



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1341 of 2022
Date of filing:	31.05.2022
First date of hearing:	02.08.2022
Date of decision:	29.04.2024

Raj Kumar Balain, S/o Tara Chand

H.no. 991, Sector-15, Sonipat, Haryana-131001

.....COMPLAINANT

Versus

1. M/s Parker Builders Pvt. Ltd

Regd. Office 410, 4th floor, D-Mall,
Netaji Subhash, Pitam Pura, Delhi-110034

2. M/s Javier Management Services Pvt. Ltd

Regd. Office 410, 4th floor, D-Mall,
Netaji Subhash, Pitam Pura, Delhi-110034

.....RESPONDENTS

Complaint no.:	1342 of 2022
Date of filing:	31.05.2022
First date of hearing:	02.08.2022
Date of decision:	29.04.2024

Prem Lata, W/o Raj Kumar

H.no. 991, Sector-15, Sonipat, Haryana-131001

.....COMPLAINANT

Versus

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Regd. Office 410, 4th floor, D-Mall,
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2. M/s Javier Management Services Pvt. Ltd

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.....RESPONDENTS

Complaint no.:	1343 of 2022
Date of filing:	31.05.2022
First date of hearing:	02.08.2022
Date of decision:	29.04.2024

Raj Kumar Balain, S/o Tara Chand

H.no. 991, Sector-15, Sonipat, Haryana-131001

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.....RESPONDENTS



CORAM: Nadim Akhtar
Chander Shekhar

Member
Member

Hearing: 9th

Present: - Mr. Kamal Dahiya, counsel for the complainant.
Mr. Gaurav Gupta, counsel for respondents through VC.

ORDER (NADIM AKHTAR - MEMBER)

Above captioned complaints have been filed by the complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, 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

1. All the captioned complaints are taken up together for hearing as there involves same issues pertaining to same project of the respondent namely; "M/s Parker Builders Pvt. Ltd". This order is passed by taking complaint no. 1341 of 2022 titled as "Raj Kumar Balain versus M/s Parker Builders Pvt. Ltd and another" as lead case.



2. The particulars of the project, 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 of Complaint no.1341 of 2022	Details of complaint no.1342 of 2022	Details of complaint no.1343 of 2022
1.	Name of the project	The Parker Suites	The Parker Suites	The Parker Suites
2.	Name of the promoter	M/s Parker Builders Pvt. Ltd	M/s Parker Builders Pvt. Ltd	M/s Parker Builders Pvt. Ltd
3.	RERA registered/not registered Unit No.	Unregistered	Unregistered	Unregistered
4.	Unit No. allotted	10, upper ground floor (U 10)	09, upper ground floor (U 09)	08, upper ground floor (U 08)
5.	Unit area (super build up area)	465 sq.ft		
7.	Date of Builder Buyer Agreement	08.07.2011	10.02.2012	29.05.2012
8.	Due date of offer of possession	08.07.2014	10.02.2015	29.05.2015
9.	Possession clause in BBA	Clause 4. <i>"That builder will make efforts to complete the development/construction of the Shop/Commercial Unit within 36 months or within an extended period</i>	Clause 4. <i>"That builder will make efforts to complete the development/construction of the Shop/Commercial Unit within 36 months or within an extended period of</i>	Clause 4. <i>"That builder will make efforts to complete the development/construction of the Shop/Commercial Unit within 36 months or within an extended</i>



		<p><i>of six months subject to force majeure conditions and reasons beyond the control of the Builder which shall include any notice/order/restriction imposed by any Court/HUDA/Municipal Authorities or any Govt. or Semi-Govt. Department and shall also be subject to other Shop/Commercial Unit Buyer(s) making timely payment. No claim by way of damages/compensation shall lie against the Builder in case of delay in handing over the possession on account of the any of the aforesaid reasons and Builder shall be entitled to a</i></p>	<p><i>six months subject to force majeure conditions and reasons beyond the control of the Builder which shall include any notice/order/restriction imposed by any Court/HUDA/Municipal Authorities or any Govt. or Semi-Govt. Department and shall also be subject to other Shop/Commercial Unit Buyer(s) making timely payment. No claim by way of damages/compensation shall lie against the Builder in case of delay in handing over the possession on account of the any of the aforesaid reasons and Builder shall be entitled to a</i></p>	<p><i>period of six months subject to force majeure conditions and reasons beyond the control of the Builder which shall include any notice/order/restriction imposed by any Court/HUDA/Municipal Authorities or any Govt. or Semi-Govt. Department and shall also be subject to other Shop/Commercial Unit Buyer(s) making timely payment. No claim by way of damages/compensation shall lie against the Builder in case of delay in handing over the possession on account of the any of the aforesaid reasons</i></p>
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		<i>reasonable extension of time for the delivery of the possession of the said Shop/Commercial Unit to the buyer(s)."</i>	<i>said Shop/Commercial Unit to the buyer(s)."</i>	<i>and Builder shall be entitled to a reasonable extension of time for the delivery of the possession of the said Shop/Commercial Unit to the buyer(s)."</i>
10.	Basic sale price	₹19,06,500/-	₹17,32,125/-	₹17,32,125/-
11.	Amount paid by complainant	₹19,84,755/-	₹18,03,052/-	₹18,03,944/-
12.	Offer of possession given or not	Yes, 27.08.2016	Yes, 27.08.2016	Yes, 27.08.2016

B. FACTS OF THE COMPLAINT

3. Vide order dated 12.09.2023, facts of the complainant were duly recorded and same is reproduced for reference:

1. *Ld counsel for the complainants referred to the facts of complaint no. 1341 of 2022 and stated that complainant booked 3 units in the project of respondent in the year 2011. Builder buyer agreement (BBA) was executed on 08.07.2011 with total cost of shop as ₹19,06,500/-. As per clause 4 of BBA the construction of unit was to be completed within 36 months from date of execution of agreement or within an extended period of 6 months subject to force majeure conditions or reasons beyond the control of builder. However, no force majeure conditions ever came into existence, hence due date of*

had

possession as per agreement was 08.07.2014. Respondent has failed to hand over possession of unit on time and complainant has sought relief of possession along with delay interest. Further, he refers to page no. 20 of complaint mentioning various deficiencies found in the unit which the respondent failed to rectify. At page no. 20 following deficiencies have been pointed out:

- a. Internal flooring is incomplete as flooring tiles of size 2X2 of a reputed company is not affixed even after receipt of Rs.1,90,647/- for flooring by the respondent*
- b. No provision of electric distribution and switch boxes, Conduit Pipes have not been laid and wires have not been provided therein. Even the installation points for fans, light and A.C. have not been provided.*
- c. Feeder cable and earth wire hanging loosely despite receipt of Rs. 1,90,647/- for electrification.*
- d. Iron Pipes of 4" and 5" diameter that is meant for fire fighting system are hanging loose along the roof that is detrimental to the inhabitants of shop. Even false ceiling has not been provided to cover these iron pipes.*
- e. There is no provision of water supply in the shop in question whereas water supply connection has been provided to all units/shops located at ground floor to 8th Floor.*
- f. The size of unit in question is much smaller i.e. only 280 sq.ft. whereas the size of unit was mentioned to be 465 sq.ft. in the Builder Buyer Agreement.*

2. Ld Counsel for complainants stated that the present complaints have been filed again as earlier complaint no.



2282, 2283, 2284 of 2019 were dismissed by the Authority for non-prosecution of complainants with liberty to file fresh complaints vide its order dated 30.3.2022 on page no. 86.

3. Further, by referring to page no. 113 and 114, he mentions observations of Hon'ble Authority vide its order dated 26.02.2020, which are reproduced below:

"The Authority on prima facie appraisal of documents and after hearing the complainant decided to make following observations in respect of each of referred deficiencies:

The agreement executed between the parties specifically provides that a sum of 1,90,647/- will be payable on flooring. Concededly, the complainant was allotted three shops on upper ground floor. This would show that the roof top of the lower ground floor structure was to serve as the floor for the shops allotted to him. The very fact that the respondent collected an amount of 1,90,647/- for flooring shows that something extra over and above the roof top of the lower ground structure was required to be laid on the floor of the complainant's shops and the amount being so charged was for meeting the expenses of such additional material. The complainant's version is that the amount so charged was for affixing tiles and his version, in the tiles and absence of some cogent material disproving the same, deserves acceptance.

ii) It is evident from the photographs produced on record that the feeder cable and earth wire are



hanging loose. There are no distribution and switch boxes provided in the shops. It is not clear whether or not conduit pipes have been laid and wires have been provided therein for electrification. So, the Authority finds prima facie merit in the allegation that deficiencies in respect of electrification work exists for which the respondent had charged Rs. 1,90,647/-.

iii) The complainant plea on the point that deficiencies exist in providing water supply services to the shops can be looked into only if romoter was obliged to provide services as per terms of agreement executed between them.

iv) An iron pipe is indeed hanging loose along the roof as per photographs placed on record and respondent deserves to be directed to cover the same as per terms of agreement,"

- 4. He stated that respondent rectified the deficiencies as mentioned in point (i), (ii) and (iv) but failed to rectified deficiency of water supply mentioned in point (iii). Therefore respondent may be directed to provide the same.*
- 5. Further, ld counsel for complainants stated that cancellation dated 29.10.20220 done by the respondent is illegal as respondent raised certain demands which are not applicable on him. He approached this Authority in year 2020 therefore cancellation during the course of proceeding is illegal. Thus, his interim prayer is for stay of cancellation issued by the respondent.*
- 6. He further stated that Parker City Centre is a project being developed by the respondent in sector 62, Kundli, Sonipat.*



Haryana and developed in two parts ,i.e., one part deals with commercial shops and other part deals with suites. However terms and conditions of builder buyer agreement for both the parts are exactly the same and common. The respondent in reply to complaint no. 2282/19 in para 20 on page no. 17 has admitted that complainant and his wife had booked five units in total. Furthermore, it has been admitted by the respondent that complainant along with his wife has taken possession and conveyance deed has been done of two units ,i.e., unit no. 201 and 207, which the respondent claim to be suites and not shops. It is pertinent to mention that Builder Buyer Agreement of such purportedly suites are exactly similar to the BBA of shops as allotted to the complainant. There is no material difference in terms and conditions of the both BBA's. Thus, specification of the purportedly suites should be

The specification of shops and as per the impression given by the respondent's representatives at the time of booking. Had the impression given by the respondent's representative would be different for suites and shops then complainant would not have booked the shops at that time. Because of false impression, deception and wrong promises made by the respondent's representatives, the complainant got an impression that suites and shops would be of same specifications. Moreover, the cost of suites is less than cost of shops inspite of the fact that area of suites is bigger than area of shops. So, the complainant had every reason to believe and trust on the presentation, promises made by the respondent's representatives at the time of booking. The respondent's representatives have misled and misrepresented the facts and



lured the complainant to invest in their project by purchasing 5 shops. Interestingly, the respondent has used the term "SHOP" for all the units booked by the complainant, out of which now the respondent is claiming that 2 units are not shop but suites. However, the allotment letter, BBA and conveyance deed executed or issued by the respondent, the term used "SHOP" for such units which respondent allegedly states as "SUIT".

7. *By referring to order of Authority in **complaint no. 63 of 2018** titled "**Vikram Singh Malik v. M/s Parker Builders Pvt. Ltd**", on page no.166 "whereby the offer of possession before obtaining occupation certificate has been held invalid by the Authority and further Hon'ble Authority observes that second offer of possession after obtaining occupation certificate is not valid as complete details of receivables and payables amount were not specifically disclosed to the complainants. Respondent has been further directed to pay delay compensation to the complainants from deemed date of possession till actual date on which offer of possession would be made in terms of this order." Similar is the case of complainant as occupation certificate obtained by respondent is not valid and hence offer of possession is also not valid. Therefore, in same terms of complaint no. 63 of 2018, he sought relief of delay interest from deemed date of possession till valid offer of possession.*
8. *On the other side ld counsel for respondent stated that he is not prepared with the arguments therefore sought time for the same. Regarding cancellation of unit he stated that he will confirm it from the company.*



9. *Part heard. Respondent is directed to maintain status quo as on today, with reference to the units of complainants in the present complaints, till the matter is adjudicated by the Authority.*

10. *Adjourned to 05.10.2023."*

4. In addition to above submissions, other submissions as per pleadings in complaint files are that:

(i) On failure to complete the construction on time as stipulated under the said agreement the respondent offered Provisional Possession for fit-out to the complainant without obtaining of occupancy certificate. Hence it can be safely construed that said offer of possession was infructuous and was only a tool to beguile the complainant and to save themselves from obligations and liabilities for not completing the construction as per terms settled in the agreement. The copy of Offer of Provisional Possession for fit-out dated 01.08.2015 is annexed as Annexure C-4.

5. That despite receipt of substantial amount of Rs.18,65,276/- till 08.11.2013, against total sale consideration of Rs.19,06,500/-, i.e., 97.83% of the total cost of the unit in question, respondent no.1 in complete disregard of the payment plan opted by the complainant raised demand for certain arbitrary charges vide letter dated



01.10.2015. A copy of letter dated 01.10.2015 is annexed herewith as Annexure C-5. In this letter, respondent no.1 raised following demands for other charges:

Sinking Funds	₹200/- per sq. ft
Labour Cess	₹20/- per sq. ft
Fir Fighting	₹120/- per sq. ft
Enhanced EDC/IDC and other Govt. charges	₹95/- per sq. ft
Dual Electric Meter Charges	₹25,000/-
Power Back-up charges	₹45,000/- (3KW)

6. That some of above-mentioned charges are statutory charges/taxes payable to the Government, the demand of which has been raised by the respondent no.1 without providing any substantive proof of amount payable to the Government or concerned Authority. Enhanced EDC/IDC charges are stayed by the Hon'ble Punjab and Haryana High Court, Chandigarh, so the respondent no.1 cannot charge the same at this stage. It is important to mention here that the complainant sent various letters to the respondent no.1 and made numerous requests to the respondent no.1 to provide justification for demand of such arbitrary charges which have been annexed as Annexure C-6.
7. That respondent no.2 also raised demand for maintenance charges from the complainant vide Performa Invoice dated 01.06.2019.



However, the complainant had never been apprised of the fact that the maintenance of the units in the said project of the respondent no. 1 would be taken care of by respondent no.2 as even there's no mentioning about respondent no.2 in the Builder Buyer's Agreement executed between the complainant and respondent no. 1. Hence the demand raised by respondent no. 2 for payment of maintenance charges is unjustified and un-called for. The complainant also sent a letter dated 27.08.2019 to respondent no.2 to that effect. However, no reply has ever been received by the complainant of the said letter. The copy of Performa Invoice dated 01.06.2019 and letter dated 27.08.2019 of the complainant are annexed as Annexure C-7 and C-8.

8. That the respondent no.1 sent a letter titled "Possession and Registration of Conveyance Deed of your unit in Parker Suites" dated 27.08.2016 wherein the respondent demanded complete dues pending against the booking and allotment of unit/shop in question. The copy of letter dated 27.08.2016 is annexed as Annexure C-9. As such the respondent did not mention the amount payable by him to the complainant for his own default/failure to deliver the possession within stipulated time period, that is contrary to the natural justice and provisions, of RE(R&D) Act. Hence offer of possession qua the said letter dated 27.08.2016 without mentioning of receivables and payables cannot be considered as a valid offer. Moreover, such



possession letter was not accompanied either by Occupation/Completion Certificate, thus offer of possession was illegal and void.

9. That the complainant visited the office of respondents on numerous occasions to enquire about the Occupation Certificate and to get justification of the charges demanded by the respondents. Copies of letters where by the complainant requested to provide him a copy of Occupation Certificate are annexed as Annexure C-10 (colly). However, the respondent inspite of replying to any of the query/correspondence of the complainant kept on raising demands for further payment and even threatened to charge heavy interest on unpaid amount as evident from letter dated 22.10.2018 of the respondent annexed as Annexure C-11. In reply to said final call regarding pending dues against complainant the complainant once again asked for justification of the demands vide letter dated 11.11.2018 as the complainant had already made 100% payments as per the agreement executed between the parties. A copy of said letter of complainant dated 11.11.2018 is annexed as Annexure C-12. However the respondent neither gave any reply of said letter nor provided any justification for demand of arbitrary payments. Hence the complainant had been left with no alternative than to bow down to



unscrupulous demands of the respondent and make payments as per demands of the respondents.

10. That despite receipt of huge amount of Rs.18,84,755/- against the total sale consideration of Rs.19,06,500/- of the unit/shop in question, i.e., having being paid more than 100% of the total cost of the unit as enumerated and settled under the agreement, the respondents in complete disrespect to settled under the agreement and in complete disrespect to numerous requests of complainant for execution of conveyance deed, raised further demands of payment and even threatened to cancel the allotment without further notice vide letter dated 29.10.2020. Copies of receipt of said amount and summary of amount paid by the complainant that includes Service Tax and Vat are annexed as Annexure C-13(colly) and a copy of letter/notice of cancellation dated 29.10.2020 is annexed as Annexure C-14. That the said notice of cancellation has been served on the complainant while the matter with respect to unit in question, i.e., complaint no. 2282 of 2019 titled "Raj Kumar Balain versus Parker Builder Pvt. Ltd. & Ors." was sub-judice before the Hon'ble Authority, Panchkula and hence was against the provisions of RE(R&D) Act. The said matter had been dismissed due to non-prosecution with liberty to file fresh complaint. Copies of various orders passed by the Hon'ble Authority in said complaint no. 2282 of 2019 are annexed as Annexure C-15 (colly). It



is important to mention here that the complainant brought into the notice of the respondent the same fact vide letter dated 11.11.2020 and requested the respondent to honour the orders passed by Hon'ble Authority on 26.02.2020 and 07.10.2020 and to reconsider their proposal for cancellation of the unit in question. A copy of letter dated 29.10.2020, notice for cancellation of the unit in question in case pending payment is not made and conveyance deed is not executed and a copy of letter dated 11.11.2020 are annexed as Annexure C-14 and C-16 respectively.

11. That the complainant had sought information under RTI Act, to know the status of Occupation Certificate of the said project. It was shocking for the complainant to know that OC relied by the respondent no.1 has been obtained fraudulently, as the NOC or documents furnished by the respondent to receive the OC of instant project does not relate to the instant project rather such NOC relates to another project of the respondent in the same locality. The complainant has moved a representation dated 25.05.2022 before The Director, Town and Country Planning Department, Haryana regarding the unscrupulous practice of the respondent and further to take strict action against the defaulting respondent, as per provisions of law. A copy of such representation and a copy of postal receipt are annexed as Annexure C-21 (Colly). In the said representation dated 25.05.2022



it has been alleged that *"The Occupation Certificate of the said project is a forged document as the same does not pertain to the project of the respondent in question as is evident from points as adduced hereunder:*

- 1. Refer to para 9 of OC – The memo no. 321/FSO dated 30.12.2015 regarding NOC by DY. Commissioner, Sonipat is the renewal No Objection Certificate in respect of Commercial Building license no. 57 to 59 i.e. area measuring 4.062 acres (Parker Mall) situated at Sector 62, Kundli being developed by Respondent no.1.However the said project in question is "The Parker Suites" and not Parker Mall.*
- 2. Refer to para 11 of OC, the letter no. 21-908/2007-IA dated 11.12.2008 regarding environment clearance from ministry of environment and forest, New Delhi was issued for Parker Mall cum Multiplex project situated at sector 62, Kundli.*

Hence, a occupation certificate of the project in question is a forged and disputed document as it is clear from the above that same has been obtained by the respondent no.1 by producing documents which do not relate to the project "The Parker Suites", i.e, instant project bearing license no.214 of 2007 dated 04.09.2007, admmeasuring 2.0 acres at Sector-62, Kundli, Sonipat. A copy of the occupation certificate attached as Annexure C-22.



12. Complainant does not want to withdraw from the project and as per obligation under section 18 of RERA Act of 2016, read with Rules 15 and 16 of Rules, 2017 the promoter has an obligation to pay interest on the delayed possession on the amount deposited by the complainant at rate the prescribed.

C. RELIEFS SOUGHT:

13. Complainant has sought following reliefs :

- (i) To give necessary directions to the respondent to hand over the possession of the allotted unit, complete in all respect, along with delay interest till delivery of possession along with the prescribed rate of interest as per the provisions of section 18 and section 19(4) of RERA Act of 2016.
- (ii) To direct the respondent to remove the deficiency of the unit as stated in the complaint.
- (iii) To direct the respondent to deliver the possession of the instant shop in parity with the basic amenities and specifications given in the unit no.201 to the complainant.
- (iv) To impose penalty upon the respondent as per provisions of section 60 of RERA act for wilful default committed by them .
- (v) To impose penalty upon the respondent as per the provisions of section 61 of RERA Act for contravention of section 12,13,14 and section 16 of RERA Act.



- (vi) To issue directions to make liable every officer concerned, i.e, Director, Manager, Secretary or any other officer of the respondent company at whose instance, connivance, neglect any of the offences has been committed as mentioned in section 69 of RERA act of 2016 to be read with HRERA Rules, 2017.
- (vii) To recommend criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under section 406,420 and 409 of IPC.
- (viii) To issue directions to pay the cost of litigation.
- (ix) Any other relief which this Hon'ble Authority deem fit and appropriate in view of the facts and circumstances of this complaint.

D. REPLY ON BEHALF OF RESPONDENT

14.Vide order dated 05.10.2023, submissions of the respondent were recorded, which are reproduced hereunder for reference:

1. Ld counsel for the complainants referred to para 4 of last order dated 12.09.2023, wherein it is mentioned that deficiencies as mentioned in point (i), (ii) and (iv) have been rectified is not been correctly recorded in the said order. These deficiencies have still not been rectified and thus para 4 of the order dated 12.09.2023 need rectification w. r. t this point only, rest of the averments are same as per last



order. Complainant sought relief of possession along with delay interest.

2. *Ld counsel for respondent stated that complainant was offered possession for fit-out purposes vide letter dated 01/08/2015. Complainant was also served with a letter dated 01/10/2015 wherein the fact that project "Parker Suites" is complete except some minor finishing works, repair, cleaning and activation of services etc. The complainant was asked to deposit payment under several heads but the complainant did not come forward for depositing payments and now, complainant raised issues as to deficiency in the unit which are unsustainable and illegal on the part of the complainant. Further, counsel for respondent submitted his submissions as follows:*

1. ***Regarding Maintainability of suit:***

By referring to para 4 of reply counsel for respondent stated that respondent's project "Parker Suites" received Occupation Certificate on 12/08/2016 and Completion Certificate on 17/07/2017, whereas the Real Estate (Regulation and Development) Act became applicable in the State of Haryana only upon the publication of a Notification in Gazette of Haryana on 28/07/2017. As such the project of the respondent is not an On-going project under the terms of the Act, thus the project is outside the purview of the Act. Therefore, the Complaint of the complainant deserves to be dismissed on this ground alone. He also submitted that when the respondent commenced construction of the said project; when the project received occupation certificate and completion certificate from the competent Authority, the



Real Estate (Regulation and Development) Act was not in existence and as such the provisions of the Act are not applicable upon the "Parker Suites" project of the respondent. It is humbly submitted that the project "Parker Suites" do not fall under the ambit of RERA as stated above, therefore, Hon'ble Authority have no jurisdiction over the "Parker Suites" project of the respondent.

Further by referring to judgement of Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2021 titled as "M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors.", wherein the Hon'ble Supreme Court of India vide its order dated 11/11/2021 while adjudicating upon the issue "Whether the Act 2016 is retrospective or retroactive in its operation and what will be its legal consequence if tested on anvil of the Constitution of India", the Hon'ble Supreme Court in para No. 52 of the said order has observed that " the Parliament has intended to bring within the fold of the Statute the ongoing real estate projects in its wide amplitude and also observed that the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued, within fold of the Act. "

The Hon'ble Supreme Court of India in para no. 54 of the said order further observed that "From the scheme of the Act 2016, its application is retroactive in character and it safely be observed that the projects already completed or to which completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no



manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act, 2016".

That means from the above well settled law of Hon'ble Supreme Court of India and from the intention of the Legislature as discussed above, this Hon'ble Authority doesn't exercise any jurisdiction over the projects which have already been completed or to which Completion Certificates have been issued by the Competent Authority in this regard. To conclude that project of the respondent was not an On-going project under the terms of the Act, thus the project is outside the purview of the Act. Therefore, the complaint of the complainant deserves to be dismissed on this ground alone.

2. On merits:

*In support of the fact that all the demands raised by the answering respondent are justified and reasonable, counsel for respondent relied upon the order dated 18/08/2021 of Hon'ble Authority in **complaint No. 2282 of 2019**, wherein this Hon'ble Authority, after proper justification given by the respondent towards the charges demanded by the company, has observed and held as follows:*

- a) **Enhanced EDC/ IDC amount-** *This Hon'ble Authority observed and directed to the complainant that complainant is liable to pay the said amount of enhanced the EDC of Rs.44,175/- to the respondent without prejudice their rights to recover the same from the concerned department as per*



the final decision taken by the Hon'ble High Court of Punjab and Haryana.

- b) **EEC-** *The complainant is liable to pay in addition to total price of the purchased unit, all such charges as are leviable by any Authority in respect of the purchased unit. EEC Charges of Rs.55,800/- are stated to have been paid to the electricity department for obtaining electricity connection. So the complainant is liable to pay said charges of Rs.55,800/-.*
- c) **Power Back up charges-** *Upon observing the fact that power back up to the tune of 3 KW is being provided to each unit of the project @ Rs. 15,000/- per KW and expenses incurred on purchase of DG set, cable, maintenance staff, maintenance cost and running cost for providing of power back up to the extent were calculated and found to be around Rs.45,000/-. At last, the complainant was directed being liable to pay the same towards the expenses to be incurred on power backup. The Hon'ble Authority also added that amount so being charged will be exclusive of the amount which the complainant will be liable to pay on the basis of consumption of electricity supplied to the unit through DG Sets.*
- d) **Fire Fighting, Sinking Fund, Holding Charges and Labour Cess-** *The Hon'ble Authority upon perusal of the terms of the Builder Buyer Agreement observed that both the parties agreed to pay charges on pro-rata basis for the purpose of preventive measures. The complainant was therefore held liable to pay the above said charges as well.*



e) **Delay Interest-** *So far as the issue of delay interest on account of delay in handing over of possession is concerned, the possession of the unit was to be delivered within a period of 42 months from the date of agreement i.e. 08/07/2011, thus as per the terms of the agreement, the deemed date of possession comes to 08/01/2015. As the valid offer of possession was made on 27/08/2016 after obtaining Occupation Certificate from the concerned Department, it was stated before the Hon'ble Authority by the respondent that delay if any caused is only for the period from and between 08/01/2015 to 27/08/2016 and not thereafter. Accordingly, this Hon'ble Authority while observing upon the same, also came to the conclusion that the delay caused in offering possession is only of the above mentioned period and not thereafter.*

By referring to para 8 of aforesaid order, Hon'ble Authority directed complainant to make payment of amounts which have been held valid by this Authority. Thereafter complainant approached respondent for settlement and same can be ascertained by order dated 09.02.2022. Later on vide order dated 30.03.2022, complaint was dismissed for non-prosecution.

3. **Deficiencies pointed by complainant:** *By referring to order dated 26.02.2020, respondent stated that directions were issued to respondent for rectifying the deficiencies. It is observed that vide order dated 02.12.2020, deficiencies w.r.t point 2 and 4, i.e., hanging wire and iron pipe rectified by the respondent. Further, w.r.t deficiency of water supply respondent referred to para 5 of order dated 02.12.2020*



wherein, Authority decides that availability of water points can't be claimed as rights by the complainant in commercial unit unless such facility is specifically provided in buyers agreement. As there is no specific clause in the agreement, complainant can't claim it from the respondent.

- 4. In regard to the averment of the complainant that respondent did not provide internal floor with tiles of 2X2 measurement of reputed company despite receiving Rs.1,90,647/- under the head of "Flooring", counsel for respondent submitted that the aforesaid amount of Rs. 1,90,647/- was raised from all the allottees/ unit holders as per the stage of construction of floor wise common area etc. in the project and not for providing flooring of any specification inside the shop/unit, as payments were to be made in accordance with construction linked payment plan by the complainant. It is nowhere mentioned in the agreement that the respondent was required to lay tiles of 2X2 measurement on the floor of the unit booked by the complainant. Moreover, the complainant is demanding the said flooring in parity with the studio apartment/ suite booked by the complainant in the same project of which possession of the same is with the complainant and conveyance deed is registered in his name. Respondent has provided smooth cemented floors (as per routine business practice of the relevant market) in the shop booked by the complainant as well as in all the shops in the project so that the allottee can do interiors of shop as per his choice.*
- 5. Issue that occupation certificate is not valid: As per law application for grant of occupation certificate is made*



before Town and Country Planning Department, Haryana (T&CP). T&CP Department official inspect the site and after their satisfaction and comparing the services as per approved service estimates, issue completion certificate. Completion certificate issued on 17.07.2017 means all provisions are complied by the respondent only than T&CP Department issued Occupation and Completion Certificate. Director, Town & Country Planning, Haryana (DTCP) is the competent authority to grant occupation/ completion certificate. Further, provision 4.12 of Haryana Building Code, 2017 relating to revocation of occupation certificate is reproduced below:

4.12. Revocation of Occupation certificate: *In case, after the issuance of occupation certificate, if found at any stage that the building is used for some other purpose against the permission or make any addition/ alteration in the building then, after affording personal hearing to the owner, the Competent Authority may pass orders for revocation of occupation permission and the same shall be restored only after removal of violations.*

If there is any discrepancy, DTCP can revoke the occupation certificate. Thus, instead of approaching the Authority, the right forum to file grievance w.r.t occupation certificate and completion certificate, the complainant should have approached DTCP.

6. *Further , the allegation of complainant that respondent is not entitled to maintenance charges as respondent, i.e., Parker Builders Pvt. Ltd neither made any averments w.r.t the maintenance of unit by the respondent no. 2, i.e., M/s*



Javier Management Services Pvt. Ltd in the Builder Buyer Agreement nor maintenance agreement has been executed between complainant and respondent no. 2 . To this, Ld counsel for respondent by referring to clause 23 of Builder Buyer Agreement stated that complainant has specifically agreed in Builder Buyer Agreement that respondent has right to appoint a maintenance agency. Also agreed that buyer shall be bound to sign the maintenance agreement with such maintenance agency before taking possession of unit along with security deposit of two months. As such signing of maintenance agreement was mandatory requirement under the agreement at the time of taking possession and there was no discretion of any allottee to sign or not to sign maintenance agreement. Thus, respondent is well within its right to claim maintenance charges and complainant cannot object to this.

- 7. Complainant is not entitled to seek relief from this Hon'ble Authority qua possession as the booking of the complainant has already been cancelled vide letter dated 29/10/2020 on account of non-payment of outstanding dues for a long period of time, due to the fact that the complainant did not come forward to take possession of the unit booked by him, despite the fact that Occupation Certificate and Completion Certificate have been issued in respect of the project, valid offer of possession was made vide letter dated 27/08/2016 and further the respondent has time and again reminded the complainant to take the possession and execute conveyance deed of the unit but the complainant has slept over his rights for a considerable period of time and now at*



this stage, complainant is not entitled to seek any relief. Further by referring to para 5 of order dated 18.03.2021 that "In view of the above mentioned reasons, respondents is directed to submit a revised statement of receivable-payable amounts within 10 days and forward a copy to the complainants. The complainant is directed to make the payment of amounts against the components which have been held by this Authority as justified before next date of hearing, otherwise the cancellation dated 29/10/2020 will be allowed on next date of hearing." Meaning thereby, the Authority was also of the view that the Cancellation letter dated 29/10/2020 is issued under reasonable circumstances and the demands of the answering respondent are also justified. Thereafter, complainant approached respondent for settlement but settlements failed and later on earlier complaints filed by the respondent got dismissed for non-prosecution.

3. *Ld counsel for the complainant stated that due to technical defects, he is not able to hear the arguments properly. However he referred to judgment of Hon'ble Punjab and Haryana High Court in CWP No. 7852 of 2022 which gives the jurisdiction to this Authority to entertain the complaint and also request for short date to rebut the arguments of respondent. To rebut the argument of complainant regarding jurisdiction, ld counsel for respondent stated that the said judgment is not applicable in his case because in aforesaid judgment petitioner had already applied /obtained occupation certificate whereas completion certificate is to be obtained. Where HC observes that simply obtaining of an*



occupancy certificate or having applied for such certificate in terms of the Haryana Building Code, 2017, the petitioner would not be considered to be outside the purview of the jurisdiction of the respondent Authority. Whereas in present case respondent has already obtained completion certificate and occupation certificate before RERA Act come into existence and therefore, the complainant is not entitled to seek any relief by placing reliance upon this judgment as it facts varies from case to case."

15. In addition to above submissions, other submissions as per pleadings in reply are that:

Complainant did not come forward to take possession of the unit booked by him, despite the fact that Occupation Certificate and Completion Certificate have been issued in respect of the project, valid offer of possession was made vide letter dated 27/08/2016 and further the respondent has time and again reminded the complainant to take the possession and execute conveyance deed of the unit but the complainant has slept over his rights as per section 19(10) of RERA Act of 2016, for a considerable period of time and now at this stage, complainant is not entitled to seek any relief.



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

16. Vide order dated 30.11.2023, arguments of both the counsels were recorded and said order is reproduced hereunder for reference:

1. *Ld counsel for complainants stated that it is an admitted fact that in year 2015 respondent had offered possession for fit outs only and had not offered valid offer of possession till date. Also, valid offer of possession accompanies statement of account reflecting delay interest, compensation for delay caused to the complainants as well as details of grant of occupation certificate and copy of occupation certificate is annexed with valid offer of possession. Since no such document were annexed by the respondent, no valid possession has been offered.*
2. *Regarding the maintainability of complaint he referred to para 54 of M/s Newtech Promoters and developers Private Limited v. State of U.P and ors 2022(1) RCR (Civil) 375 which is reproduced for reference:*

"The Hon'ble Supreme Court of India in para no. 54 of the said order further observed that "From the scheme of the Act 2016, its application is retroactive in character and it safely be observed that the projects already completed or to which completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects



registered under Section 3 to prospectively follow the mandate of the Act, 2016".

Ld counsel for complainant further stated that Hon'ble Supreme Court has held that Act is retroactive in nature which means that something which starts in past and continues at present. Respondent had obligation under section 11 and 14 of the Act and had not discharged such obligation by not giving valid offer of possession.

3. *Ld counsel for complainant also referred to para-1 of order dated 12.09.2023 passed by this Hon'ble Authority, which is reproduced for reference:*

"1. Builder buyer agreement (BBA) was executed on 08.07.2011 with total cost of shop as ₹19,06,500/-. As per clause 4 of BBA the construction of unit was to be completed within 36 months from date of execution of agreement or within an extended period of 6 months subject to force majeure conditions or reasons beyond the control of builder. However, no force majeure conditions ever came into existence, hence due date of possession as per agreement was 08.07.2014. Respondent has failed to hand over possession of unit on time and complainant has sought relief of possession along with delay interest. Further, he refers to page no. 20 of complaint mentioning various deficiencies found in the unit which the respondent failed to rectify. At page no. 20 following deficiencies have been pointed out:

- a. Internal flooring is incomplete as flooring tiles of size 2X2 of a reputed company is not*



- affixed even after receipt of Rs.1,90,647/- for flooring by the respondent*
- b. No provision of electric distribution and switch boxes, Conduit Pipes have not been laid and wires have not been provided therein. Even the installation points for fans, light and A.C. have not been provided.*
 - c. Feeder cable and earth wire hanging loosely despite receipt of Rs. 1,90,647/- for electrification.*
 - d. Iron Pipes of 4" and 5" diameter that is meant for fire fighting system are hanging loose along the roof that is detrimental to the inhabitants of shop. Even false ceiling has not been provided to cover these iron pipes.*
 - e. There is no provision of water supply in the shop in question whereas water supply connection has been provided to all units/shops located at ground floor to 8th Floor.*
 - f. The size of unit in question is much smaller i.e. only 280 sq.ft. whereas the size of unit was mentioned to be 465 sq.ft. in the Builder Buyer Agreement.*

Ld counsel for complainants submitted that it is nowhere disputed in reply nor in arguments that BBA was executed on 08.07.2011 and as per clause 4 of BBA, the construction of unit was to be completed within 36 months from date of execution of agreement or within an extended period of 6



months subject to force majeure conditions or reasons beyond the control of builder. As no force majeure conditions ever came into existence, hence due date of possession is 08.07.2014. Regarding deficiency specifically mentioned in (f), he stated that it is in complete violation of section 14 of the Act as respondent reduced the area without any justification.

- 4. Further, the issue whether these units are shops or suites, Ld counsel for complainants referred to para 6 of order dated 12.09.2023, relevant para is reproduced for reference:*

"6. Furthermore, it has been admitted by the respondent that complainant along with his wife has taken possession and conveyance deed has been done of two units ,i.e., unit no. 201 and 207, which the respondent claim to be suites and not shops. It is pertinent to mention that Builder Buyer Agreement of such purportedly suites are exactly similar to the BBA of shops as allotted to the complainant. There is no material difference in terms and conditions of the both BBA. Thus, specification of the purportedly suites should be the specification of shops and as per the impression given by the respondent's representatives at the time of booking. Had the impression given by the respondent's representative would be different for suites and shops then complainant would not have booked the shops at that time. Because of false impression, deception and wrong promises made by the respondent's



representatives, the complainant got an impression that suites and shops would be of same specifications. Moreover, the cost of suites is less than cost of shops inspite of the fact that area of suites is bigger than area of shops. So, the complainant had every reason to believe and trust on the presentation, promises made by the respondent's representatives at the time of booking."

Meaning thereby that all the facilities which are to be provided for suites are too available to shops also, as it is admitted fact as no where in reply or during the arguments respondent had disputed that suites and shops are different..

- 5. Ld counsel for complainant further stated that he had filed earlier three complaints relating to the same property and certain directions were issued which were later dismissed for non-prosecution and liberty was granted to both parties to file fresh complaints if any of the parties wished so. Therefore, issue with respect to deficiencies were never adjudicated and no finality has been attained w.r.t this issue. That respondent had raised his contentions by relying upon the erstwhile complaints. Erstwhile complaints have only persuasive value and are not binding on parties as liberty was granted to the parties to file fresh complaints.*
- 6. Ld counsel for complainants also referred to para 3 of page 6 of last order dated 05.10.2023 which is reproduced for reference below:*

"6. Deficiencies pointed by complainant: By referring to order dated 26.02.2020, respondent stated that directions were issued to respondent for



rectifying the deficiencies. It is observed that vide order dated 02.12.2020, deficiencies w.r.t point 2 and 4, i.e., hanging wire and iron pipe rectified by the respondent. Further, w.r.t deficiency of water supply respondent referred to para 5 of order dated 02.12.2020 wherein, Authority decides that availability of water points can't be claimed as rights by the complainant in commercial unit unless such facility is specifically provided in buyers agreement. As there is no specific clause in the agreement, complainant can't claim it from the respondent."

Some deficiencies were adjudicated and some were not by earlier the Authority in interim orders of earlier complaints, as erstwhile complaints have only persuasive value. Therefore, these deficiencies needs to be decided afresh by taking entire documents on record.

7. *Ld counsel for complainants also referred to para 4 of order dated 05.10.2023 which is reproduced for reference:*

"In regard to the averment of the complainant that respondent did not provide internal floor with tiles of 2X2 measurement of reputed company despite receiving Rs.1,90,647/- under the head of "Flooring", counsel for respondent submitted that the aforesaid amount of Rs.1,90,647/- was raised from all the allottees/ unit holders as per the stage of construction of floor wise common area etc. in the project and not for providing flooring of any specification inside the shop/unit, as payments were to be made in accordance with construction linked payment plan by



the complainant. It is nowhere mentioned in the agreement that the respondent was required to lay tiles of 2X2 measurement on the floor of the unit booked by the complainant. Moreover, the complainant is demanding the said flooring in parity with the studio apartment/ suite booked by the complainant in the same project of which possession of the same is with the complainant and conveyance deed is registered in his name. Respondent has provided smooth cemented floors (as per routine business practice of the relevant market) in the shop booked by the complainant as well as in all the shops in the project so that the allottee can do interiors of shop as per his choice."

Ld counsel for complainants stated that respondent said that he is not liable to provide tiles in the units booked by the complainants. If this is the issue then why the respondent had taken an amount of Rs. 1,90,647/- under the head of "flooring". Moreover, the respondent stated that agreement for suits and shops are same, if that so then why respondent is not providing cement flooring in case of shops as provided in the suits. Respondent is applying pick and choose theory by providing tiles in shops to some allottee and not providing to the complainants. In the complainant's case, the respondent has stated that as per prevalent business practice, only cemented floor is provided in case of shops so that the allottees can get the flooring done as per their choice.



8. Counsel for complainant stated that other contention raised by the respondent is that since occupation certificate and completion certificate have been granted by T & CP Department, therefore right forum to file grievance w.r.t occupation certificate and completion certificate is T& CP department and not RERA. In regard to this, ld counsel for complainants stated that whole case of complainants lie on validity of occupation certificate as complainants is challenging its validity which has been received by respondent by submitting forged document before the concerned Authority. Further by referring to completion and occupation certificate annexed with reply, he stated that as per para 9 of occupation certificate, for getting the occupation certificate it is pre-requisite that fire NOC is required. In this regard, complainant had filed RTI application through which it came to knowledge of complainant that memo no. 321/FSO mentioned in occupation certificate relates to some other project. That license no. 57 to 59 is not related to the project of the respondent and also requirement of fire NOC is not fulfilled. Also fire NOC has been issued in year 2018 and occupation certificate has been received in year 2016. Also, this fire safety certificate/NOC has been granted to Mr. Sudhir Gupta and not to Parker Builder in general. This clearly indicates that occupation certificate has been obtained by the respondent by submitting fraud and fabricated document. Hence said occupation certificate is null and void and criminal action is to be initiated against the respondent. Ld counsel further stated that case has already



been filed before Director, Town and Country Planning department for revocation of occupation certificate.

9. *Further, Ld counsel for complainants referred to para 6 of last order dated 05.10.2023, which is reproduced for reference:*

"6. Further , the allegation of complainant that respondent is not entitled to maintenance charges as respondent, i.e., Parker Builders Pvt. Ltd neither made any averments w.r.t the maintenance of unit by the respondent no. 2, i.e., M/s Javier Management Services Pvt. Ltd in the Builder Buyer Agreement nor maintenance agreement has been executed between complainant and respondent no. 2 . To this, Ld counsel for respondent by referring to clause 23 of Builder Buyer Agreement stated that complainant has specifically agreed in Builder Buyer Agreement that respondent has right to appoint a maintenance agency. Also agreed that buyer shall be bound to sign the maintenance agreement with such maintenance agency before taking possession of unit along with security deposit of two months. As such signing of maintenance agreement was mandatory requirement under the agreement at the time of taking possession and there was no discretion of any allottee to sign or not to sign maintenance agreement. Thus, respondent is well within its right to claim maintenance charges and complainant cannot object to this."

Regarding the liability to pay maintenance charges, Ld counsel for complainants stated that complainants are not



liable to pay any maintenance charges as agreement mentioned that signing of agreement with maintenance agency will be before taking of possession of unit. Complainants were forced to sign agreement for taking possession., therefore said agreement with maintenance agency is invalid as complainant was forced/compelled to sign the one sided agreement.

10. *Para 7 of last order dated 05.10.2023 was also referred by Ld counsel for complainants during arguments and thus para is reproduced below for reference:*

"7. Complainant is not entitled to seek relief from this Hon'ble Authority qua possession as the booking of the complainant has already been cancelled vide letter dated 29/10/2020 on account of non-payment of outstanding dues for a long period of time, due to the fact that the complainant did not come forward to take possession of the unit booked by him, despite the fact that Occupation Certificate and Completion Certificate have been issued in respect of the project, valid offer of possession was made vide letter dated 27/08/2016 and further the respondent has time and again reminded the complainant to take the possession and execute conveyance deed of the unit but the complainant has slept over his rights for a considerable period of time and now at this stage, complainant is not entitled to seek any relief. Further by referring to para 5 of order dated 18.03.2021 that "In view of the above mentioned reasons, respondents is directed to submit a revised statement of



receivable-payable amounts within 10 days and forward a copy to the complainants. The complainant is directed to make the payment of amounts against the components which have been held by this Authority as justified before next date of hearing, otherwise the cancellation dated 29/10/2020 will be allowed on next date of hearing." Meaning thereby, the Authority was also of the view that the Cancellation letter dated 29/10/2020 is issued under reasonable circumstances and the demands of the answering respondent are also justified. Thereafter, complainant approached respondent for settlement but settlements failed and later on earlier complaints filed by the respondent got dismissed for non-prosecution."

Ld counsel for complainants stated that cancellation is not valid in this case as interim orders passed in erstwhile complaints have no relevance. Also, erstwhile complaints were later on dismissed therefore, this shows that the issue of cancellation was never adjudicated in those complaints.

- 11. Further, respondent contention that CWP 7852 of 2022 is not applicable in this case, Ld counsel for complainants stated that this judgement is very much applicable in this case as occupation certificate matter is subjudice before the authorities and said occupation certificate cannot be said to be valid. Therefore, respondent is liable to be penalised under section 61 and 63 of the Act.*
- 12. Another contention of complainants that even after receiving completion certificate by the respondent ,*



Authority has jurisdiction to deal with delay interest as the same issue has already been decided by Hon'ble SC in Civil Appeal no. 6239 of 2019 titled as Wg. Cdr. Arifur Rahman Khan and others vs DLF Southern Homes Pvt. Ltd and also by this Authority in complaint no. 808 of 2020 titled as Indu Sangwan v. Jindal Realty .

13. *Ld counsel for respondent stated that RERD came into force in May,2016 and Rules regarding applicability of RERD, Act in Haryana came into force on 28.07.2017. In this case, completion certificate has been issued and all the infrastructure work has been laid before enactment of RERD, Act, therefore, project of respondent did not come under the ambit of RERD Act. Moreover, para 54 of M/s Newtech Promoters and developers Private Limited v. State of U.P and ors 2022(1) RCR (Civil) 375 judgment is not only limited to section 3 but also talks about complete provisions of RERD Act.*
14. *Regarding the offer of possession, Ld counsel for respondent referred to Annexure R2 dated 27.08.2016, titled as possession and registration of conveyance deed mentions that valid offer of possession has been made to the complainants. Authority asked a specific question to the respondent that whether this offer of possession was accompanied with statement of account of receivables and payables. To this counsel for respondent stated that for receivables and payables complainant was required to visit the office of respondent promoter before 15 Sept, 2016 as same is mentioned in the ibid letter. Further, regarding agreement with maintenance agency , complainant was*



intimated about the same through said letter. Moreover, due amount was intimated to allottee after offer of fit out and thereafter after receiving the occupation certificate, respondent served letter of possession dated 27.08.2016.

15. *Further, it is admitted fact that complainants had booked 5 units, out of which conveyance deed has been executed w.r.t 2 units. Regarding rest 3 units complainant were also intimated to get conveyance deed done. Furthermore, shops and suites are not same but are related to same project.*
16. *Further, Ld counsel for respondent referred to **complaint no.230 of 2021** titled as **RWA Mapsko Garden Estate V/S Mapsko Builders Private Limited** and a copy of the same has been supplied to opposite party and referred to para 7 of the order of abovementioned complaint whereby Authority had held that where part completion certificate has already been issued w.r.t project and no discrepancies has been disputed by the complainant, then RERD Act will not be applicable in that case. Also, regarding the obligations of builder under section-11, he mentioned that promoter /respondent has very well discharge his obligations by sending offer of possession dated 27.08.2016, annexed as Annexure R2 to the complainant wherein complainant was intimated that complainant is required to pay the dues. Thereafter, complainant did not approach the respondent and in year the 2019, filed the earlier complaints. Moreover, complainant had opportunity to avail remedy before other forums also other than RERD.*
17. *Regarding the cancellation letter dated 29.10.2020 annexed as Annexure R7, Ld counsel for respondent stated that unit*



of complainant was cancelled due to non-payments of dues and this cancellation has been justified by Authority in orders passes in earlier complaints. On perusal of said cancellation letter, Authority observed that it is nowhere mentioned that it is a cancellation letter. It is simple notice issued by the respondent and it nowhere mentions about dues on part of complainant. It was the duty of respondent to communicate the complainant that allotment of his unit has been cancelled, whereas, no such communication has been made by respondent. Regarding this, counsel for respondent stated that he will seek instructions from his client and will assist the Authority on next date of hearing.

18. *Further, counsel for respondent stated that as per BBA 42 months are to be taken for deemed date of possession. Ld counsel for complainants submitted that respondent is not able to prove the force majeure circumstances to claim 6 months grace period for calculation of deemed date of possession. Regarding this also counsel for respondent stated that he will seek the instructions. "*

F. ISSUE FOR ADJUDICATION

17. Whether complainant is entitled for relief of possession along-with delay interest for delay in handing over the possession in terms of Section 18 of RERA Act of 2016?

G. OBSERVATIONS AND DECISION OF AUTHORITY

18. Objection of the respondent regarding maintainability of complaint:

Ld counsel of the respondent contended that respondent's project "Parker Suites" received the occupation certificate on 12.08.2016 and completion certificate on 17.07.2017, whereas the Real Estate (Regulation and Development) Act became applicable in the State of Haryana only upon the publication of a Notification in Gazette of Haryana on 28/07/2017. As such the project of the respondent is not an On-going project under the terms of the Act, thus the project is outside the purview of the Act. Therefore, the Complaint of the complainant deserves to be dismissed on this ground alone. Also, project "Parker Suites" do not fall under the ambit of RERA as stated above, therefore, Hon'ble Authority have no jurisdiction over the "Parker Suites" project of the respondent. In this regard Authority observes that as respondent received the occupation certificate on 12.08.2016 and completion certificate on 17.07.2017, it has been clarified by this Authority in its numerous orders that the term 'on-going project' is only used in Section 3 of RERA Act, 2016 which deals with only one of the obligations of the promoter under RERA Act, 2016 ,i.e, to get the project registered. There are various other obligations of promoter illustrated in the RERA Act and under those



provisions it is nowhere provided that those obligations are only limited to registered projects.

It will be prudent to refer to the definition of allottee, promoter and real estate project. As per S.2(d) of the RERA Act, "allottee" is defined as follows:

(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 is promoter in respect of allottees of units/shops sold by it in its real estate project in question. There exists a relationship of an allottee and promoter between the parties. Since, relationship of an allottee and promoter between complainant and respondents 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.

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

- i. It is admitted fact that the complainant booked a shop/commercial unit in the real estate project, "The Parker Suites" being developed by the promoter namely; "M/s Parker Builder Pvt. Ltd" and Builder Buyer Agreement was executed on 08.07.2011 with respect to shop/commercial unit no.10, upper ground floor having super build up area approx. 465 sq.ft against the basic sale price of ₹19,16,500/- in said project at Sector-62, Kundli, Sonipat. Complainant had paid a total amount of ₹19,84,755/- against the basic sale consideration of ₹19,06,500/-.

As per clause 4 of builder buyer agreement, builder was under an obligation to complete the construction of shop/commercial unit within 36 months. Relevant clause is reproduced for reference:



Clause 4 "That builder will make efforts to complete the development/construction of the Shop/Commercial Unit within 36 months or within an extended period of six months subject to force majeure conditions and reasons beyond the control of the Builder which shall include any notice/order/restriction imposed by nay Court/HUDA/Municipal Authorities or any Govt. or Semi-Govt. Department and shall also be subject to other Shop/Commercial Unit Buyer(s) making timely payment. No claim by way of damages/Compensation shall lie against the builder in case of delay in handing over the possession on account of the any of the aforesaid reasons and builder shall be entitled to a reasonable extension of time for the delivery of the possession of the said Shop/Commercial Unit to the buyer(s)."

Considering the relevant clause of builder buyer agreement, possession of the shop/commercial unit was to be handed over by the respondent on or before 08.07.2014. Contention of the respondent that 42 months to be taken for deemed date of possession holds no good as 6 months' time period is subject to force majeure conditions and respondent is not able to prove any force majeure conditions. Therefore, deemed date of possession is 08.07.2014 and respondent has failed to hand over valid possession to the complainant by the deemed date of possession.

- ii. It is observed by the Authority that though respondent had obtained the occupation certificate from the concerned department, i.e., Department of Town & Country Planning on 12.08.2016 and



completion certificate with respect to the project on 17.07.2017. The respondent issued provisional possession for fit out to the complainant on 01.08.2015 and thereafter, respondent issued letter dated 01.10.2015, mentioning the details of enhanced EDC/IDC and other govt. charges, sinking fund, labour cess, EEC, firefighting charges, electric meter charges and power back up charges. Subsequent to that complainant wrote letter dated 26.12.2016 challenging the said demands. On 27.08.2016, respondent issued possession and invited the complainant for registration of conveyance deed with respect to the unit of complainant. Thereafter, respondent issued cancellation notice dated 29.10.2020 to the complainant. Now, the main contention of the complainant is that said offer of possession dated 27.08.2016 is not valid offer as the occupation certificate received by the respondent is based on forged and fabricated documents and also said offer of possession was not accompanied with receivables and payables. In this regard, Authority observes that occupation certificate and completion certificate are issued by the Department of Town & Country Planning and if there is any issue/discrepancy w.r.t OC/CC than that has to be dealt by the concerned department. Also, complainant has placed on record only a copy of the representation dated 25.05.2022 made to the Director of Town



& Country Planning. Complainant has not placed any documentary evidence about the outcome of the said representation or what action was taken by the Director, Town & Country Planning on the said representation of the complainant. Therefore, Authority deems it fit that OC/CC issued by the concerned department is valid one. As the Occupation certificate is held valid by the Authority, then the offer of possession issued by the respondent on 27.08.2016 is also valid offer of possession.

- iii. Complainant is also challenging the demands raised w.r.t unit vide letter dated 01.10.2015, saying that such statutory charges/taxes are payable to the government and respondent has raised the said demand without providing any substantive proof of such amount and respondent had not provided any justification in this regard. Enhanced EDC/IDC charges have been stayed by the Hon'ble Punjab and Haryana High Court.

Observation of Authority with regard to demands raised by the respondent:

On perusal of terms and conditions of Builder Buyer Agreement, Authority observes that since the Builder Buyer Agreement executed between the parties is Pre-RERA agreement and accordingly parties are bound by the terms and conditions of said



agreement. Therefore, complainant is liable to pay the above mentioned charges.

- a. As far as issue of EEDC is concerned, an amount of ₹44,175/- is being charged on account of enhanced EDC/IDC and respondent had filed justification alongwith a document annexed as Annexure R6 regarding payment of EEDC/IDC amounting to ₹68,80,000/- to Director, Town & Country Planning Department, Haryana. As amount on account of enhanced EEDC has already been paid to the concerned department by the promoter therefore, complainant is liable to pay the said amount to the respondent.
- b. With regard to payment of EEC of ₹55,800/-, Authority observes that as per Clause 2 of Builder Buyer Agreement executed between the parties, complainant is liable to pay in addition to total price of the purchased unit, all such charges as are leviable by an authority in respect of purchased unit, therefore, complainant is liable to pay the same to the respondents.
- c. With regard to power backup charges of ₹45,000/-. In this regard, Authority observes that if any additional services/facilities are being provided by the builder then it is



reasonable expectation that complainant shall pay for the same.
Therefore, complainant is liable to pay the same.

- d. With regard to fire fighting, holding charges and labour cess, Authority observes that as per Clause 26 of the agreement both the parties agreed to pay charges on pro rata basis for the purpose of preventive measures, thus complainant is liable to pay the same.
- e. As regards sinking fund, Authority observes that as per Clause 2 of the agreement, buyer is liable to pay the same.
- f. As regards maintenance charges, Authority observes that as per Clause 23 of Builder Buyer Agreement complainant has specifically agreed in Builder Buyer Agreement that respondent has right to appoint a maintenance agency. Also agreed that buyer shall be bound to sign the maintenance agreement with such maintenance agency before taking possession of unit along with security deposit of two months. As such signing of maintenance agreement was mandatory requirement under the agreement at the time of taking possession and there was no discretion of any allottee to sign or not to sign maintenance agreement. Thus, respondent is well within its right to claim maintenance charges and complainant cannot object to this.



iv. Contention of the respondent regarding deficiencies, i.e., electric distribution, switch boxes, conduit pipes, fans and lights not provided, feeder cable and earth wire hanging loosely and iron pipes that are meant for firefighting system are hanging loosely, no water supply, etc., Authority observes that subsection (3) of section 14 of RERA Act of 2016 prescribes that *"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."* Therefore, complainant may be entitled for compensation, if any, after taking possession of the unit, before the appropriate forum.

v. With regard to contention of the respondent that unit has been cancelled by the respondent vide letter dated 29.10.2020, Authority observes that it is nowhere mentioned that it is a



cancellation letter. It is a simple notice issued by the respondent and it nowhere mentions about dues on part of complainant. Therefore, Authority concludes that said notice is not a termination letter and commercial unit/shop is still in the name of the complainant. Respondent is directed to hand over the possession of the unit to the complainant and complainant is directed to pay the dues as decided by the Authority.

- vi. In the present complaint, complainant intend to continue with the project and is seeking possession along with delayed possession charges as 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".*

- vii. 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;

- viii. In view of the above observations and reasons, Authority is of the considered view that complainant is well within his rights to claim the possession alongwith delay interest from respondent for the amount paid by him and thus Authority deems it fit to allow interest for delay in handing over of possession from the deemed date of possession (i.e. 08.07.2014) till the date of valid offer of possession, i.e., till 27.08.2016. Such interest shall be calculated at the rate prescribed in Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is 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".

20. Authority directs respondent to pay an amount of ₹4,33,597/- 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 10.85% (8.85% + 2.00%). Authority has got calculated interest at the rate of 10.85% and total amount works out to ₹4,33,597/-/- as per detail given below:

Sr. No	Principal Amount	Deemed date of possession (i.e. 08.07.2014) or date of payment whichever is later	Interest Accrued till 27.08.2016
1.	₹18,65,276/-	08.07.2014	₹4,33,597/-

21. In complaint no.1342 of 2022, builder buyer agreement was executed on 10.02.2012, therefore, deemed date of possession as per clause 4 at page no.46 comes to 10.02.2015.



Sr. No	Principal Amount	Deemed date of possession (i.e. 10.02.2015) or date of payment whichever is later	Interest Accrued till 27.08.2016
1.	₹16,94,496/-	10.02.2015	₹2,84,594/-

22. In complaint no.1343 of 2022, builder buyer agreement was executed on 29.05.2012, therefore, deemed date of possession as per clause 4 at page no.46 comes to 29.05.2015.

Sr. No	Principal Amount	Deemed date of possession (i.e. 29.05.2015) or date of payment whichever is later	Interest Accrued till 27.08.2016
1.	₹16,95,385/-	29.05.2015	₹2,30,315/-

23. The reliefs under clause (iv), (v), (vi) and (vii) were neither argued nor pressed upon during course of hearing. Therefore, no observation is made in this regard.



24.The complainant is also seeking compensation towards litigation cost.

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. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

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

- (i) Respondent is directed to deliver actual physical possession of unit alongwith payment of upfront delay interest to the respective complainants as mentioned in para 20, 21 and 22 of this order towards delay already caused in handing over



the possession within 60 days from the date of uploading of this order.

- (ii) Complainants will remain liable to pay balance consideration amount to the respondent at the time of delivery of actual physical possession.
- (iii) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate, i.e, 10.85% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.
- (iv) The respondent shall not charge anything more from the complainant which is not part of the agreement to sell.

26.**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]