,859/-'*. Reminder for said letter was issued by respondent on 23.08.2013. Lastly, an email dated 20.12.2013 has been placed on record by respondent whereby complainant was informed about occupation certificate and computation of EDC/IDC charges in respondent o complainant's query raised by mail dated



13.12.2013. Despite all these transactions/communications, the complainant failed to come forward for taking possession of plot. It is pertinent to observe herein that throughout the period of 2008 till 2013 complainant has not agitated the offer of possession dated 20.10.2008 with the respondent or any other competent Authority. Nearly after a gap of more than 5 years, the complainant enquired from the respondent with regard to the status of allotted plot W23 vide email dated 13.12.2013. Vide said email, complainant further enquired about receipt of occupation certificate, charges raised on account of IDC, EDC, STP and EEDC. In response to the said query, respondent vide email dated 20.12.2013 duly apprised the complainant that the respondent company had the requisite documents in order which entitled the respondent to offer possession and register the plot in the name of the complainant. Despite such clear assurances from the respondent, complainant failed to come forward and take possession. Complainant has placed on record copy of RTI reply on the basis of application dated 22.02.2014 filed by complainant before Director, Town and Country Planning, with regard to the licence no. 1210-1261 of 2006 placed as annexure A11 in the complaint file. It can be noted that on 20.12.2013, complainant had become aware of the fact that the respondent was in possession of requisite documents to legally handover possession of the plot in question.



42. In view of above observations, it can be deduced that as on 20.12.2013 complainant was aware that the offer of possession dated 20.10.2008 has become a valid offer and the complainant can legally take possession of the plot in question. However, instead of taking over possession, complainant chose not to respond to the communications of the respondent. Nothing has been placed on record by the complainant to show that it faced any hindrance in taking over possession of the plot after 20.12.2013. The complainant is relying on indirect evidence with regard to the RTI response date 16.04.2014, order of DTCP, Hon'ble NCDRC. The complainant, however, has not placed on record any documentary evidence or email, or any written letter stating that due to the issue of electricity, complainant was unable to make use of its plot. Further, the complainant has not placed on record any documentary evidence wherein the complainant has challenged the offer of possession dated 20.10.2008, statement of accounts issued by the respondent or the issue of unavailability of electricity connection at the site before any competent Authority until the filing of this complaint. It is worthy to note that the complainant has deposited an amount of ₹ 65,56,576/- in total towards the booked plot. It is astonishing on the part of the complainant as to not agitate its rights until the year 2020 for the plot in question. The complainant was in possession of knowledge that it can legally take possession of its plot on 20.12.2013, however, the complainant failed to take proactive measures with regard to the same till



filing of present complaint. It seems that the complainant is trying to make use of later day events in support of its claim. Fact of the matter is that the plot in question had received part completion certificate on 09.09.2010 from Town and Country Planning Department certifying that the plot bearing no. W23 was in a habitable position since then. After the complainant was made aware of the fact that the possession of the plot could be legally handed over as on 20.12.2013, it became the duty of the complainant to approach the respondent and begin formalities with regard to taking over of possession. In case the complainant had any issue or grievances with the demands raised by the respondent or receipt of part completion certificate, complainant should have agitated its right before appropriate Authority. However, the complainant despite making payments to respondent neither took the possession of the allotted plot nor raised any grievances against the alleged offer of possession. Complainant for reasons best known to it chose to sit over its rights for an inordinate amount of time.

43. On the other hand, respondents too failed to proactively approach the matter. Admittedly, complainant has delayed taking over of possession of the allotted plot since the initial offer of possession 20.10.2008. Respondents had received part completion certificate on 09.09.2010. Respondent issued letters to the complainant for taking over of possession till the year 2013. However, for the period from 2014 till 2017 and



thereafter till present complaint, respondent has not placed on any communication issued to the complainant with respect of the plot in question. Since the complainant had defaulted in accepting the offer of possession and making payments on account of maintenance charges and holding charges, respondents should have cancelled the allotment of the complainant and refunded the paid amount. Rather, the respondent also chose not to act upon the allotment of the complainant and further retained the amount paid by the complainant for more than 15 years. It is the contention of the respondents that the complainant slept over its rights and is only now agitating the matter when the prices of the property has gone up. In light of this submission, it is observed that though the complainant did not actively pursue its allotment, however, even the conduct of the respondents was arbitrary and to an unfair advantage. The offer of possession issued by the respondents was initially without statutory approvals and cancellation of allotment cannot be sustained on such defective 'offer of possession'. Further even after 20.12.2013, the acceptance of offer of possession was dependent upon settlement of illegal demands and levy of unjustified interest and charges on the part of respondent. Complainant could not have abruptly accepted the offer of possession without proper acknowledgement of payable and receivable amounts. Though the complainant has delayed in pressing its relief but the said fact does not diminish the rights of the complainant qua the plot in



question after having invested a huge amount of ₹ 65,56,576/- . Reliance is placed upon judgement passed by Hon'ble Supreme Court in "Uppal Trehan Vs DLF Home Developers Ltd" wherein it is observed that in case of illegal demands and possession being conditional to settling of accounts, the allottee is entitled to proper adjudication of his rights and liabilities. Further, Authority observes that respondent has misplaced its reliance on judgement passed by Hon'ble Supreme Court in case titled as 'Bharati Knittig Co. Vs DHL Worldwide Express Courier Division'. As per said judgement not only the complainant but the respondent is also bound by the terms of the plot buyer agreement dated 25.08.2007. As per clause 10 of the agreement, respondent has agreed that in case the allottee is in breach of the terms then respondent is entitled to terminate the allotment, and refund the balance amounts already paid by the complainant after resale of the unit. However, the respondent too chose not to adhere to the terms of the contract and rather retained the amount deposited by the complainant. Herein both parties have committed default in respect of the agreed terms of plot buyer agreement.

44. As is gathered/evident from the above facts, both parties failed to actively pursue their interests qua the plot in question and chose to remain silent until the filing of the present complaint. Complainant should have agitated its rights before the appropriate Authority in the year 2013 or prior to it itself. Whereas the respondent should have cancelled the allotment of the



complainant in case of continuous default in taking over of possession. Fact of the matter is that the plot bearing W-23 is allotted to the complainant and still stands in its favour for which respondent is in receipt of Rs 65 lacs. Respondent has already issued offer of possession/letter for execution of conveyance deed in favour of the complainant.

45. The issue remaining in the present complaint is with regard to the delay interest admissible to the complainant on account of delay caused in delivery of possession. As per observations made in para 32 of this order, possession of the plot should have been delivered to the complainant by 11.04.2009. As observed above, the offer of possession dated 20.10.2008 became legally valid on 20.12.2013 when the complainant came to know that the respondent company had requisite documents to legally transfer the title of the plot in favour of the complainant. Therefore, for the period from 11.04.2009 to 20.12.2013 the complainant is entitled to receive delay interest on account of delay caused in delivery of possession as per Rule 15 i.e SBI MCLR + 2% on the entire payment made prior to 20.12.2013.
46. Now with regard to the period between 20.12.2013 till the filing of present complaint on 25.02.2020, it is observed that nothing has been put on record to show as to why the complainant chose not to agitate its right before any Court of law. The respondent on the other hand raised excessive demands and failed to proactively proceed with the allotment of the complainant retained a huge amount of more than Rs 65 Lakhs till date. Both parties



failed to properly pursue the allotment formalities with regard to the plot bearing no. W23. Accordingly, to balance the equities in the matter and in the interest of justice, Authority decides to maintain the period from 21.12.2013 till now to be treated as zero period, i.e, neither the complainant will be entitled to get delay interest for this period nor the respondents can claim holding charges or maintenance charges or interest on balance due amount. For this reason, no maintenance charges will be applicable, accordingly demands raised by the respondent on account of holding charges, maintenance charges and or interest on any delayed payments are hereby quashed. Maintenance charges shall be applicable after actual handing over of possession of plot to the complainant.

47. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

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

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;



(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

48. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15: “Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub-sections (4) and (7) of section 19, the “interest at the rate prescribed” shall be the State Bank of India highest marginal cost of lending rate +2%:

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

49. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 31.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.

50. Hence, Authority directs respondent to pay delay interest to the complainant for delay caused in delivery of possession at the rate



prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.75% (8.75% + 2.00%) from due date of possession i.e 11.04.2009 till the date of acknowledgement i.e 20.12.2013.

51. Authority has got calculated the interest on total paid amount from due date of possession i.e 11.04.2009 till the date of acknowledgement i.e 20.12.2013 and said amount works out to ₹ 27,21,272/- as per detail given in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 20.12.2013 (in ₹)
1.	48,90,364/-	11.04.2009	24,70,136
2.	6,315/-	24.11.2010	2,089
2.	5,00,485/-	07.06.2012	82,841
3.	7,81,662/-	07.06.2012	1,29,381
4.	3,77,750/-	24.01.2013	36,825
Total:	65,56,576/-		27,21,272/-

52. The complainant is seeking compensation to the tune of ₹. 10,00,000/- on account of of unfair trade practice, negligence, harassment, deficiency in service, breach of commitments / agreements etc; Rs. 1,00,000/- for illegally offering possession of the unit in question to the Complainant; to pay compensation amounting to Rs. 1,00,000/- for not



intimating to the Complainant illegally offering possession of the unit; pay compensation amounting to Rs. 1,00,000/- to the Complainant for not providing Sewage Treatment Plan. In this regard, it is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra.), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the 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 complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

F. DIRECTIONS OF THE AUTHORITY

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

- (i) Respondents no. 1 and 2 shall issue a letter apprising the complainant exact date and contact no. of representative in order



to deliver actual possession of plot to the complainant within a period of one month from the date of uploading of this order. Said letter of possession shall be inclusive of a detailed statement of payable and receivable amounts including the delay interest admissible to the complainant on account of delay caused in delivery of possession along with revised statement as per observations made in this order.

(ii) Respondents no. 1 and 2 are directed to pay upfront delay interest of ₹27,21,272/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of uploading of this order.

(ii) Complainant is directed to accept the offer of possession issued by the respondent and take physical possession within a period of 30 days from date of letter issued by respondent.

(iii) Respondents no 1 and 2 are directed to get conveyance deed of plot of complainant executed within 90 days of actual handover possession of plot as stamp duty charges amounting to Rs 4,67,750/- already stands paid. In case, any amount is due on account of stamp duty charges, then respondent shall inform the same alongwith letter of actual handing over of possession to complainant.



(iv) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e, 10.75% by the respondent/ promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

(v) The respondents no. 1 and 2 shall not charge anything from the complainant which is not part of the agreement to sell.

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


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


.....
NADIM AKHTAR
[MEMBER]