



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2134 of 2022
Date of filing:	05.09.2022
Date of first hearing:	25.01.2023
Date of decision:	26.09.2024

Vikas Satija S/o Sh. Shanti Devi
R/o 22A, Inderpuri, Sonipat
Haryana- 131001

....COMPLAINANT(S)

VERSUS

Jindal Realty Pvt Limited
DSM-648, 6th floor, DLF Tower, Shivaji Marg,
Najafgarh road, Moti Nagar, New Delhi-110015

....RESPONDENT(S)

CORAM:

Chander Shekhar
Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member
Member

Present: -

Mr. Chaitanya Singhal, Counsel for the complainant
through VC.

Mr. Madhur Panwar, counsel for the respondent through
VC.

ORDER (NADIM AKHTAR- MEMBER)

1. Present complaint dated 05.09.2022 has been filed 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 fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project	Jindal Global City, (Phase-V), Sonipat
2.	RERA registered/not registered	Un-registered
3.	Unit no.	F-98, Ground Floor
4	Unit area (Built-up area)	1242 sq. ft.



5.	Date of booking	05.01.2013
6.	Date of builder buyer agreement	08.04.2014
7.	Deemed date of possession	08.04.2017
8.	Possession clause in BBA [28(a)]	<p>Clause-28 <i>Subject to the terms of this clause, clause 47 and subject to the Floor Allottee having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the Developer by the Floor Allottee under this Agreement etc., as prescribed by the Developer, the Developer proposes to hand over the possession of the Floor within a period of thirty Six (36) months from the date of signing of this Floor Buyer Agreement. It is however understood between the parties that the possession of various residential floors comprised in the Residential Development as also the various common facilities planned therein shall be ready & complete in phases and will be handed over to the allottees of different residential floors constructed over different plots as and when completed</i></p>



8.	Basic sale price	₹39,49,000 + applicable charges = Rs. 41,49,450/-
9.	Amount paid by complainant	₹45,05,169/- as per payment receipts annexed by the complainant as Annexure P-3 but he claims ₹41,49,450/- in his pleadings on page no.9, para 14.
10.	Offer of possession	30.06.2018
11.	Occupation Certificate	21.06.2018
12.	Conveyance deed executed on	12.10.2018.

B. FACTS OF THE COMPLAINT

3. Facts of the present complaint are that the complainant is a senior citizen of India, aged 64 years, booked an independent floor in the Respondent's project "Jindal Global City," Sonipat, Haryana, on 05.01.2013. A provisional allotment letter was issued on 14.02.2013, and a Builder Buyer Agreement (BBA) was executed on 08.04.2014. Under this agreement, the Complainant was allotted unit no. F-98, Ground Floor, with a super area of 1242 sq. ft. for a total sale consideration of Rs. 41,49,450/-. The Respondent committed to delivering possession within 36 months, by 08.04.2017.



4. That clause 30 of the BBA stipulated that in the event of a delay, the Respondent would pay compensation @ of Rs. 4/- per sq. ft. per month of the super area. However, despite 18-months delay in handing over possession, no compensation has been paid to the Complainant. The Respondent cited "force majeure" as the reason for the delay, which was previously granted by the Hon'ble RERA Authority, Panchkula, due to changes in layout plans by the Director Town and Country Planning Department (DTCP) between 04.11.2011 and 09.02.2015.
5. However, the complainant's unit was booked during the force majeure period, and payments were accepted by the respondent without informing the complainant about the prevailing conditions. The Hon'ble RERA Authority, Panchkula, in its order dated 22.11.2018, observed in "*Rena Dua vs Jindal Realty Pvt. Ltd.*, complaint no. 142/2018" and "*Santosh Lathwal vs Jindal Realty Pvt. Ltd.*, complaint no. 314/2018" that if development was halted during this period, the Respondent should not have demanded installments, and the complainant is entitled to compensation.
6. That the Complainant paid the entire sale consideration, and the physical possession of the unit was handed over on 12.12.2018. However, delayed possession charges have not been paid by the respondent, as per Section 18 of RERA, read with Rule 15 of HRERA Rules, 2017. The cause of action continues due to the non-payment of



compensation. The complainant has the right to seek delayed possession charges even after possession, as upheld by the Hon'ble RERA Authority, Gurugram, in complaint no. 4062 of 2020 titled as "*Bulbul Singh vs M/S Emaar MGF Land Ltd.*," decided on 22.07.2021.

C. RELIEFS SOUGHT

7. The complainant in her complaint has sought following reliefs:-
- (i) To pay DPC (delayed possession charges) as per Rule 15 of HRERA Rules 2017 from deemed date of possession, i.e., 08.04.2017 till the final handover of possession, i.e., on 12.12.2018.
 - (ii) Any other relief as this Hon'ble Authority may deem fit in the facts and circumstances of the present case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent initially filed an application for dismissal of complaint on 18.10.2022 and thereafter on 20.08.2024 filed a detailed reply to the complaint wherein:

8. Respondent has submitted specifically in the dismissal application that the present complaint is not maintainable and should be dismissed for lack of cause of action. The complainant, having executed a Plot Buyer's Agreement on 08.04.2014, was offered possession on 30.06.2018 and the conveyance deed was executed and registered on 12.10.2018. Possession was handed over on 12.12.2018 and thereafter,



- the complainant transferred the unit to a third party, Mr. Vikas Satija. After the execution of conveyance deed, complainant ceased to be an allottee. At the time of obtaining possession, the complainant did not raise any concerns and the complainant, along with her father, signed an indemnity bond and declaration of possession, confirming satisfaction with the unit. As such, the complainant has no locus standi to file this complaint. Additionally, the complaint is time-barred, as the cause of action arose on 12.10.2018 and is being raised now merely to harass the respondent. Therefore, the complaint is devoid of merit and should be dismissed with costs.
9. That the respondent in its detailed reply dated 20.08.2024 again submitted that the complaint is time-barred, as possession of the unit was offered on 30.06.2018 and the conveyance deed was executed and registered on 12.10.2018. The complaint, however, was filed only in June 2022, well beyond the three-year limitation period for filing consumer complaints under the Limitation Act. As such, the respondent contends that the complaint should be dismissed on this ground alone.
10. Furthermore, the respondent claims that the complainant lacks locus standi, or legal standing, to file the complaint. The complainant had taken possession of the unit without raising any objections and had executed an indemnity bond, as well as a declaration of satisfaction



- regarding the unit. Additionally, the unit was subsequently transferred to Mr. Vikas Satija on 12.10.2018 through a registered transfer deed. In light of these facts, respondent submitted that the complainant is no longer the "allottee" of the unit and, therefore, cannot bring the complaint under the provisions of the RERA Act, 2016. The respondent emphasizes that by signing these documents without any objection, the complainant is now estopped from raising any claims and the complaint is a mere afterthought intended to harass the respondent.
11. Respondent also raises the issue of project delays, attributing them to changes in the sectoral plan by the Department of Town and Country Planning, Haryana. These unilateral changes, made without prior notice or opportunity to the respondent to be heard, resulted in the re-planning of the project and caused significant delays. It is contended that these delays were beyond their control and should be treated as force majeure events, thus absolving them of any responsibility for the delay in completion.
12. In addition to the above, it is highlighted that the agreement between the parties contains an arbitration clause. As such, any dispute should be referred to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996. Given the presence of this arbitration clause, it



is submitted that the complaint is not maintainable before this Hon'ble Authority and should be dismissed in favor of arbitration.

13. Finally, it is asserted by the respondent that the complaint is an abuse of the process of law, designed to harass the respondent by maligning its reputation. Given that the complainant had already accepted possession, executed the conveyance deed, and transferred the unit without any protest, the complaint is frivolous and should be dismissed with costs.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

14. During oral arguments learned counsel for the complainant insisted upon delay interest and referred to decision dated 22.07.2021 of the Hon'ble RERA Authority, Gurugram, in complaint no. 4062 of 2020 titled as "*Bulbul Singh vs M/S Emaar MGF Land Ltd.*," stating that the complainant has the right to seek delayed possession charges even after possession. Learned counsel for the respondent reiterated arguments as were submitted in written statement. He submitted that the complaint constitutes an abuse of the legal process, intended to unjustly harass the respondent by damaging its reputation. The complainant, having already accepted possession, executed the conveyance deed, and transferred the unit without raising any



objections, is now precluded from bringing forth any claims.

Therefore, it is frivolous and deserves dismissal with costs.

F. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT.

F.I Objection regarding maintainability of complaint after execution of conveyance deed and signing of indemnity cum undertaking.

15. Whether signing of indemnity bond cum undertaking and execution of conveyance deed dated 12.10.2018 and handover of possession vide possession certificate dated 12.10.2018 extinguishes the right of the allottee to claim delay possession charges?
16. The respondent is contending that at the time of taking possession of the residential floor vide possession certificate dated 12.10.2018, the complainant had certified himself to be fully satisfied with regard to the size, measurement, location, services, quality of work of the unit, installations etc and also admitted and acknowledge that he does not have any claim of any nature whatsoever against the respondent and that upon acceptance of possession, the liabilities and obligations of the respondent as enumerated in the buyer's agreement, stand fully satisfied.
17. At times, the allottee is asked to give the indemnity bond cum undertaking before taking possession. The allottee has waited for long for his cherished dream home and now when it is ready for possession,



he either has to sign the indemnity bond cum undertaking and take possession or to keep struggling with the promoter if indemnity bond cum-undertaking is not signed by him. The relevant clause of the indemnity bond is reproduced hereunder:

" 1. That the indemnifiers have taken over the possession of the said unit to their complete satisfaction and after proper inspection and verification. The indemnifiers shall henceforth have no claim against the company of any nature whatsoever in respect of the size, measurement, location, services of the said Unit and the indemnifiers shall be responsible for the same."

18. Such an undertaking/ indemnity bond given by a person thereby giving up his valuable rights must be shown to have been executed in a free atmosphere and should not give rise to any suspicion. If a slightest of doubt arises in the mind of the adjudicator that such an agreement was not executed in an atmosphere free of doubts and suspicions, the same would be deemed to be against public policy and would also amount to unfair trade practices. No reliance can be placed on any such indemnity bond-cum-undertaking and the same is liable to be discarded and ignored in its totality. Therefore, this Authority does not place reliance on such indemnity-cum-undertaking. To fortify this view, the Authority place reliance on the National Consumer Disputes Redressal Commission (NCDRC) order dated 03.01.2020 in case titled as *Capital Greens Flat Buyer Association and Ors. Vs. DLF Universal Ltd.,* Consumer case no. 351 of 2015, wherein it was held that the execution

of indemnity-cum-undertaking would defeat the provisions of sections 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being an unfair trade practice. The relevant portion of the said judgment is reproduced herein below.

" Indemnity cum undertaking.

30.The developer, while offering possession of the allotted flats insisted upon execution of the indemnity-cum-undertaking before it would give possession of the allotted flats to the concerned allottee.

Clause 13 of the said indemnity-cum-undertaking required the allottee to confirm and acknowledge that by accepting the offer of possession, he would have no further demands/claims against the company of any nature, whatsoever. It is an admitted position that the execution of the undertaking in the format prescribed by the developer was prerequisite condition for the delivery of the possession. The opposite party, in my opinion, could not have insisted upon clause 13 of the Indemnity-cum' undertaking. The obvious purpose behind such an undertaking was to deter the allottee from making any claim against the developer, including the claim on account of the delay in delivery of possession and the claim on account of any latent defect which the allottee may find in the apartment. The execution of such an undertaking would defeat the provisions of Section 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being on unfair trade practice. Any delay solely on account of the allottee not executing such an undertaking would be attributable to the developer and would entitle the allottee to compensation for the period the possession is delayed solely on account of his having not executed the said undertaking-cum-indemenity".

19. The said judgment of NCDRC was also upheld by the Hon'ble Supreme Court vide its judgement dated 14.12.2020 passed in Civil Appeal nos. 3864- 3889 of 2020 against the order of NCDRC.



20. It is noteworthy that Section 18 of the RERA Act, 2016 stipulates for the statutory right of the allottee against the obligation of the promoter to deliver the possession within stipulated timeframe. Therefore, the liability of the promoter continues even after the execution of indemnity bond- cum- undertaking at the time of possession. Further, the reliance placed by the respondent counsel on the language of the clause of the indemnity bond that the allottee had waived off his right by signing the said indemnity cum undertaking is superficial. In this context, it is appropriate to refer case titled as *Mr. Beatty Tony Vs. Prestige Estate Projects Pvt Ltd.* (Revision petition no. 3135 of 2014 dated 18.11.2014), wherein the Hon'ble NCDRC while rejecting the arguments of the promoter that the possession has since been accepted without protest vide letter dated 23.12.2011 and builder stands discharged of its liabilities under agreement, the allottee cannot be allowed to claim interest at a later date on account of delay in handing over of the possession of the apartment to him, held as under:

"13. The learned counsel for the opposite parties submits that the complainant accepted possession of the apartment on 23/24.12.2011 without any protest and therefore cannot be permitted to claim interest at a later date on account of the alleged delay in handing over the possession of the apartment to him. We, however, find no merit in the contention. A perusal of the letter dated 23.12.2011, issued by the opposite parties to the complainant would show that the opposite parties unilaterally stated in the said letter that they had discharged all their obligations under the agreement. Even if we assume on the basis of the said printed statement that having accepted



possession, the complainant cannot claim that the opposite parties had not discharged all their obligations under the agreement, the said discharge in our opinion would not extend to payment of interest for the delay period, though it would cover handing over of possession of the apartment in terms of the agreement between the parties. In fact, the case of the complainant, as articulated by his counsel is that the complainant had no option but to accept the possession on the terms contained in the letter dated 23.12.2011, since any protest by him or refusal to accept possession would have further delayed the receiving of the possession despite payment having been already made to the opposite parties except to the extent of Rs. 8,86,736/-. Therefore, in our view the aforesaid letter dated 23.12.2011 does not preclude the complainant from exercising his right to claim compensation for the deficiency on the part of the opposite parties in rendering services to him by delaying possession of the apartment, without any justification condonable under the agreement between the parties."

21. Said view was later reaffirmed by 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. "

Therefore, the Authority is of the view that the signing of Indemnity Bond on 12.10.2018 does not preclude the complainant from exercising her right to claim delay possession charges as per the provisions of the RERA Act,2016.

F.II Whether the execution of the conveyance deed extinguishes the right of the allottee to claim delay possession charges?

22. The respondent submitted that the complainant had executed a conveyance deed dated 12.10.2018 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 and is a clear malicious act to harass the respondent by maligning the untarnished reputation of the respondents.
23. It is important to look into 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 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.

24. From the above, it is clear that on execution of a sale/ conveyance deed, only the title and interests in the said immovable property (herein the allotted unit) is transferred. However, the conveyance deed does not mark an end to the liabilities of a promoter 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)

25. 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."

26. 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 and upon taking possession, and/or executing conveyance deed, the complainant never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act.

27. It is relevant to point out here that in clause 49 of conveyance deed, the words used are-

'the vendee (s) shall have no claim against the promoters/vendors with regard to any item of work, quality of work, materials, installations etc in the said floor or any ground whatsoever and all such claims, if any shall be deemed to have been waived'.



Also, the contents of the indemnity bond is also reproduced which are as-

'the indemnifiers have taken over the possession of the said floor to their entire satisfaction and after proper inspection and verification. The indemnifiers shall henceforth have no claim against the company of any nature whatsoever in respect of the size, measurement, location, services of the said floor and the indemnifiers shall be fully responsible for the same.'

meaning thereby that the complainant/vendee(s) is left with no claim with regard to size, measurement, location of the unit. Neither in the conveyance deed nor in the indemnity bond, it has been mentioned that the complainant is left with no right to claim delay interest/compensation of any type from the promoter. Complainant herein is not putting forward any claim with regard to size, measurement, location, quality and material of work.

28. 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 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 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."

29. Also, the para 35 of judgement dated 24.08.2020 titled as *Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt, Ltd, (now Known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no.6239 of 2019)* is reproduced herein below:

" 35. The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been



allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeking a Deed of Conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."

30. 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.
31. The complainant/allottee has invested his hard-earned money and there is no doubt that the promoter has been enjoying benefits of 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 and the law laid down in the Wg. Cdr. Arifur Rahman (supra), this Authority holds that even after execution of the conveyance deed, the complainant cannot be precluded from his right to seek delay possession charges from the respondent-promoter.

Keeping in view the aforesaid discussion, it is decided that the complaint is maintainable.”

F.III Objections raised by the respondent regarding force majeure conditions and delay in handing over of possession of unit.

32. The obligation to deliver possession within a period of 36 months from builder buyer agreement was not fulfilled by the respondent. There is delay on the part of the respondent and the plea taken by respondent is that there was arbitrary revision in sectoral plan of the project by DTCP during the period from 04.11.2011 to 09.02.2015. Said period cannot be counted towards commitment period as construction work was not carried out by the respondent during said period.
33. This issue has already been dealt at length by this Authority in its order dated 24.01.2019 passed in *Complaint no. 569/2018-Roshan Malwal vs Jindal Realty Pvt Ltd.* Relevant para of the order is reproduced below for reference:-

“7. The Authority after hearing the parties and going through the record observes that the possession which was required to be



delivered in terms of buyer's agreement on 19.11.2014 has not yet been delivered. However, the delay in the delivery of possession is on account of revision of the sectoral plan of the Town and Country Planning Department. When the department was in process of revising the zoning and layout plan, the respondent submitted a representation opposing such revision. However, the department did not accede to his request and had carried out revision of sectoral plan. The matter regarding revision of sectoral plan remained pending from 14.11.2011 to 09.02.2015 and therefore, the respondent could not carry out any construction work during such period. The Authority is of the considered opinion that the respondent cannot be held liable to pay delay compensation for the period during which he could not carry out the construction work due to the revision of the sectoral plan.

8. In the present case when the construction activity could not be carried out due to revision of sectoral plan, the deemed date of possession which in normal circumstances was to lapse on 19.11.2014 must be deemed lapsed after 36 months of the date of finalization of sectoral plan. The sectoral plan had been finalized on 09.02.2015 and on addition of 36 months period prescribed in the buyer's agreement for completion of the project, the deemed date of possession comes out to 09.02.2018. So, the respondent can be held liable for paying delay compensation to the complainant from 09.02.2018 till the date on which the actual possession will be offered to the complainant."

34. Accordingly, due date of possession in this case comes out to 09.02.2018. Possession was offered on 30.06.2018 after receipt of



occupation certificate on 21.06.2018. Delay of around 4 months is still there in offering the possession of the unit to the complainant for which respondent is accountable.

G. ISSUES FOR ADJUDICATION

35. Whether the complainant is entitled to the relief claimed by the complainant in terms of provisions of RERA Act of 2016?

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

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

(i) Admittedly, respondent was under an obligation to deliver possession on 08.04.2017 in terms of clause 28(a) of builder buyer agreement dated 08.04.2014 but possession got delayed on account of force majeure conditions which is revision of sectoral plan of the project. Possession was offered to complainant on 30.06.2018 after obtaining occupation certificate on 21.06.2018. In terms of principles laid down by the Authority in *complaint no. 569/2018-Roshan Malwal vs Jindal Realty Pvt Ltd* and *complaint no. 1048/2018-Nirmala Chaudhary & Parul Chaudhary vs Jindal Realty Pvt Ltd*, the deemed date of possession works out to 09.02.2018. A valid offer of possession supported with occupation certificate dated 21.06.2018 was issued to complainant on 30.06.2018 and thereafter conveyance



deed got executed on 12.10.2018. There is delay of 8 months and 3 days in offering a valid 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”.

37. 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;

38. 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. 26.09.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate + 2% i.e., 11.10%.

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".

39. In view of aforesaid observations and reasoning, the Authority hereby concludes that the complainant is entitled for the delay interest from 09.02.2018 (deemed date of possession) to 30.06.2018 (date on which a valid offer was sent to the complainant after obtaining occupation certificate from the competent Authority dated 21.06.2018) and



Interest @ 9% on amount of Rs ₹10,18,300/- from date of payment to the date of finalization of sectoral plan.

40. Authority has got calculated the interest on total paid amount from the deemed date of possession till the date of valid offer of possession at the rate of 11.10% till and said amount works out to ₹1,71,845 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 30.06.2018
1.	36,92,856/-	09.02.2018	1,59,471
2.	04,42,288/-	31.03.2018	12,374
	Total = ₹41,35,144		Total = ₹1,71,845

41. Authority has also got calculated the interest on the amount paid of Rs ₹10,18,300/- during the force majeure period from the date of respective payment till finalisation of sectoral plan (09.02.2015) @9% in terms of principles laid down by this Authority in complaint no. 569/2018 and 1048/2018 said amount works out to ₹1,91,726 as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 09.02.2015
1.	9,90,000/-	05.01.2013	1,86,988
2.	28,300/-	02.04.2013	4,738
	Total= ₹10,18,300/-		Total = ₹1,91,726



I. DIRECTIONS OF THE AUTHORITY

42. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the HRERA Act, 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 is directed to pay the delay interest of Rs. 1,71,845/- as calculated in para 40 of this order and interest of Rs 1,91,726/- on the amount received during force majeure to the complainant as calculated in para 41 of this order to the complainant within 90 days from the date of uploading of this order.

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


.....
CHANDER SHEKHAR
[MEMBER]


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


.....
NADEEM AKHTAR
[MEMBER]