



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Date of decision:	11.10.2023
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Name of Builder	M/s Alpha Corp Development Pvt. Ltd. and others
Name & Location of Project	Alpha International City, Fatehabad

Sr. No.	Complaint No(s).	Complainants
1.	89 of 2022	Mrs. Madhu Mehta W/o Sh. Vijay Kumar Mehta, R/o Satish Colony Street No. 2, Near Blue Bird School, Fatehabad-125050Complainant no. 1 Mr. Vijay Kumar Mehta S/o Sh. Ladha Ram R/o Satish Colony Street No. 2, Near Blue Bird School, Fatehabad-125050Complainant no. 2

2.	90 of 2022	<p>Mrs. Madhu Mehta W/o Sh. Vijay Kumar Mehta, R/o Satish Colony Street No. 2, Near Blue Bird School, Fatchabad-125050Complainant no. 1</p> <p>Mr. Vijay Kumar Mehta S/o Sh. Ladha Ram R/o Satish Colony Street No. 2, Near Blue Bird School, Fatchabad-125050Complainant no. 2</p>
3.	91 of 2022	<p>Mrs. Anamika Aggarwal W/o Mr. Manoj Aggarwal, R/o H. No. 407, 1st floor, Sector 14, main road, Rohtak-124001Complainant no. 1</p> <p>Mr. Manoj Aggarwal S/o Sh. Manohar Aggarwal, R/o H. No. 407, 1st floor, Sector 14, main road, Rohtak-124001Complainant no. 2</p>

Versus

M/s Alpha Corp Development Private Limited (Alpha G. Corp Development Pvt. Ltd.) registered office 806, Meghdoot, 94, Nehru Place, New Delhi - 110019 & corporate office at Golf View Corporate Towers, Wing A , DLF Golf Course Road, Sector - 42, Gurgaon - 122002

....Respondent No. 1

M/s Ambrose Real Estate Private Ltd. registered office 806, Meghdoot, 94, Nehru Place, New Delhi - 110019 & corporate office at Golf View Corporate Towers, Wing A , DLF Golf Course Road, Sector - 42, Gurgaon - 122002

....Respondent No. 2



M/s Elegant Realtech Pvt. Ltd. registered office 806, Meghdoot, 94, Nehru Place, New Delhi - 110019 & corporate office at Golf View Corporate Towers, Wing A , DLF Golf Course Road, Sector - 42,Gurgaon – 122002

....Respondent No. 3

M/s Accord Development Pvt. Ltd. registered office 806, Meghdoot, 94, Nehru Place, New Delhi - 110019 & corporate office at Golf View Corporate Towers, Wing A , DLF Golf Course Road, Sector – 42, Gurgaon – 122002

....Respondent No. 4

M/s Marvel Buildtech Pvt. Ltd. registered office 806, Meghdoot, 94, Nehru Place, New Delhi - 110019 & corporate office at Golf View Corporate Towers, Wing A , DLF Golf Course Road, Sector – 42, Gurgaon – 122002

....Respondent No. 5

M/s Reindeer Buildtech Pvt. Ltd. registered office 806, Meghdoot,94, Nehru Place, New Delhi - 110019 & corporate office at Golf View Corporate Towers, Wing A , DLF Golf Course Road, Sector - 42,Gurgaon – 122002

....Respondent No. 6

Director Town & Country Planning Haryana, Aayojna Bhawan, Sector18, Chandigarh

....Respondent No. 7



CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Present:- Mr. Munish Kapila, Advocate, counsel for complainants (in all the captioned complaints)

Mr. Bahul Bunger, Advocate, counsel for the respondents (in all the captioned complaints)

ORDER (NADIM AKHTAR - MEMBER)

1. This order shall dispose of 3 captioned complaints filed by the complainants before this Authority under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.
2. Captioned complaints are taken up together as facts and grievances of all complaints are more or less identical and relate to the same project of the respondents, i.e., "Alpha International City", situated at, Sector 70, Fatchabad. The fulcrum of the issue involved in all these complaints pertains to failure of the respondent promoters to deliver the timely possession of plots in question. Complaint no. 89 of 2022 titled "Mrs. Madhu Mehta & Mr. Vijay Kumar Mehta versus M/s Alpha Corp



Development Pvt. Ltd and ors.” has been taken as lead case for disposal of all the complaints.

A. UNIT AND PROJECT RELATED DETAILS:

3. The particulars of the project have been detailed in following table:

SR. No.	Particulars	Details
1.	Name of project	Alpha International City, Fatehabad
2.	Nature of the Project	Integrated Township
3.	Name of the Promoter	M/s Alpha G Corp Development Pvt. Ltd.
3.	RERA registered/not registered	Lapsed registration of the RERA , Panchkula

4. Further the details of sale consideration, the amount paid by all the complainants and date of proposed handing over of possession have been portrayed in following table:

Sr. No	COMPLAINANT NO.	Plot No. and area	DATE OF AGREEMENT/ALLOTMENT LETTER	DEEMED DATE OF POSSESSION	TOTAL SALES CONSIDERATION (IN RS.)	TOTAL AMOUNT PAID BY THE COMPLAINANTS AS PER RECEIPTS (IN RS.)
v	89 of 2022	162, 290 sq. yds.	29.01.2009 Date of endorsement-19.03.2012	29.07.2010 (18 months from date of execution of agreement; ascertained in para 36 of the order)	₹16,67,500/-	17,80,701/- (receipts attached)

2	90 of 2022	365, 360 sq. yds.	14.01.2009 Date of endorsement- 07.06.2012	14.07.2010 (18 months from date of execution of agreement; ascertained in para 36 of the order)	₹20,70,000/-	₹32,60,583/- (receipts attached)
3	91 of 2022	70, 500 sq. yds.	31.03.2011 Date of endorsement- 03.05.2018	31.03.2014 (3 years from date of execution of agreement; ascertained in para 36 of the order)	₹32,75,000/-	₹40,81,007/- (receipts attached)

B. FACTS OF THE LEAD CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANTS

5. That M/s Ambrose Real Estate Pvt. Ltd., M/s Elegant Realtech Pvt. Ltd., M/s Accord Development Pvt. Ltd., M/s Marvel Buildtech Pvt. Ltd & M/s Reindeer Pvt. Ltd. are fully owned subsidiaries of M/s Alpha Corp Development Private Limited arrayed as Respondent No.1. These subsidiary companies are the Owners/Developers of aggregate land measuring 54.75 acres and have obtained license bearing No. 90/2008 for 51.744 acres dated 12.5.2008 from the Director Town & Country Planning, Haryana, Chandigarh for development of colony known as "Alpha International City" situated at Fatehabad. Further, M/s Elegant Realtech Pvt. Ltd., M/s Accord Development Pvt. Ltd., M/s Marvel Buildtech Pvt.



Ltd & M/s Reindeer Pvt. Ltd. had authorized M/s Ambrose Real Estate Pvt. Ltd. to carry out all such acts on their behalf as are required for the development of the said project and in turn M/s Ambrose Real Estate Pvt. Ltd. on its own behalf and as well as all the owners had authorized M/s Alpha G Corp. Development Pvt. Ltd. to represent the owners before the applicants, allottees etc. These subsidiary companies are arrayed as Respondent No. 2 to 6 in the present complaint.

6. That respondent no. 1 entered into a Plot Buyer's Agreement (PBA) dated 29.01.2009 with Sh. Sunil Kumar(hereinafter referred as original allottee) in respect of Plot No. 162, located in the project namely "Alpha International City, Fatehabad" (hereinafter referred as project). This plot was later on transferred in the name of Mrs. Madhu Mehta and Sh. Vijay Kumar Mehta (complainants in the captioned complaint) vide endorsement dated 19.03.2012, made on the plot buyer's agreement. An addendum dated 31.03.2011 of plot buyer agreement (herein after referred as PBA) was entered into between the parties, wherein, parties have agreed to change the plot no. from D-52, Sector 4 to plot no. 162, Sector-4. Complainants have paid entire sale consideration in respect of booked plot. A copy of the Plot Buyer's Agreement entered into between complainants and respondent No. 1 and an Addendum to this agreement is annexed as "Annexure C-2 & Annexure C-3" .



7. As per clause 9.1 of PBA, respondent no. 1 had agreed to deliver the possession of the plot within 18 months from the date of commencement of the development works along with a grace period of 90 days in handing over of possession of the plot subject to obtaining necessary approvals from the authorities but not limited to completion certificate and NOC/Clearance from the Ministry of Environment & Forests. However, when respondent no. 1 did not offer the possession, complainants approached the site office of respondent to enquire about the reasons for inordinate delay in delivery of possession and execution of the Conveyance Deed in their favour. After incessant visits by complainants, complainant No. 1 received letter of offer of possession dated 08.05.2012 of plot no. 162 at Alpha International City, Fatchabad. A copy of letter dated 08.05.2012 is annexed as "Annexure C-4". In pursuance to letter dated 08.05.2012, complainants approached the site office of respondent no. 1 at Fatchabad for completing the necessary formalities for delivery of actual physical possession of booked plot and requested officials to inform them about the exact date as to when conveyance deed will be executed. No clear answer was received from Respondent No. 1 till date. However, complainants were told that concerned person was not available and soon they shall be informed about the exact date of delivery of possession and execution of conveyance deed. Thereafter nothing was heard from



respondent no. 1. Subsequently, complainants repeatedly visited the site office of respondent no. 1 at Fatehabad seeking possession. Finally in December 2012, when complainants visited site office of respondent No. 1, to the utter shock, they were told that letter dated 08.05.2012 was inadvertently issued to complainants.

8. Thereafter, complainants themselves started making inquiries from all quarters and it came to their knowledge that out of total project area of 51.744 acres, in respect to 77K-19M of land, a civil suit titled as "Neelam Kumari & Ors.Vs Elegant Real Touch &Ors" was pending before the Civil Judge, Fatehabad wherein defendants, vide order dated 06.11.2012, were refrained from further alienating the suit land till further orders. Site plan shows that plot of the complainants was in the disputed area. A copy of the suit and order granting interim injunction are annexed as "Annexure C-5 & Annexure C- 6" and the site plans are annexed as "Annexure C-7 & Annexure C-8".
9. That on 02.07.2015, Director of Town & Country Planning, Haryana granted conditional part completion certificate to Respondent No. 2 to 6 in respect of 42 acres of land (excluding 77K-19M of land there from). A copy of the part completion certificate dated 02.07.2015 is annexed as "Annexure C-9". That the said Civil Suit was dismissed as withdrawn on 19.7.2017. Thereafter, respondent no.1 issued another letter dated



07.09.2017 informing complainant No.1 for the first time about the withdrawal of the civil suit and calling upon the complainants to make the payment of outstanding dues as per the statement enclosed. However, no statement of any outstanding amount was enclosed with the said letter. Thereafter, complainants again approached respondent no. 1 at their branch office at Fatehabad, seeking possession and bringing the fact to them that no statement of account showing outstanding dues was enclosed with this letter to her notice. After seeing this letter, the representative of the respondent no.1 informed that the same is a standard format of letter which is being issued to everyone and they should ignore it. Complainants were also informed that a formal letter of possession shall be issued to the complainants within 2 months. Thereafter, no communication was received by the complainants with regard to possession of the plot in question. A copy of letter dated 07.09.2017 is annexed as "Annexure C-10".

10. That even after receiving part completion certificate on 03.05.2018 in respect of 77K-19M (earlier excluded area), no possession was offered to the complainants. A copy of the part completion certificate dated 03.05.2018 issued to M/s Ambrose Real Estate Pvt. Ltd. is annexed as "Annexure C-11". That in 2018, letters were issued by the respondent-company demanding maintenance charges from the complainants. Complainants once again approached the branch of respondent no.1 at



Fatehabad and protested against this illegal demand of maintenance charges as the same were being demanded from them without offer of possession. Thereafter, complainant No. 1 received reminder dated 09.01.2019 from respondent no.1 which was in reference to earlier letter dated 08.05.2012, calling upon complainants to take possession of plot No. 162 and get conveyance deed in respect of this plot registered in their favour. Deliberately this letter was written in continuation of letter dated 08.05.2012 which Respondent No. 1 had himself previously admitted to have been inadvertently issued. A copy of letter dated 09.01.2019 is annexed as "Annexure C-12".

11. That after receipt of letter dated 09.01.2019, complainants approached respondent No.1 at their branch office at Fatehabad seeking possession of their plot i.e. Plot No. 162. At that time the representative of respondent No.1 informed that the complainants should deposit the maintenance charges along with interest @15% per annum w.e.f. July, 2018 till 31.03.2019. When complainants asked representative of respondent No. 1 that maintenance charges cannot be claimed for the period before possession is offered, they were told to deposit these charges otherwise formality for handing over physical possession of plot shall not be initiated. Accordingly, complainants deposited a sum of Rs. 9,500/- on 28.02.2019. Thereafter, complainants have regularly paid maintenance



charges till 31.12.2021. Even after receiving maintenance charges from the complainants, still physical possession of plot in question was not handed over. Even after receiving part completion certificate on 03.05.2018, no offer of possession was made to the complainants in writing till 09.01.2019. Even, after receipt of this offer of possession, maintenance charges were illegally recovered w.e.f. July 2018 with interest by respondents. Complainants had also written several e-mails in this regard to respondents which were never answered. Copy of these e-mails are attached as "Annexure C-13".

12. Further, despite handing over of possession, respondents started verbally demanding illegal holding charges from the complainants. Complainants were left with no other option, so along with other plot buyers, they approached the District Town Planner, Fatchabad vide letter dated 14.07.2021. In response to this letter, the District Town Planner, Fatchabad issued letter dated 22.07.2021 to Sh. Santosh Aggarwal, Manager, Ambrose Real Estate Pvt. Ltd., intimating him that a meeting is going to be held in the campus of M/s Alpha International City, Fatchabad on 27.07.2021 for looking into the grievances of the complainants as well as other plot buyers. However, despite notice, no one from respondent-developer attended the said meeting. As a result, the District Town Planner, Fatchabad issued another letter dated 27.07.2021 intimating Sh.



Santosh Aggarwal that the next meeting is going to be held on 04.08.2021 in the campus of Alpha International City. In pursuance to this notice, the meeting was convened at the campus of the Alpha International City, Fatehabad under the Chairmanship of DTP, Fatehabad on 04.08.2021. Mr. Vinod Chaudhary and Mr. Alok Jain (Advocates) attended this meeting as representative of the Respondent -company and assured that they would resolve the problems of the allottees within a week. However, when the complainants as well as other allottees met Mr. Vinod Chaudhary at his office, he demanded 60% of holding charges in cash to resolve the matter and handover possession of the plot and execute the conveyance deed. This was not acceptable to the complainant and resultantly, it was brought to the notice of the DTP, Fatehabad who issued letter dated 01.09.2021 to Mr. Santosh Aggarwal, Manager, Ambrose Real Estate Pvt. Ltd. apprising him of this fact and calling upon him to decide the complaint within a period of 15 days with intimation to the office of DTP. Copies of these letters dated 14.07.2021, 22.07.2021, 27.07.2021 and 01.09.2021 are annexed as "Annexure C-14 to C-17".

13. That since the acts of the respondent-company such as illegally demanding holding charges in cash came to fore, now respondent-company washed its hand of Sh. Vinod Chaudhary by alleging that it had not authorised any person by the name of Vinod Chaudhary to represent the company and the



same have been mentioned to defame the developer. That this was being stated when this fact was recorded by the public servant like the DTP. Copy of letter dated 13.09.2021 is attached as "Annexure C-18".

14. That a meeting of the "Allottees Grievance Redressal Forum" was held on 11.10.2021 under the Chairmanship of the Deputy Commissioner, Fatehabad at Mini Secretariat, Fatehabad and the respondent company was also intimated about the same vide Memo No.DTP (F)-2374 dated 29.09.2021. In response to this memo, respondent submitted its reply dated 20.10.2021, wherein it was claimed that sum of ₹3,52,163/- was due from the complainants on account of holding charges as on 19.10.2021 w.e.f. 03.05.2018. In the same letter, it was also claimed that a sum of Rs.3,050/- was due towards maintenance charges in respect of Plot No.162. A copy of this letter is attached as "Annexure C-19". That after the above stand of the respondent, complainant No.1 represented to the Deputy Commissioner, Fatehabad who is the Chairman of the Allottees Grievance Redressal Forum, Fatehabad vide letter dated 29.10.2021 against this illegal demand of holding charges as specified in reply dated 20.10.2021. It was demanded in the said letter that respondent no.1 should show any receipt/invoice whereby respondent No. 1 had received holding charges from any of the allottees of other plots. It was also prayed that a legal action be initiated against the Respondent-developer under Section 420 IPC. A copy of this



letter dated 29.10.2021 is annexed as "Annexure C-20". Further, that claim of holding charges is neither backed by the terms of the plot buyer's agreement nor such charges have any legal sanctity attached to it as would be apparent from the submissions made hereinafter. That as per the terms of the plot buyer's agreement, respondents were obligated to offer possession of the plot after due clearances and completion certificate. Part completion certificate in respect of 77K-19M of land was obtained on 03.05.2018. Thus, it can be concluded that offer of possession dated 08.05.2012 was an illegal offer of possession. Respondent no.1 even after receipt of part completion certificate dated 03.05.2018 has never delivered actual physical possession of the plot in question to the complainants except issuing false promise in the shape of letter dated 09.01.2019.

15. That even as per clause 9.4 of the plot buyer's agreement, respondents are liable to compensate the complainants and are thus liable to pay interest on the amount received by them from complainants from the respective dates of deposits. Instead of compensating the complainants or paying interest to them on their hard-earned money, officials of respondent No.1 are exploiting the situation by illegally demanding holding charges from them. Even other approvals like NOC/Clearance from the Ministry of Environment & Forest have never been shared by the Respondent-Company with the Plot buyers. Hence, without handing over of actual



possession to the complainants, charging holding charges are both unreasonable and punitive in nature and respondent no. 1 can neither demand nor recover these from the Complainants.

16. That the Hon'ble Supreme Court of India in "Ireo Grace Realtech Pvt. Ltd. Vs Abhishek Khanna & Ors" held that where the terms of the Apartment Buyer's Agreement were entirely loaded in favour of the developer and against the allottee at every step as both oppressive and one-sided; the same would constitute unfair trade practice. Hence the terms of the plot buyer's agreement including the one relating to levy of holding charges is oppressive in nature and a plot buyer cannot be compelled to be bound by such terms and conditions.

C. RELIEFS SOUGHT:

17. The complainants in their complaint have sought following reliefs:
- i. Direct the Respondents to deliver legal and actual physical possession of Plot No. 162 to the complainants and to execute a conveyance deed in the favour of the complainants after obtaining necessary approvals from the statutory authorities.
 - ii. Set aside illegal verbal demand of holding charges amounting to Rs. 3,52,163/- raised by Respondent No. 1.
 - iii. Declare arbitrary and one side terms and conditions of the Plot Buyer's Agreement as unenforceable.



- iv. Direct respondents to pay interest under Section 2 (za) of Real Estate (Regulation & Development) Act 2016.
- v. Direct Respondents to compensate the complainants for delay in handing over of the possession of the plot in questions as per Real Estate (Regulation & Development) Act 2016 alongwith any amount complainants are entitled to as per plot buyer's agreement in addition to relief claimed in clause (iv) of the above relief clause.
- vi. Order refund of maintenance charges paid to the respondents.

D. REPLY AS SUBMITTED BY RESPONDENT:

18. Perusal of file revealed that respondents have inadvertently attached reply of complaint no. 89 of 2022 in complaint no. 90 of 2022. For reference reply attached in complaint no. 90 of 2022 is as under:
19. That present reply is being filed through Authorized Representative of M/s Alpha Corp Development Private Limited (previously known as M/s Alpha G: Corp Development Private Limited) arrayed as respondent No.1 in complaint. The Respondent No. 2 to 6 are not separate legal entity and therefore, needs to be deleted from the array of parties since respondent No. 2 to 6 namely; M/s Ambrose Real Estate Pvt. Ltd., M/s Elegant Realtech Private Limited, M/s Accord Development Pvt. Ltd., M/s Marvel Buildtech Pvt. Ltd. and M/s Raindeer Buildtech Pvt. Ltd. have since merged with Respondent Company vide order of the Hon'ble High Court



of Delhi in CO PET. 312 of 2008 dated 10.12.2008 and CO. PET. 611 of 2015 dated 06.04.2016. That Respondent submits that all the development activities required to be carried out stood accomplished and executed on spot and no further development activity of any kind or nature remained to be carried out or left out from being executed qua the plot. Even otherwise grievances raised by the Complainant falls within the domain and ambit of purely private contractual agreement simplicitor in between parties and cannot be said to be a dispute under the RERA Act of 2016.

20. That the instant complaint is liable to be dismissed on the ground that the complaint is barred by limitation. Therefore, complaint is liable to be dismissed on account of delay & laches. That the instant complaint is liable to be dismissed on the short ground that the phase of the Project wherein the plot No. 768 is situated, the said phase has not been registered with RERA, thus, the instant complaint is not maintainable for the alleged violations of Real Estate Regulation Act, 2016. Further, License No. 90 of 2008 dated 12.05.2008 were granted to the respondent for an area measuring 51.744 acres situated in Village Basti Bhiwan, Tehsil and Distt. Fatehabad, Haryana, for developing an 'Integrated Township' namely 'Alpha International City, Fatchabad'. Out of 51.744 acres; an area measuring 9.74 acres became subject matter of a court case, however the plot in question of the Complainants did not form part of the said 9.74



acres. Regarding the remaining area (other than 9.74 acres); the answering Respondent was granted a Part Completion Certificate on 02.07.2015 for 42 acres out of 51.744 acres from competent Authority; which is much earlier in point of time to the date of the publication of Haryana Real Estate Regulation (Regulation and Development) Rules, 2017 i.e. 28.07.2017. Further, owing to litigation qua 9.74 acres, the part completion certificate was not issued, accordingly the said area of 9.74 was got registered as a "Phase" being an "ongoing project". Thus, since the plot of Complainants falls within the area for which part completion certificate already stood granted prior to coming into force of the RERA, 2016 and the said area having not been registered under RERA, the instant complaint under RERA 2016 qua the plot in question is not maintainable and this Hon'ble Authority does not have the jurisdiction qua the said plot under the Real Estate (Regulation and Development) Act, 2016; hence the present Complaint is liable to be dismissed.

21. That in respect of the same project and in view of somewhat similar allegations, this Hon'ble Authority in the case of Complaint No. 1506 of 2019 titled as "Anil Kumar versus Alpha Corp. Development Pvt. Ltd.", decided on 30.03.2021 and other connected matters; has already decided the issues raised in the instant complaint. Copy of judgment has also been placed on record.



22. That plot No. 162 booked by complainants in Alpha International City, Fatehabad has been developed by Respondent in respect of an area measuring 51.744 acres, after obtaining requisite license from Director General Town & Country Planning Department, Haryana, bearing License No. 90 of 2008. A copy of the License No. 90 of 2008 is annexed as "Annexure R-1. The Lay-out cum Demarcation/Zoning were approved by the Directorate of Town and Country Planning, Haryana, vide memo. no. ZP-477/9446 dated 03.11.2008 and Service Plan & Estimates of the said colony was approved vide memo no. LC-1603-JE(BR)2010/16384 dated 19.11.2010 and thereafter the development activities of the project started. The development activities were carried out and application for Part Completion Certificate was submitted by Respondent vide letter dated 15.03.2011. A copy of the Application for Part Completion Certificate dated 15.03.2011 is annexed as "Annexure R-2". The Respondent Company issued Offer of Possession Letter dated 08.05.2012 to the Complainants along with the Demand Letter for Rs.3,87,279/- which also included stamp duty of Rs.78,993/- and registration charges of Rs.10,210/- falling due on 20.07.2012. A copy of the Offer of Possession Letter dated 08.05.2012 is annexed as "Annexure R-3". The Complainants got the plot in question through nomination on 19.03.2012 upon furnishing Affidavit and Indemnity Bond dated 24.02.2012. That the Complainants have



specifically stated that complainants agree to remain bound by the terms and conditions of the Plot Buyers' Agreement without any dispute demur or any account whatsoever. Now, complainants cannot legally take up disputes regarding the same at this belated stage. A copy of the Affidavit and Indemnity Bond dated 24.02.2012 is annexed as "Annexure R-4 (Colly)".

23. That, offer of possession dated 08.05.2012 is legal, since the project was for plotted colony. That all the development works including water supply, drainage, sewer lines, electricity lines, rainwater harvesting system and roads were completed as per the approved lay-out plan by March 2011 and part completion was applied for by the Respondent Company on 18.03.2011 and nothing remained to be done on the part of the Respondent Company. Photographs showing development on the spot as also construction in the vicinity of the plot No. 162 are annexed as "Annexure R-6". That the law is settled in this regard that for a plotted colony what is required to be seen before valid offer of possession is that whether the basic amenities as per the approved lay-out plan have been completed or not and the completion certificate qua the plotted colony is not required for offer of possession as the completion certificate is a matter between the Authority and the developer. That many of the plot-holders in the vicinity



of the Plot in question have already taken possession way back in the year 2012 and even raised construction of their houses.

24. That the real intention of the Complainants behind filing these complaints are to thwart the rightful claim of the Respondent Company towards the unjust and irrational refusal of the Complainants from taking the possession of the plot in question upon receipt of the offer of possession dated 08.05.2012, and reminders on 18.09.2012, 26.09.2012. Copies of the reminders dated 18.09.2012 and 26.09.2012 are annexed as "Annexure R-7 (Colly)". Thereafter, the letter dated 25.09.2013 was sent to Complainants mentioning the fact that the Learned Additional Civil Judge, Fatchabad has dismissed the suit titled "Smt. Neelam Kumari & Anr. v/s M/s Elegant Real Tech Pvt. Ltd". and the Stay Order regarding the 9.74 acres also does not sustain and now there remains no hindrance in taking the possession of the Plot. A copy of the Letter dated 25.09.2013 is annexed as "Annexure R-8". That the said refusal to take possession of the plot by the Complainants was solely based on the frivolous civil suit titled Smt. Neelam Kumari & others vs. Elegant Real Tech and others which was finally dismissed by the Learned Civil Judge. Thereafter, an interest waiver was offered vide letter dated 17.02.2014 to complainants which was followed by reminders dated 07.09.2017 and 09.01.2019. Copies of the letter dated 17.02.2014 and reminders dated 07.09.2017 and 09.01.2019



are annexed as "Annexure R-9 (Colly.)" It is also important to mention at the outset that the plot in question, i.e., Plot No. 162 measuring 290 yards did not form part of the alleged disputed land and there were no hindrance at all in taking the possession of the said plot by the complainants since all the development works were completed way back in the August 2011 and the same was certified by the Chief Engineer HUDA in its letter dated 16.08.2011. It is thus submitted that project in question was complete in all respects as certified by the Chief Engineer, Huda Panchkula vide letter memo No.10453 dated 16.08.2011 and no further development activity of any kind whatsoever or any other nature remained to be carried out or left out from being executed for the Plot in question.

25. That the letter dated 03.05.2018 issued by the DTCP to the respondent vide which part completion certificate was granted even in respect of land admeasuring 9.74 acres which was earlier a part of civil suit. Further, the objection now being raked up by the complainants regarding the same is devoid of any basis and a ploy to thwart the lawful claims of the respondent. A copy of the part completion certificate dated 03.05.2018 is annexed as "Annexure R-10".
26. That the complainants have conveniently withheld the information that an enquiry by the Learned Additional Deputy Commissioner, Fatehabad, was carried out and a report dated 12.04.2013 was submitted which was



entirely in favour of Respondent. A copy of the Report of Ld. Additional Deputy Commissioner, Fatehabad dated 12.04.2013 is annexed herewith as "Annexure R-11".

27. That upon receipt of offer of possession in May 2012, the Complainants kept quiet and never raised any objection or wrote any letter to the respondent disputing the validity of the offer of possession. The complainants remained silent and thereafter filed the complaints in the year 2021 which makes it amply evident that the Complainants are trying to take advantage of their own default which is not permissible in law.
28. Furthermore, 10% of the basic price was to be paid at the time of delivery of possession, as per Schedule of Payment annexed with the Plot Buyers' Agreement along with other payables as per the terms of the plot buyers' Agreement. But Complainants who entered into the shoes of the Original Allottee Sh. Sunil Kumar through endorsement dated 19.03.2012 upon furnishing Affidavit and Indemnity Bond dated 24.02.2012, and thereafter have become a defaulter against the terms of agreement the and did not pay heed to various reminders and notices sent by the answering Respondent.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT:

29. Learned counsel for complaint reiterated the basic facts of the case and stated that respondent made an initial offer of possession on 08.05.2012,



which is an illegal offer of possession as it was not accompanied by necessary approvals and documents from competent Authority. Respondent was granted conditional part completion certificate in respect of 42 acres of land (excluding 77K-19M of land therefrom). A copy of the part completion certificate dated 02.07.2015 from Director of Town & Country Planning, Haryana is annexed as "Annexure C-9". On land measuring 77K-19M, a civil suit titled as "Neelam Kumari & Ors.Vs Elegant Real Touch &Ors" was pending before the Civil Judge, Fatchabad wherein respondents vide order dated 06.11.2012 were refrained from further alienating the suit land till further orders. The said civil suit was dismissed on 19.7.2017. He submitted that the plot in question in compliant no. 89 of 2022 falls within the area measuring 77K-19M which was a subject matter of civil suit. Subsequently, on 03.05.2018, a part completion certificate (including area of 77K-19M) was obtained by respondent from competent authority. That even after receiving part completion certificate on 03.05.2018, respondent didn't make a fresh offer of possession to complainants. Learned counsel for complainants, apprised the Authority that respondent vide its reply dated 20.10.2021, claimed that certain sum was due from the complainants on account of holding charges. In the same letter, it was also claimed that a sum was due towards maintenance charges in respect of booked plot in captioned complaint. A



copy of this reply is attached as "Annexure C-19". He prayed to set aside the holding charges, since complainants are already paying maintenance charges.

30. Learned counsel for complainants in complaint no. 90 of 2022 and 91 of 2022 submitted that plots booked by complainants in these complaints doesn't fall in the area 77L-19M which was subject matter of civil suit. He further stated that during offer of possession made by respondent on 08.05.2012 and reminder letter dated 09.01.2019, respondent has nowhere mentioned anything regarding holding charges.
31. On the other hand, respondent prayed that cost imposed on respondent as per order dated 19.07.2023 of ₹5000/- payable to the Authority and ₹2000/- payable to complainants be dismissed, as respondent had already addressed all the details asked by the Authority in his reply. To which, Authority stated that respondent should have submitted the same in the form of affidavit within the prescribed time limits. However, respondent failed to do so. Therefore, respondent is liable to pay cost imposed by the Authority. He further prayed to dispose of the captioned complaint in similar terms as decided in Complaint No. 1506 of 2019 titled as "Anil Kumar versus Alpha Corp. Development Pvt. Ltd.", decided on 30.03.2021. He further stated that complainants had filed an application before Hon'ble Appellate Tribunal for stay in present proceedings,



however, no stay was granted by Hon'ble Appellate Tribunal. Learned counsel for complainants stated that order dated 30.03.2021 in compliant no. 1506 of 2109 is prima facie contrary to law as an offer of possession without completion certificate is illegal. Further with regard to appeals filed by the complainants, it was withdrawn by the complainants as certain negotiations were done by the parties.

F. ISSUES FOR ADJUDICATION:

- i. Whether or not the possession offered to complainants by respondent on 08.05.2012 is a legally valid offer of possession?
- ii. Whether the complainants are entitled for possession of the booked flat along with delay interest in terms of Section 18 of Act of 2016?
- iii. Whether the demand raised by the respondent towards holding charges is illegal and to be set aside or not?
- iv. Whether the amount already paid by complainants on account of maintenance charges is to be refunded or not?

G. OBSERVATIONS OF THE AUTHORITY:

32. The Authority has gone through the rival contention and the documents placed on record. It is admitted by both the parties that the complainants booked a plot no. 162, admeasuring 290 sq. yards. in the real estate project namely, "Alpha International City" located at Fatehabad, being developed by promoter, for basic sale consideration of ₹16,67,500/-. Plot buyer



agreement was executed between the respondent and the original allottee, i.e., Mr. Sunil Kumar on 29.01.2009. Subsequently, on 19.03.2012 the same was endorsed in name of present complainants with due permission of the respondent company.

33. In captioned complaints, complainants are aggrieved by the fact that respondent initially had offered possession of booked plot to complainants on 08.05.2012 which was not a valid offer of possession as firstly, respondent at that time had not possessed completion certificate from the competent Authority and secondly, the booked plot was a subject matter of civil suit on the date of offer of possession. Therefore, complainants were bound not to accept said offer of possession made in year 2012. Further, respondent had demanded huge amount on account of holding charges which are not payable by the complainants. Hence, the same should be set aside. Lastly, complainants have pleaded for relief of possession of booked plot and requested to quash the demand raised on account of holding charges imposed by the respondent and refund of maintenance charges already paid to respondent by the complainants.
34. On the other hand, respondent has orally as well as by filing reply, has objected to the maintainability of the complaint on following grounds:
- i. Respondent has taken objection that complaint is grossly barred by limitation. Reference in this regard is made to the judgement of Apex court



Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise.

"It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963." 20. In *Kerala State Electricity Board v. T.P*"

The promoter has till date failed to fulfill his obligations because of which the cause of action is re-occurring. RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not Courts.

- ii. Another objection taken by the respondent is that the provisions of RERA Act, 2016 cannot be applied retrospectively. Reference can be made to the case titled M/s Newtech Promoters& Developers Pvt. Ltd. vs. State of UP &Ors. Etc. (supra), wherein the Hon Apex Court has held as under:-

"41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee



for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.

45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest.

53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the 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 ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."

The provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the Rules applicable to the acts or transactions, which were in the process of the



completion though the contract/ agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

- iii. Further, respondent has objected that project in question has obtained part completion certificate in year 2015 for 42 acres. Rest 9 acre of land of the project was under litigation at that time. The said litigation was later on withdrawn and for rest of 9 acres also respondent has obtained Part Completion Certificate in the year 2018 from Competent Authority. For the said 9 acres, respondent had also obtained registration from HRERA, Panchkula on 23.10.2018, although all the development works were completed by respondent in year 2011. The issue as to where project shall be considered as "on-going project" has been dealt with and settled by the Hon'ble Supreme court in **Newtech Promoters and developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021** herein reproduced:

" 37. Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all "ongoing projects" that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while



imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority."

Wherein Hon'ble Apex held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects. Furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder.

35. In view of the aforementioned reasons, the present complaints are maintainable and the Authority has complete jurisdiction to adjudicate on the complaints.
36. As per Clause 9.1 of the agreement, respondent was under an obligation to deliver possession to the complainant within 18 months from the date of commencement of development works with a grace period of 90 days. However, neither complainant nor respondent has mentioned the exact date as to when development works in the project were initiated. Therefore, to calculate the deemed date of handing over of possession, Authority deems appropriate to calculate 18 months from the date of execution of the agreement. Therefore, 18 months from the date of execution of agreement, (i.e., 29.01.2009) comes out to be 29.07.2010. In addition, in complaint no.



91 of 2022, clause 9.1 of the agreement reads as “*the possession of the said plot shall be delivered by the owners/company of the allottee on completion of development works and subject to obtaining the necessary approvals from the authorities....*”. Unlike other complaints, this particular complaint does not specify the deadline by which the respondent was required to deliver possession to the complainant. Therefore, in this situation, Reference has been made to observation of the Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) and anr for reckoning the deemed date of possession 3 years from the date of booking. Therefore, the deemed date of possession in the present complaint is taken 3 years from the date of agreement i.e. 31.03.2011 which turns out to be 31.03.2014.

37. Further, it is observed that as per Section 11(4)(a) of the RERA Act 2016, the promoter shall be responsible for all obligations, (responsibilities) and function under the provisions of this Act or the rules and regulations made thereunder or to the allottees, as per the agreement for sale. In the present case, the complainants raised a dispute regarding the offer of possession made by the respondent on 08.05.2012, mainly on the grounds that a civil suit, titled as *Smt. Neelam Kumari & Others Versus Elegant Real Tech and Others*, was pending at that time. In the said civil suit, a stay was imposed on an area of 77K-19M of the respondent's project. Therefore, the



complainants consistently maintained that any offer of possession made during the pendency of the civil suit should be considered invalid.

38. However, it is important to note that only the plot booked by the complainants in *Complaint No. 89 of 2022* fell within the disputed area of 77K-19M, which was the subject of the civil suit. The plots booked by the complainants in *Complaint Nos. 90 and 91 of 2022* were outside this disputed area and were not subject to the litigation. Furthermore, the civil suit in question was eventually dismissed as withdrawn on 19.07.2017.
39. During the pendency of the said civil suit, respondent was granted a conditional part completion certificate (excluding the disputed area of 77K-19M) by the Director of Town and Country Planning, Haryana on 02.07.2015. Therefore, regardless of whether the complainants' land fell within the subject matter of the civil suit, it is clear that the offer of possession made by the respondent on 08.05.2012 was not accompanied by a valid completion certificate in any of the complaints. As a result, the offer of possession made on that date is declared invalid by the Authority. Subsequently, respondent was granted a part completion certificate with respect to the 77K-19M of the land on 03.05.2018. In consonance to the same, respondent sent complainants another letter dated 09.01.2019 stating that "*in reference to offer of possession letter dated 08.05.2012, you are requested to taken physical possession of your plot & registered the*



conveyance deed in your favour." Authority is of the view that the offer made by the respondent on 09.01.2019 is a legal offer of possession as by this time respondent had got the part completion certificate.

40. However, rather than promptly approaching the respondent company to accept the valid offer of possession, the complainants chose to remain silent from the year 2019 to 2021. When the respondent had already made a valid offer of possession on 09.01.2019, the complainants were legally obligated to accept this offer, as it was made following the issuance of the completion certificate and was free from any legal hindrances. By not responding to this offer, the complainants effectively neglected their duty to accept possession at the appropriate time. Instead of acting on the offer made on 09.01.2019, the complainants chose to send multiple emails to the respondent on 15.02.2021, 28.02.2021, 22.03.2021 and 21.03.2021 requesting the respondent to deliver possession of the booked plot. This delay in responding to the initial valid offer raises questions about why the complainants did not accept the offer when it was first made. The complainant's inaction during the period between January 2019 and early 2021 suggests that they missed the opportunity to formalize their acceptance of the offer when it was legally valid. As the offer made on 09.01.2019 was compliant with all legal requirements and the project was free of any disputes, the complainants should have promptly accepted it



rather than waiting and sending repeated follow-up emails. In light of such circumstances, Authority is of the view that that the offer of possession made by the respondent on 09.01.2019 is legally valid as offer was made after the completion certificate had been issued for the entire project, including the previously disputed area. Consequently, the complainants were expected to accept the offer of possession at that time.

41. Further, the respondent in his reply has relied upon the prior dismissal of complaint no. 1506 of 2019 titled as "*Anil Kumar versus Alpha Corp Development Pvt. Ltd.*", wherein the Authority on 30.03.2021 concluded that an offer of possession made on 08.05.2012 was legally valid. This was based on evidence, including letters from the Chief Engineer, HUDA confirming that development works were completed by 2011. The Authority noted that the complainants had failed to take possession for no valid reason and remained silent after receiving the offer of possession. Ld. counsel for respondent requested the Authority that captioned complaints should similarly be dismissed, as they involve similar subject matter and issue. However, the Authority in its view, distinguishes the earlier disposed complaint (1506 of 2019) from the captioned complaints (89, 90, 91 of 2022) by referencing the Supreme Court's judgment "*M/s Newtech Promoters and Developers Pvt. Ltd. v. State of U.P & Ors*". (Civil Appeal No. 6745-6749 of 2021) passed on 11.11.2021, wherein the Apex Court



laid down specific rules regarding the real estate sector, notably the requirement of a valid completion certificate for any offer of possession. The judgment established that any offer of possession made without a valid completion certificate is legally invalid as the completion certificate, issued by the competent authority, certifies that all essential services and infrastructure are completed and fit for possession. Without this certificate, the developer cannot legally transfer possession to the buyer. Authority is of the view that the judgment in Complaint no. 1506 of 2019 (*Anil Kumar v. Alpha Corp Development Pvt. Ltd.*) was passed by the Authority before the Supreme Court's landmark decision in *M/s Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. & Ors.* At that time, the rules surrounding the legality of offers of possession, particularly concerning the necessity of a valid completion certificate, were not as clearly established as they are now. Therefore, the Authority cannot rely on the previous dismissal as a basis to decide the current complaints.

42. However, the fact remains the same that complainants are insisting on possession of booked unit only and do not want to exist from the project. Further, respondent has made a considerate delay in offering a legally valid offer of possession to the complainant. Therefore, complainants have sought delay interest w.e.f. 29.07.2010, i.e., after expiry of 18 months from execution of the buyer agreement.



43. In the present complaint, the complainants intend to continue with the project and are seeking 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".

44. Complainants however are interested in getting the possession of the booked unit. They do not wish to withdraw from the project. In such circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the plot the allottee can also demand, and respondent is liable to pay, monthly interest for the entire period of delay caused at the rates prescribed. Hence, the Authority hereby concludes that the complainants is entitled for the delay interest from the deemed date, i.e., 29.07.2010 till the date on which a legally valid offer is made to them after obtaining completion certificate, i.e., 09.01.2019. 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;

45. Consequently, as per website of the State Bank of India, i.e., <https://sbi.co.in>, the Highest Marginal Cost of Lending Rate (in short MCLR) as on date, i.e. 11.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.75%.

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]

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".



A. In Complaint no. 89 of 2022

Authority has calculated the interest on total paid amount from the deemed date of possession i.e., 29.07.2010 till the date on which a legally valid offer is made to them after obtaining completion certificate, i.e., 09.01.2019 at the rate of 10.75% till, and said amount works out to **₹14,64,852/-** as per detail given in the table below:

Sr. No.	Principal Amount	Deemed date of possession (29.07.2010) or date of payment whichever is later	Interest Accrued till 09.01.2019
1.	₹1,50,125/-	29.07.2010	₹1,36,491/-
	₹1,00,000/-	29.07.2010	₹90,918/-
	₹12,32,500/-	05.04.2011	₹10,29,821/-
	₹2,98,076/-	20.07.2012	₹2,07,622/-
	Total= ₹17,80,701/-		Total- ₹14,64,852/-
2.	Monthly interest		₹16,258/-

Accordingly, the respondent is liable to pay the upfront delay interest of **₹14,64,852/-** to the complainants towards delay already caused in handing over the possession. Further, on the entire amount of **₹17,80,701/-** monthly interest of **₹16,258/-** shall be payable up to the date of actual handing over of the possession. The Authority orders that the complainants will remain liable to pay balance consideration amount to the respondent when an offer of possession is made to him.



B. In Complaint no. 90 of 2022

Authority has calculated the interest on total paid amount from the deemed date of possession i.e., 14.07.2010 till the date on which a legally valid offer is made to them after obtaining completion certificate, i.e., 09.01.2019 at the rate of 10.75% till, and said amount works out to **₹25,90,509/-** as per detail given in the table below:

Sr. No.	Principal Amount	Deemed date of possession (14.07.2010) or date of payment whichever is later	Interest Accrued till 09.01.2019
1.	₹49000/-	14.07.2010	₹44,767/-
	₹49000/-	14.07.2010	₹44,767/-
	₹11,88,450/-	05.04.2011	₹9,93,015/-
	₹49000/-	14.07.2010	₹44,767/-
	₹1,00,000/-	14.07.2010	₹91,360/-
	₹5,53,879/-	03.05.2012	₹3,98,524/-
	₹49000/-	14.07.2010	₹44,767/-
	₹2,72,550/-	14.07.2010	₹2,49,002/-
	₹3,70,388/-	08.05.2012	₹2,65,954/-
	₹37,937/-	25.09.2013	₹21,598/-
	₹14,500/-	14.07.2010	₹13,247/-
	₹5,26,879/-	03.05.2012	₹3,79,097/-
	₹32,60,583/-		₹25,90,865/-
2.	Monthly interest		₹29,770/-

Accordingly, the respondent is liable to pay the upfront delay interest of **₹25,90,865/-** to the complainants towards delay already caused in handing

over the possession. Further, on the entire amount of ₹32,60,583/- monthly interest of ₹29,770/- shall be payable up to the date of actual handing over of the possession. The Authority orders that the complainants will remain liable to pay balance consideration amount to the respondent when an offer of possession is made to him.

C. In Complaint no. 91 of 2022

Authority has calculated the interest on total paid amount from the deemed date of possession i.e., 31.03.2014 till the date on which a legally valid offer is made to them after obtaining completion certificate, i.e., 09.01.2019 at the rate of 10.75% till, and said amount works out to ₹20,68,203/- as per detail given in the table below:

Sr. No.	Principal Amount	Deemed date of possession (31.03.2014) or date of payment whichever is later	Interest Accrued till 09.01.2019
1.	₹4,25,000/-	31.03.2014	₹2,18,549/-
	₹4,91,250/-	31.03.2014	₹2,52,617/-
	₹4,50,000/-	31.03.2014	₹2,31,405/-
	₹7,40,000/-	31.03.2014	₹3,80,532/-
	₹4,93,874/-	31.03.2014	₹2,53,966/-
	₹4,80,883/-	31.07.2014	₹2,30,007/-
	₹5,00,000/-	29.05.2014	₹2,48,428/-
	₹5,00,000/-	30.04.2014	₹2,52,699/-
	Total= ₹40,81,007/-		₹20,68,203/-
2.	Monthly interest		₹37,260/-



Accordingly, the respondent is liable to pay the upfront delay interest of ₹20,68,203/- to the complainants towards delay already caused in handing over the possession. Further, on the entire amount of ₹40,81,007/- monthly interest of ₹37,260/- shall be payable up to the date of actual handing over of the possession. The Authority orders that the complainants will remain liable to pay balance consideration amount to the respondent when an offer of possession is made to him.

46. Further, complainants in their relief clause had prayed for quashing of holding charges demanded by respondent for plot in question. Perusal of documents, reveals that respondent demanded an initial amount of ₹3,52,163/- payable as holding charges from complainants vide letter dated 20.10.2021. Authority is of the view that since respondent has already charged maintenance charges from complainants from the date 28.02.2019 to 31.12.2021, so respondent cannot charge separately the holding charges from complainants, as complainants had booked a plot for which he is paying maintenance charges to respondent since 2019. It is noteworthy that the law is settled in this regard that in case of plotted colony, when basic amenities have been laid at the site, respondent charge maintenance for the same. In the present case, respondent is charging both holding charges as well as maintenance charges from complainants but has



failed to produce any documents or referring to any provision of PBA which differentiate the charges to be taken on account of maintenance and on account of holding charges. Further, to support this view, Authority refers to a judgment passed by the Hon'ble NCDRC in its order dated 03.01.2020 in case titled as *Capital Greens Flat Buyer Association and Ors. V. DLF Universal Ltd., Consumer case no. 351 of 2015* held as under:

*"36. It transpired during the course of arguments that the OP has demanded holding charges and maintenance charges from the allottees. As far as maintenance charges are concerned, the same should be paid by the allottee from the date the possession is offered to him unless he was prevented from taking possession solely on account of the OP insisting upon execution of the Indemnity-cum-Undertaking in the format prescribed by it for the purpose. If maintenance charges for a particular period have been waived by the developer, the allottee shall also be entitled to such a waiver. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, **the developer shall not be entitled to any holding charges** though it would be entitled to interest for the period the payment is delayed."*

The said judgment of NCDRC was also upheld by the hon'ble Supreme Court vide its judgment dated 14.12.2020 passed in the civil appeal nos.3864-3889 of 2020 against the order of NCDRC (supra).



Thus, in view of above, the respondent shall not charge holding charges from the complainants in the present case.

47. Lastly, complainants have prayed for refund of amount paid on account of maintenance charges. As it is clearly made out in the present case that possession offered by respondent on 09.01.2019 to complainants was a legally valid offer of possession, as Part Completion Certificate was already granted to the respondent with respect to the plots in question and all development works were complete at the site when possession was offered. Further, respondent had started charging maintenance from the complainants from the date 28.02.2019, i.e., after legally valid offer of possession was made to the complainants. Therefore, respondent has to maintain the site for which respondent will charge maintenance from the complainants. After completion of work at site complainants are also duty bound to take possession which in present case complainants have failed to take in the year 2019, therefore respondent has all the rights to charge maintenance from complainants to maintain the site.

H. DIRECTIONS OF THE AUTHORITY

48. 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. Complainants are directed to accept the offer of possession issued by the respondent on 09.01.2019 and take physical possession of the booked units from the respondent.
- ii. Respondent is directed to pay upfront delay interest as calculated in para 45 of the order to the complainants towards delay already caused in handing over the possession within 90 days from the date of uploading of the order.
- iii. Respondent is directed to quash holding charges as same cannot be charged along with maintenance charges.
- iv. Respondent is directed to get conveyance deed of plots of the complainants executed within 90 days of actual handover of possession of plot. In case, any amount is due on account of stamp charges, then respondent shall inform the same alongwith letter of actual handing over of possession.
- v. The rate of interest chargeable from the allottees by the promoter in case of default shall be charged at the prescribed rate, i.e., 10.75 by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.
- vi. The respondent shall not charge anything from the complainant which is not a part of agreement to sell.



49. These complaints are, accordingly, **disposed of**. Files be consigned to the record room after uploading orders in each case on the website of the Authority.



.....
Dr. GEETA RATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]