



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint nos.:	1535 of 2023
Date of filing:	14.07.2023
Date of first hearing:	17.08.2023
Date of decision:	22.07.2024

Robin Sharma S/o Sh. Suresh Kumar

R/o House No. 1158/1, ward no. 18,
Near Shiksha Bharti School, Shivam Enclave
Rohtak, (Haryana) 124001.

....COMPLAINANT

VERSUS

1. M/s GNEX Realtech Private Limited

Registered office at B-10, Lawrence Road,
Industrial Area, Delhi – 110035

2. M/s Renu Realtech Private Limited

B-10, Lawrence Road, Industrial Area, Delhi-110035

3. M/s Gnex Projects Private Limited

B-10, Lawrence Road, Industrial Area, Delhi-110035

4. M/s Gnex Infrabuild Private Limited

B-10, Lawrence Road, Industrial Area, Delhi-110035

5. M/s CFG Infrabuild Private Limited

B-10, Lawrence Road, Industrial Area, Delhi-110035

6. M/s Gnex Buildtech Private Limited

B-10, Lawrence Road, Industrial Area, Delhi-110035

.... RESPONDENTS

CORAM: Nadim Akhtar

Member

Chander Shekhar

Member

Present: - Mr. Hardeep Saini, counsel for the complainant.

Mr. Shrey Sharma, Authorised Representative of Company,
through VC.

ORDER (NADIM AKHTAR -MEMBER)

1. Present complaint has been filed on 14.07.2023 by the 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 fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the unit booked by complainant, sale consideration, the amount paid by the complainant and details of project are given in following table:

S.No.	Particulars	Details
1.	Name of the project	"Asha-Bahadurgarh, Phase-1"
2.	Plot no. and area	A-212, measuring 100 Sq.



		Yds.
3.	Date of allotment	Not mentioned
4.	Date of Builder Buyer Agreement/ Agreement to Sell	09.10.2018
5.	Due date of offer of possession	09.10.2019
6.	Possession clause	<p>8.1. Schedule for possession of the Plot:</p> <p><i>The Company agrees and understands that timely delivery of possession of the Plot for residential usage to the Allottee as provided under Rule 2(1)(f) of the said Rules, is the essence of this Agreement.</i></p> <p><i>The Company assures to hand over possession of the Plot for residential usage as detailed in Schedule E of this Agreement unless there is delay due to Force Majeure, Court orders, Government policy/ guidelines, decisions affecting the regular development of the ASHA-Bahadurgarh, Phase- I project. If, the completion of the said Project is delayed due to the above conditions, then the Allottee agrees that the Company shall be entitled to the extension of time for delivery of possession of the Plot for residential usage.</i></p>

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		<p>Schedule "E" details of timelines for handing over the possession of the plot:</p> <p><i>The Company shall make all efforts to complete the development and handover the possession of the said Plot within twelve (12) months plus two (02) months grace period from the date of signing of this Agreement subject to Force Majeure, Court orders, Government policy/guidelines, decisions affecting the regular development of the ASHA-Bahadurgarh, Phase- I project. If, the completion of the said Project is delayed due to the above conditions, then the Allottee agrees that the Company shall be entitled to the extension of time for delivery of possession of the Plot for residential usage.</i></p>
7.	Basic sale price	₹ 26,00,000/-
8.	Amount paid by complainant	₹26,39,160/- (as per receipts attached with complaint file)
9.	Offer of possession	Yes, on 21.02.2023

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B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

3. The complainant has made the following submissions in the present complaint:

(i) That the complainant booked a plot bearing no. A212 having an area of 100 Sq. Yd. in the project of the respondent namely; "Asha Bahadurgarh, Phase-1" by making a payment of booking amount of Rs.2,60,000/- on 09.10.2018. In respect of the said plot, a Builder Buyer Agreement was executed on 09.10.2018. A copy of Builder Buyer Agreement/Agreement to Sell is annexed as Annexure C-2.

(ii) That the complainant paid the total amount of Rs.26,39,160/- (as per receipts attached with complaint file) against the total sale consideration as per the payment plan as mentioned in Builder Buyer agreement and copies of the receipts are annexed as Annexure C-3 (Colly).

(iii) That as per clause 8 of the Builder Buyer Agreement, respondent had agreed to deliver the possession of the said plot within 12 months + 2 months of grace period from the date of the signing of the agreement subject to Force Majeure, Court orders, Government Policies, Guidelines & Decisions affecting the development of the project.



(iv) That respondents have failed to deliver the possession of the said unit within the stipulated time as mentioned in Builder Buyer Agreement. That the complainant approached the respondents several times for handing over the possession and also visited the office of respondents, but the respondents kept on assuring the complaints that the possession would be handed over very soon. At last, on 21.02.2023, the respondents executed a conveyance deed in the favour of the complainant and handover the possession of the said unit to the complainant.

(v) That the complainant approached the respondents several times for the delayed interest, but the respondents did not respond. Now the complainant has filed the present complaint before the Authority for interest on delayed possession @ SBI MLCR+2%. on the amount paid to the respondent as per Rule 15 of Haryana Real Estate(Regulation and Development) Rules, 2017.

C. RELIEFS SOUGHT

4. The complainant in their complaint have sought following reliefs:

(i) Direct the respondent to pay interest to the complainant for delay in handing over the possession of plot in question as per Real Estate (Regulation And Development) Rules, 2016 along with any amount complainant is entitled to as per plot buyer's agreement in addition to relief claimed.



- (ii) Or Any other relief which the Hon'ble Authority may deems fit or necessary, in the interest of justice.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

5. Learned counsel for the respondents filed a detailed reply on 05.12.2023 and contested the complaint on the following grounds: -

- (i) That the present complaint filed by the complainant is liable to be dismissed/rejected as the complainant had got the conveyance deed executed and registered out of his own free will and consent after being fully satisfied with all the amounts & calculations etc. The respondent did not commit any coercion or used any unfair means to get the said Conveyance Deed executed and therefore, no liability can be imposed upon the respondent at this stage. Moreover, the Agreement for sale between the parties has already been concluded and once an agreement has been concluded, no cause of action survives in favor of the complainant to file the present complaint. Execution of Conveyance Deed is equivalent to entering into a new agreement which in itself signifies that both the parties are satisfied with the considerations exchanged between them and also that all other obligations have been duly discharged except the facts recorded in the conveyance deed. In the present case, there is no mention of delay interest in the conveyance deed



and therefore, the complainant cannot be allowed to seek delay compensation at this stage by approaching this Hon'ble Authority.

- (ii) That the present complaint filed by the complainant is liable to be dismissed/rejected as it was clearly mentioned in the said Conveyance Deed that after execution of the said deed, the complainant will be left with no right/claim/grievance against the respondent. Clause 5 of the Conveyance Deed provides that *"The Vendee further agrees and confirms that having received the actual, physical, vacant and peaceful possession of the said plot from the Vendor; he/she has been left with no other or further claim, compensation or grievances of any nature whatsoever against the Vendor in respect of the said Plot. The Vendee further confirms that he/she has/have no objection, claim or grievances against the Vendor in respect of any item of work or amenities, facilities connected or attached with the said plot situated within the project and the development works in respect of the said plot is complete in all respects."* Moreover, on the date of execution of Conveyance Deed i.e., 21.02.2023, the respondent had handed over the possession of the said plot to the complainant and a Possession Certificate was also issued in this regard which was duly signed by the complainant and the respondent as well as two witnesses. It was clearly mentioned in the said Possession

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Certificate that, "...as all or any dues stands settled on part of both the parties." It can be easily construed from the abovesaid facts and circumstances that the complainant was totally satisfied with all the amounts and calculations and the said Conveyance Deed was executed only after his approval.

(iii) That the present complaint filed by the complainant is liable to be dismissed as execution of Conveyance Deed and handing over peaceful possession brings end to a contractual relationship and the same cannot be allowed to be reopened. The respondent has discharged all its obligations prescribed under the Real Estate (Regulation and Development) Act, 2016 and when the same have been accepted by the complainant without any protest or reservation, he cannot be allowed to question the same at this stage. It is pertinent to mention here that the complainant has failed to place on record any document to show that he had raised any objection at the time of execution of conveyance deed or even after execution of the said conveyance deed.

(iv) That the present complaint filed by the complainant is liable to be dismissed as the complainant wrongly seeks to proceed on the basis that time was the essence of the contract and ignores the provisions of clause 8.1 of the Agreement for Sale, which have to be read in its totality to gauge the intention of the parties, which



clearly is not to treat delivery of possession clause as being the essence of the contract. The mandate of the Constitution Bench of the Hon'ble Supreme Court in the case of '**Chand Rani Vs Kamal Rani**' 1993-1-SCC-519 (Para 25) and other decision namely '**Gomathinayagam Pillai Vs Palaniswami Nadar** 1967-1-SCR-227 and '**Govind Prasad Chaturvedi Vs Hari Dutt Shastri** 1977-2-SCC-539 (Para 5) holding that fixation of the period within which the contract has to be performed does not make the stipulation as to time, the essence of the contract and when a contract relates to a sale of immovable property it will normally be presumed that time is not the essence of the contract.

- (v) That the present complaint filed by the complainant is liable to be dismissed as one of the reasons for the alleged delay in delivery of possession was Force Majeure Event of Covid-19 Pandemic. In the month of March, 2020, the whole country faced massive backlash due to Covid-19 pandemic when nation-wide lockdown was imposed by the Central Government which caused reverse migration of labourers, break in supply chain of construction material etc. and thus, all the construction activities across the country came at a halt. Keeping in view the struggles faced by the developers/builders all over the country, the Ministry of Housing and Urban Affairs issued an advisory for extension of registration



of real estate projects due to the force majeure event of covid-19 pandemic for a period of six months w.e.f. March, 2020. In furtherance of the said advisory, all the RERA Authorities including the Haryana Real Estate Regulatory Authority granted general extension for all the projects. The said extension was further extended in the year 2021 for a period of three months due to the second wave of covid-19 pandemic.

(vi) That the present complaint filed by the complainant is liable to be dismissed as this Hon'ble Authority does not have the jurisdiction to entertain the present complaint as the transaction/contract between the complainant and the respondent has already been concluded and it cannot be reopened at this stage. The possession of the said unit has already been handed over to the complainant on 21.02.2023 and a Conveyance Deed to this effect has also been executed between the complainant and the respondent and therefore, no right to sue survives in favor of the complainant herein.

(vii) That the present complaint filed by the complainant is liable to be dismissed on the ground of misjoinder of parties. The complainant has wrongly impleaded Respondents No.2 to 6 in the present complaint with the sole motive to harass and cause wrongful loss to them. The Agreement for Sale dated 09.10.2018 was primarily



between the respondent no. 1 and the complainant and the respondents No. 2 to 6 were merely confirming parties to the said Agreement being the owners of the land upon which the said project Asha Bahadurgarh was to be constructed. No assurance/guarantee/affirmation/promise was made by the respondents No. 2 to 6 to the complainant either towards developing the said Project or handing over possession of the said Unit/Plot to the complainant. Moreover, the Hon'ble Supreme Court has held in various cases that a Confirming Party cannot be held liable in a Contract only because of the fact that it has confirmed the terms of the Contract. In the recent case of **M/s Janpriya Buildestate Pvt. Ltd. Vs. Amit Soni & Ors. Civil Appeal No. 1065/2021**, the Hon'ble Supreme Court has held that, *"The mere fact without anything more that the appellant was a confirming party also would not advance the case of the complainant. We are unable to divine as to on what basis it could be said in a contract of this nature that merely because the appellant has confirmed terms of the agreement which is styled as a tripartite agreement, it would by itself make the appellant liable"*.

(viii) That the present complaint filed by the complainant is liable to be dismissed as the respondent have not violated any of the



provisions of the RERA Act and the present complaint is not maintainable and no indulgence is required by the Hon'ble Authority to hold any further inquiry as the complainant having himself breached his contractual obligation by not making timely payments as agreed.

E. REJOINDER SUBMITTED BY THE COMPLAINANT:

6. As per rejoinder dated 05.02.2024, following submissions are made by the complainant:
 - (i) That after execution of sale deed, only the titles and interest in the said immovable property is transferred. However, conveyance deed does not mark an end to the liabilities of the promoter who may not under garb of such contentions be able to avoid its responsibility.
 - (ii) That complainant has waited long for his own plot and when it is ready for possession, he has to sign the conveyance deed which is also one sided document. Moreover, no Indemnity cum Undertaking has ever been given by the complainant. Further, taking over of possession and thereafter execution of conveyance deed can be best termed as respondent having discharged its liabilities as per builder buyer agreement and upon taking possession and execution of conveyance deed, complainant never gave up his statutory rights to seek delayed possession charges as



per provisions of said Act. Also, same view has been upheld by the Hon'ble Apex Court in the Civil Appeal No.6239 of 2019 titled as **Wg. Cdr. Arifur Rehman Khan and Aleya Sultna and Ors V/s DLF Southern Homes Private Limited and ors**, dated 24.08.2020.

- (iii) That Section 18 (1) of RERA Act of 2016, stipulates for statutory right to the allottees against the obligation of the promoter to deliver possession within stipulated time. Therefore, liability of respondents continues even after execution of conveyance deed.
- (iv) That complainant represented through email and also made various oral requests to the respondents for seeking the delayed possession interest before execution of conveyance deed but respondents never responded the same. Therefore, complainant has no other option after execution of conveyance deed but to approach this Authority by filing the present complaint.
- (v) As per agreement to sell, actual date of handing over of possession of plot was 09.10.2019 which was prior to Covid 19 in India.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS

- 7. During oral arguments, learned counsel for the complainant reiterated the submissions as stated in the complaint and stated that no relief is claimed against respondent no.2 to 6. On the other hand, Mr. Shrey



Sharma, reiterated the grounds for dismissal of complainant as mentioned in reply. Also, he relied upon complaint no.625 of 2021 and sated that after execution of conveyance deed, obligations of the parties to contract comes to end and therefore, respondent cannot be made liable to pay any delay interest.

F. ISSUES FOR ADJUDICATION

8. (i) Whether the execution of the conveyance deed extinguishes the right of the allottees to claim delay possession interest?
- (ii) Whether the complainant is entitled to delayed possession interest as claimed by him in terms of provisions of RERA Act of 2016?

G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

9. Authority has heard arguments of both the parties and perused the documents available on the record. After going through the submissions made by both the parties, Authority observes as under:-
 - (i) Respondents have alleged that the complainant had executed a conveyance deed dated 21.02.2023 and therefore, the transaction between the complainant and the respondent has been concluded and no right or liability can be asserted by respondent or the complainant against the other. Therefore, the complainant is estopped from claiming any interest in the facts and circumstances of the case. The present complaint is nothing but a gross misuse of process of law.



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

From the above, it is clear that on execution of a sale/ conveyance deed, only the title and interests in the said immovable

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property [herein the allotted plot) is transferred. However, the conveyance deed does not mark an end to the statutory liabilities of a promoter which have accrued before the signing of the conveyance deed since various sections of the Act provide for continuing liability and obligations of a promoter who may not under the garb of such contentions be able to avoid its responsibility. The relevant sections are reproduced hereunder:

"11. Functions and duties of promoter

(1) XXX

(2) XXX

(3) XXX

(4) The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

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

(b) XXX

(c) XXX

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



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

(1) XXX

(2) XXX

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

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

" 7. It would thus be seen that the complainants while taking possession in terms of the above referred printed hand over letter of the OP, can, at best, be said to have discharged the OP of its liabilities and obligations as enumerated in the agreement. However, this hand over letter, in my opinion, does not come in the way of the complainants seeking compensation from this Commission under Section 14(1)(d) of the Consumer Protection Act for the delay in delivery of possession. The said delay amounting to a deficiency in the services offered by the OP to the complainants. The right to seek compensation for the deficiency in the service was never given up by the complainants. Moreover, the Consumer Complaint was also pending before this Commission at the time the unit was handed over to the complainants. Therefore, the complainants, in my view, cannot be said to have relinquished their legal right to claim compensation from the



OP merely because the basis of the unit has been taken by them in terms of printed hand over letter and the Sale Deed has also been got executed by them in their favour.

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

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

It is noteworthy to mention here that in **Appeal no. 272, 273, 274 of 2019 titled as Manju Arya vs M/s TDI Infrastructure Pvt Ltd**, Hon'ble Haryana Real Estate Appellate Tribunal Chandigarh vide order dated 19.01.2021 has observed that the cause of action which had already accrued to the allottee against the promoter due to non-fulfilment of the obligations as per the agreement for sale shall stand extinguished with the execution of the conveyance deed. Whatever statutory rights had accrued to the allottee prior to the conveyance deed cannot be defeated with the subsequent execution and registration of the conveyance deed. Relevant part of the order is reproduced below:



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

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

“11. Functions and duties of promoter. — (4) The promoter shall— (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”

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



agreement for sale shall stand extinguished with the execution of the conveyance-deed. Whatever statutory rights had accrued to the allottee prior to the conveyance-deed, cannot be defeated with the subsequent execution and registration of the conveyance-deed.

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

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

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

23. Even though this judgment has been rendered by the Hon'ble Apex Court under the Consumer Protection Act, 1986 but the principle of law laid down by the Hon'ble Apex Court in the aforesaid judgment will also be applicable to the cases under the Act. Thus, we are of the considered opinion that mere execution of the conveyance-deed by the respondent/promoter qua plot no.663, Block no.L, TDI City at Kundli, Sonipat, Haryana (Complaint No.718/2018, Appeal No.273/2019) will not extinguish the right of the appellant/allottee to claim the compensation which had already accrued to her much before the execution of the conveyance-deed."



Respondent alleged that Clause 5 of Conveyance Deed clearly mentioned that after execution of the said deed, the complainant will be left with no right/claim/grievance against the respondent. Authority observes that all the agreements/ documents signed by the allottee reveals stark incongruities between the remedies available to both the parties. In most of the cases, these documents and contracts are ex-facie one sided, unfair and unreasonable whether the plea has been taken by the complainant/allottee while filing its complaint that the documents were signed under duress or not. The right of the allottee to claim delayed possession charges shall not be abrogated simply for the said reason.

The complainant/allottee has invested his hard-earned money and there is no doubt that the promoter has been enjoying benefits and the next step is to get their title perfected by executing a conveyance deed which is the statutory right of the allottee. Also, the obligation of the developer - promoter does not end with the execution of a conveyance deed. The essence and purpose of the Act was to curb the menace created by the developer/promoter and safeguard the interests of the allottees by protecting them from being exploited by the dominant position of the developer which he thrusts on the innocent allottees. Therefore, in furtherance to the Hon'ble Apex Court judgement this

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Authority holds that even after execution of the conveyance deed, the complainant cannot be precluded from their statutory right to seek delay possession charges from the respondents-promoter which already stayed accrued from the deemed date of possession till the handover of the possession.

(ii) Complainant stated that possession of the plot was to be handed over within 12 months + 2 months grace period from date of signing of agreement. On the other hand, respondents alleged that in delivery of possession was delayed due to Force Majeure Event of Covid-19 Pandemic. In this regard, Authority observes that as per Clause 8.1 read with schedule E, possession was to handed over to the complainant within 12 months + 2 months grace period from date of signing of agreement subject to Force Majeure, Court orders, Government policy /guidelines. Now, question arises as to whether any situation or circumstances which could have happened prior to this date due to which the respondent could not carry out the construction activities in the project can be taken into consideration? Also as to whether the said situation or circumstances was in fact beyond the control of the respondent or not? The obligation to deliver possession within a period of 12 months from builder buyer agreement was not fulfilled by respondent. There is delay on the part of the respondent, the reason given by the respondent is ceasement of



construction activities during the COVID-19 period. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020* dated 29.05.2020 has observed that:

“69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March, 2020 in India. The contractor was in breach since September, 2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.

Respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by October, 2019. Respondent is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used as an excuse for non-performance of contract for which deadline was much before the outbreak itself. To conclude, Authority observes that mere averment of force majeure without any relevant proof of the same for causing delay in offering the possession is not sufficient to justify the delay caused and therefore, 2 months grace



period to be given to respondent for force majeure conditions is not justified.

Authority observes that possession of plot was offered to complainant on 21.02.2023 and thereafter conveyance deed got executed on 21.02.2023. There is delay of 3 years 4 months and 12 days approx.. in offering possession by the respondent to the complainant. Complainant herein is entitled to delayed possession charges which is provided under the proviso to Section 18 (1) of the Act,

Section 18 (1) proviso reads as under :-

“18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed”.

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

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

Explanation.-For the purpose of this clause-

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



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

(iv) Consequently, as per website of the State Bank of India, i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date, i.e., 22.07.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.

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

Interest for every month of delay, till the handing over of possession at such rate, as it has been prescribed under rule 15 of the rules.

Rule 15 has been reproduced as under;

"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19) (1) For the purpose of proviso to section 12; section 18, and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%; Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public".

(vi) In view of aforesaid observations and reasoning, the Authority hereby concludes that the complainant is entitled for the delay interest from 09.10.2019 (deemed date of possession) to 21.02.2023 (date of offer of possession/execution of conveyance deed).



(vii) Authority has got calculated the interest on total paid amount from the deemed date of possession till the date of offer of possession at the rate of 11% till date and said amount works out to ₹/- as per detail given in the table below:

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 21.02.2023
1.	₹80,000/-	09.10.2019	₹29703/-
2.	₹9,60,000/-	09.10.2019	₹356436/-
3.	₹6,50,000/-	09.10.2019	₹241337/-
4.	₹2,60,000/-	09.10.2019	₹96535/-
5.	₹5,20,000/-	15.11.2020	₹129915/-
6.	₹1,55,000/-	31.01.2023	₹1028/-
7.	₹14160/-	08.02.2023	₹60/-
	Total=26,39,160/-		Total= ₹855014/-

It is pertinent to mention that complainant alleges to pay an amount of ₹26,25,000/-, however, as per receipts attached with the complaint file total amount works out to be ₹26,39,160/-,. Therefore, delay interest is awarded with respect to this amount.

10. As complainant has not claimed any relief against respondent no.2 to 6, therefore, no directions are required to pass against the said respondents.


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H. DIRECTIONS OF THE AUTHORITY

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

(i) Respondent no.1 is directed to pay delayed possession interest of Rs.855014/- to the complainant towards delay caused in handing over the possession within 90 days from the date of this order.

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


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]