



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>2795 of 2023</b>
<b>Date of filing:</b>	<b>26.12.2023</b>
<b>Date of first hearing:</b>	<b>30.01.2024</b>
<b>Date of decision:</b>	<b>14.01.2025</b>

1. Mr. Naresh Kumar Sharma, S/o Jagdish Chander Sharma,
2. Mrs. Pratibha Sharma, W/o Naresh Kumar Sharma,  
Address: RZF-1013/13, Ambedkar Marg,  
Raj Nagar Part 2 Extension, Palm Colony,  
South West Delhi, New Delhi- 110077.

....COMPLAINANT(S)

VERSUS

M/s MG Housing Pvt. Ltd.,  
Address: G- 127, 12<sup>th</sup> floor, Himalayan House,  
23 Kasturba Gandhi Marg, New Delhi- 110001.

....RESPONDENT(S)

**CORAM:**

**Dr. Geeta Rathee Singh**  
**Chander Shekhar**

**Member**  
**Member**

*Geeta Rathee*

**Present:** Complainant no.1 in person, and on behalf of complainant no.2 as well.

Adv. Rohan Mittal, counsel for respondent, through VC.

**ORDER:**

1. Present complaint has been filed on 26.12.2023 by the complainants 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 plot booked by complainants, the details of sale consideration, the amount paid by the complainants and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Anandam Estate, Sector- 19 & 24, Dharuhera, district Rewari (Haryana)
2.	Plot no.	B-18 (block B)
3.	Area	150 sq. yards

*Rohan Mittal*

4.	RERA registered/ not registered	Lapsed Project Registration no. was- 49 of 2017.
5.	Date of Allotment	22.07.2019
6.	Date of Builder Buyer Agreement	07.08.2019
7.	Deemed date of possession	31.12.2019  <i>[As per clause 36, the developer undertakes to develop or complete the development of the said township latest by 31.12.2019, and obtains the occupancy certificate and on receipt of the same will offer possession of the plot to the buyer.]</i>
8.	Basic sale price	Rs.35,60,000/-
9.	Amount paid by complainants	Rs.28,72,000/-
10.	Offer of possession	Not made
11.	Occupation Certificate	Not issued

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

3. That Mr. Naresh Kumar Sharma and his wife Mrs. Pratibha Sharma are the co-allottees of the project of the respondent namely, "Anandam Estate" at Sector- 19 & 24, Dharuhera, district Rewari (Haryana). It is submitted that respondent lured them by making false claims that the site of the project is located in the fast developing part of Dharuhera on the main Dharuhera- Bhiwadi bypass and demand for the residential property

*[Signature]*  
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will obviously be huge due to the reason that the said township would be available for possession (within 5 months only) latest by December 2019 as all types of internal infrastructures are 100% complete and all statutory approvals including (electricity from DIIBVN according to latest guidelines) have already been obtained. Further, it was told by respondent that all government dues (like EDC/IDC) stood paid. Believing, such claims/assurance and commitments given by respondent through its marketing representative, complainants decided to purchase a unit and booked a plot bearing no. B -18, admeasuring approximately 150 Sq. Yards, located in Block B of the real estate project "Anandam Estate" for a total sale consideration of Rs. 35,60,000/- including Rs. 6,00,000/- for EDC/IDC, Rs. 75,000/- for club membership charges and Rs. 45,000/- for IFMS. Complainants paid an initial booking amount of Rs. 6,00,000/- to execute builder buyer agreement and register the same in Sub Tehsil - Dharuhera.

4. That complainants submit that after receiving the an initial booking amount of Rs.6,00,000/-, respondent had raised further demand of Rs.1,00,000/- against booking amount again which was again paid on 07.08.2019. By raising such demands, respondent has violated provisions of section 13(1) of the RERA Act, 2016, as such amounts added to more than 10% of the total sale consideration.



5. That allotment letter was issued on 22.07.2019 and on the same day, respondent created a further demand of Rs. 21,72,000/- which complainants paid on time i.e. on 22.07.2019 itself, however receipt was issued only on 20.08.2019. Further, it is submitted that the demands raised by the respondent was not in consonance with the development linked payment plan as mentioned in "Schedule C" of builder buyer agreement.
6. That it is submitted that complainants made timely payment as and when demanded by the respondent. Complainants, herein also applied for a home loan to the tune of Rs. 21,72,000/- for the respective unit and the same was accepted by the HDFC Sales. Respondent had also shared the permission letter to mortgage and NOC (Issued by PNB Housing Finance Limited to the Director of MG Housing Pvt. Ltd. - Respondent) with complainant's bank (HDFC) directly. It is further submitted that complainants were very surprised after they read this NOC - issued by PNB Housing Finance Limited to the Director of MG Housing Pvt. Ltd (Respondent) whereby respondent had sold him such plot on which he (Respondent) had already created a third party right. In this NOC, it's clearly mentioned by the PNB Housing Finance Limited ("PNBHFL") that -



*"PNB Housing Finance Limited ("PNBHFL") has no objection in your selling of the unit(s) as mentioned above of the captioned Project. The prospective buyers of the said units may avail housing loan from any Bank/financial institution. Further in this respect, we shall release our charge on such units of the project and will permit you to hand over the physical possession of the same to the prospective buyers and PNBHFL charge on the property/flats will be released only on full payment against the plot/flat/apartment".*

Complainants submit that as respondent or his authorized marketing representative neither disclosed expressly nor impliedly at the time of booking that the said plot had already mortgaged by them. Hence, this act of the respondent comes under unfair trade practice.

7. That it is submitted that respondents had taken approx. 80% of the total sale consideration within just 32 days of the date of booking the said plot without registering the BBA, thus acting in violation of section 13(2) of RERA Act, 2016. Builder buyer agreement was executed on 07.08.2019 against the total sale consideration of Rs.35,60,000/-, against which complainants have paid Rs.28,72,000/-. Copy of receipts has been attached at page no. 98-107 of the complaint book.
8. Further as per clause 36 of the builder buyer agreement, respondent was obliged to deliver the possession of the plot by 31.12.2019. As respondent had failed to give possession of the said plot as per builder buyer agreement, complainant had written an email to the respondent on



29.09.2021 and requested him to release offer letter of possession along with demand of the balance payment. However, respondent neither gave any response to this particular email nor gave possession letter of the said plot till date. It is further submitted that Mr. Aditya Gupta & Mr. Ajay Mangal - Directors of the respondent company had orally shared the following information many times during meeting at project site:

- a. That they still have to deposit EDC & IDC amount to the Department of Town & Country Planning;
- b. That they still have to get approval 33KV Bay from DIIBVN Ltd and also have to deposit his share cost;
- c. And that they requested complainants every times to give them to make an offer of possession.

However till date, respondent has failed to issue valid offer letter of possession along with certified copy of completion certificate, occupation certificate and all related documents which are essential as per RERA Act, 2016..

9. That as per section 11 (4) of the RERA Act, 2016, the promoter is liable to adhere to the terms and conditions of the agreement and also to pay delayed possession interest to the allottees of an apartment, building or

  
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plot for a delay or failure in handing over of such possession as per the terms and agreement of the sale.

10. That it is submitted that respondent simply duped the complainants of their hard earned money and life savings. The aforesaid arbitrary and unlawful acts on the part of respondent have resulted into extreme kind of financial hardship, mental distress, pain and agony to complainants. Hence, the present complaint has been filed (by the complainants) in order to seek possession of the said plot in question along with interest on the delayed possession along with the other reliefs as mentioned in the relief clause of the Complaint.

**C. RELIEF SOUGHT:**

11. In view of the facts mentioned above, the complainants prays for the following relief(s):-
- a) To direct the respondent to provide the actual physical possession of the respective plots along with copy of OC and other released documents as prescribed in RERA Act;
  - b) To direct the respondent to release the delay possession charge as per section 18 of RERA Act 2016 along with payment of Rs. 1,00,000/- on account of litigation charges, mental distress, pain and agony to the complainants;





- c) To impose penalty upon the respondent as per the provision of Section 61 of the RERA Act 2016 for the contravention of Section 12 and 13 (1) of the Act;
- d) To conduct the enquiry under section 35 of the Act against the respondent;
- e) To pass such direction, as may be deemed fit, under Section 37 & 38 of the act, toward giving effect to any one or more of the above sought relief;
- f) To pass any other relief as may deem fit and proper in the facts and circumstances of the present case.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT:**

Ld. Counsel for the respondent filed detailed reply on 05.04.2024 pleading therein:

12. That the respondent submit that since there is an arbitration clause in the agreement, the complainants without invoking arbitration proceedings should not be allowed to proceed with the present complaint. It is submitted that the relationship of complainants and respondent is defined and decided by the plot buyer agreement executed between the parties. A specific clause for referring disputes to Arbitration is included in the said agreement vide clause 81 of the agreement which is extracted hereunder:



*"81- All disputes, differences arising out of, in connection with or in relation to this transaction, which cannot be settled amicably, shall be finally decided by arbitration to be referred to sole arbitrator appointed mutually by the parties. The arbitration proceedings shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any modification/amendment made thereto".*

Hence, respondent submits that both parties are contractually bound by the above condition. Thus, in view of clause 81 of the Agreement, the captioned complaint is barred in accordance with law.

13. Further, as per agreement entered into between the parties, both have agreed upon their respective liabilities/ obligations and in case of breach of any of the conditions specified therein as such even assuming without admitting that the present complaint of the complainants is maintainable even then the complainants cannot claim reliefs which are beyond the compensation agreed upon by the complainants as enumerated under clause 66 of the agreement. In this view of the matter, the captioned complaint is not maintainable in law and is liable to be dismissed in-limine.
14. Further, respondent submits that as per clause 36 and 37 of the Agreement, it undertook to complete the development work of the project by 31.03.2019 with a grace period of six months. And as per clause 38 of the Agreement, if there is delay due to force majeure conditions or



- circumstances beyond the control of respondent, then it shall be entitled to a reasonable extension of time for offering possession of the plot.
15. Respondent submits that the construction of the project was stopped several times during the year 2018, 2019, 2020 and 2021 by the order of EPCA, HSPCB, NGT and the Hon'ble Supreme Court of India. Ban on construction caused irreparable damage to the delivery timelines and the real estate developers' finances as respondent was not able to undertake any construction work during the aforesaid period and the same was beyond the control of respondent. The delay, if any, in completion of the project is also attributable to the unprecedented situation being faced due to outbreak of COVID and the subsequent second wave, the effects whereof have been felt throughout the globe with the real estate industry being no exception. The force majeure event on account of COVID first occurred on 19.02.2020 pursuant to which the Government of India's procurement policy division issued an order no. F18/4/2020-PPD recognizing the outbreak of COVID pandemic as a force majeure event. Thereafter, on 11.03.2020, the World Health Organization declared that the COVID-19 outbreak be characterized as a pandemic. This was followed by the Government of National Capital Territory of Delhi invoking provisions of the Epidemic Diseases Act 1897 on 12.03.2020 which signified the existence of a public health emergency in NCT of Delhi. Subsequent thereof, even the Government of India announced its



decision under notification (No. 33-4/2020/NDM-1) dated 14.03.2020 to treat COVID-19 as a "notified disaster".

16. Respondent submits that the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula vide its Order dated 26.05.2020 had directed that the period from 25.03.2020 to 24.09.2020 shall be considered as "zero period" in respect all compliances or timelines specified under Real Estate (Regulation & Development) Act, 2016 ("Act") including but limited to deadline for completion of the Project. Besides the above, the I.d. Authority vide its another office order dated 02.08.2021, in view of unprecedented circumstances being faced due to second wave of COVID, had further extended the time by three (3) months from 01.04.2021 to 30.06.2021, considering COVID as a force majeure event. In view of above, the aforesaid period shall be excluded in computing the delay in completion of the project.
17. Besides in order to curb down the air pollution, the Environment & Pollution (Prevention & Control) Authority, has reviewed the urgent action that needs to be taken for the implementation of the Graded Response Action Plan (GRAP) vide it's notification dated EPCA-R/2020/L-38 dated 08.10.2020 and has imposed ban on the use of Diesel Generator set with effect from 15.10.2020, which has further led to delay in the construction being raised.



18. It is pertinent to mention herein that even after the order of the EPCA, HSPCB and the Apex Court, the respondent company has finished major portion of the development works. Respondent submits that it has faced challenges stemming from regulatory interventions, which have impacted the project's timeline and expenses.
19. That respondent submits that it has always kept complainants updated with respect to the development of surrounding area as well as of the project. Further it has also apprised complainants of the factors which are affecting the real estate industry. Moreover it is submitted that money received from the complainants/allottees has been utilized towards the development of the Project/Plot.
20. That it is further pertinent to mention here that during the last four years, real estate sector has seen several events which severely impacted the real estate sector. It is further pertinent to mention here that the work of the project is still going on, despite of the financial obstacles due to economic slowdown. It is most respectfully submitted that 90% of the construction cost is already being incurred as on date and major portion of the work has already been completed and the money paid by the allottees have only been utilized for construction of the project thus, it is not feasible for respondent to pay interest as sought for, since project is nearing completion and the same will cause severe loss to the Project and other



allottees who are eagerly waiting for the possession of their respective plot.

21. Further it is submitted that the dispute between the parties involves complicated questions of facts and law, which necessarily entails the leading of copious evidence. The issues raised by complainants cannot be addressed in a complaint before this Hon'ble Authority which follows a summary procedure. In this view of the matter, the complaint is liable to be dismissed.
22. That further, it is imperative to distinguish between legitimate concerns and frivolous demands. Respondent submits that it has acted in good faith throughout the course of this dispute and has diligently fulfilled its obligations under the Agreement. Therefore, complaint filed by complainants lacks merit and should be dismissed accordingly. It's essential to deter the proliferation of baseless legal proceedings, which only serve to drain resources and impede the progress of legitimate projects.
23. That it is submitted that respondent wishes to extend a fair offer to complainants, providing them with an option to exit the project and respondent is willing to offer a refund with 10% interest. The respondent company, being a customer-oriented organization is demonstrating such a manner to address the concerns of the complainants in a reasonable manner.



24. Thus, there is no cause of action that arose in favour of complainants and against the respondents, thus question of invoking jurisdiction of this Hon'ble Authority does not arise.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENTS:**

25. During arguments, the learned counsels for complainants and respondents reiterated the facts of the case as stated in para no.3-11 and in para no. 13-28 of this order respectively. For the sake of brevity, such facts are not repeated herein.

**F. ISSUES FOR ADJUDICATION:**

26. (i) Whether respondent has violated provisions of Section 13(1) of RERA Act, 2016?
- (ii) Whether complainants are entitled to relief of possession along-with delay interest for delay in handing over the possession in terms of Section 18 of Act of 2016?

**G. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT.**

**G.I. Objection raised by the respondent that complainants have acted in breach of agreement for non-invocation of arbitration.**

27. The respondent in its reply has submitted that the present complaint filed by the complainants is not admissible before this Hon'ble



Authority as this Authority does not have the jurisdiction to entertain the present complaint due to the fact that it has been specifically stated/mentioned in the buyer's agreement that all the disputes shall be referred to an arbitrator to be appointed as per provisions of Arbitration and Conciliation Act, 1996. In this regard, Authority is of the opinion that jurisdiction of the Authority cannot be fettered by the existence of an arbitration clause in the agreement as it may be noted that Section-79 of the Real Estate (Regulation and Development) Act, 2016 bars the jurisdiction of civil courts about any matter which falls within the purview of this Authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, Section-88 of the RERA Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the Authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly on *National Seeds Corporation Ltd. v. M. Madhusudhan Reddy and Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the Authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

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28. Further, in *Aftab Singh and Ors. v. Emaar MGF Land Ltd and ors.*, Consumer case no. 701 of 2015 decided on 13.07.2017, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

*"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short the Real Estate Act"), Section 79 of the said Act reads as follows-*

*"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*

*It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra) the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act*

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*56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated land of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section B of the Arbitration Act."*

29. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the application form, the Hon'ble Supreme Court in case titled as *M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629- 30/2018 in civil appeal no. 23512-23513 of 2017* decided on 10.12.2018 has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the Authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

*"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under*



*Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."*

Furthermore, Delhi High Court in 2022 in ***Priyanka Taksh Sood V. Sunworld Residency, 2022 SCC OnLine Del 4717*** examined provisions that are "Pari Materia" to Section 89 of RERA Act; e.g. S. 60 of Competition act, S. 81 of IT Act, IBC, etc. It held "*there is no doubt in the mind of this court that giving a purposive interpretation to sections 79, 88 and 89 of the RERA Act, there is no bar under the RERA Act from application of concurrent remedy under the Arbitration & Conciliation Act, and thus, there is no clash between the provisions of the RERA Act and the Arbitration & Conciliation Act, as the remedies available under the former are in addition to, and not in supersession of, the remedies available under the Arbitration & Conciliation Act.*" Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.



30. Therefore, in view of the above judgements and considering the provisions of the Act, the Authority is of the view that complainants are well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and Real Estate (Regulation and Development) Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this Authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondent stands rejected.

**G.II Objection raised by respondent that complainants cannot claim reliefs which are beyond the compensation agreed by complainants under clause 66 of the agreement dated 07.08.2019.**

31. Respondent submits in its reply filed on 05.04.2024 that as per agreement for sale dated 07.08.2019, both parties had agreed upon their respective liabilities/ obligations and in case of breach of any of the conditions specified therein as such even assuming without admitting that the present complaint of the complainants is maintainable even then the complainants cannot claim reliefs which are beyond the compensation agreed upon by the complainants as enumerated under clause 66 of the



agreement. Clause 66 of the agreement is reproduced for reference as under:

*"66. The developer shall abide by the time schedule for completing the development and handing over of the said plot to the buyer after receiving the completion certificate. In case the possession of the plot is delayed beyond the time lines as specified in the clause 36 infra, the developer will be liable to pay a penalty of Rs.50 per sq. yard per month for the delay of period after the grace period."*

32. Authority observes that RERA Act, 2016 came into force on 10.05.2017, whereas the agreement to sell in the present case was executed in the year 2019 meaning thereby that agreement for sale was executed subsequent to the enactment of RERA Act, 2016 and the Rules and Regulations made therein. Thus, agreement between the parties was executed after the enactment of RERA Act and its rules thereunder. It is pertinent to note that object behind the enactment of RERA Act was to ensure transparency and to protect the interest of consumers in the real estate sector. Section 18 of the Act provides for the rights of the aggrieved allottee in case possession of an apartment, plot or building is not handed over within the time period as stipulated in the agreement for sale. Proviso to Section 18(1) of the Act provides 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*. Thus, interest for delay



shall be paid as per the rate prescribed under the Act. Any clause in the agreement for sale which is in violation of the provision of the Act and is heavily loaded in favour of the respondent is arbitrary and bad in the eyes of law.

33. Authority observes that in present case, the agreement for sale was executed subsequent to the enactment of the RERA Act, 2016 and IRERA 2017. At the time of execution of agreement for sale dated 07.08.2019, respondent promoter was well aware of the Act, however it incorporated a compensation clause in the event of delay in handing over of possession that is heavily one-sided and loaded in favour of respondent. Nevertheless, such clause shall not affect the right of allottee to seek possession along-with delay interest in case of delay in offer of possession for the reason that if any clause that is inconsistent with the provision of the RERA Act, 2016, then as per Section 89, provisions of the RERA Act, 2016 shall have overriding effect. Thus, complaint for delayed possession is maintainable under provisions of RERA Act, 2016.

#### **II. OBSERVATION OF AUTHORITY:**

34. 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 that complainants booked plot no. B-18, having an area of 150 sq. yard in the project of the respondent namely, "Anandam Estate" located at Sector- 19 & 24,



Dharuhera, district Rewari (Haryana) by payment of Rs.6,00,000/- to respondent on 19.07.2019. Allotment letter was issued on 22.07.2019 and builder buyer agreement was executed between the parties on 07.09.2019. The total sale consideration of the plot was fixed as Rs. 35,60,000/- against which complainants have paid Rs.28,72,000/- till 2021.

**Issue no.1: Whether respondent has violated provisions of Section 13(1) of RERA Act, 2016?**

35. Complainants in their complaint have alleged that out of the total sale consideration of Rs.35,60,000/-, they have paid a booking amount of Rs.6,00,000/- on 18.07.2019 whereas builder buyer agreement was executed on 07.08.2019. Respondent in its reply has not disputed such payment of booking amount. On perusal of buyer's agreement dated 07.08.2019 annexed by complainant with complaint as well as respondent with its reply, it is apparent that amount of Rs.6,00,000/- stands paid to respondent on 18.07.2019.
36. Further, contents of the agreement and amounts mentioned therein are not disputed by the respondent. Complainants has averred that respondent had further raised the demand of amount of Rs.1,00,000/- against booking amount again which was paid on 07.08.2019 i.e. the date of signing of agreement for sale. Customer ledger at page no. 58 of the complaint book proves that amount of Rs.1,00,000/- was paid on 07.08.2019. However it



cannot be ascertained if the payment of Rs.1,00,000/- was accepted before the execution of agreement as the date of acceptance of Rs.1,00,000/- and agreement is the same.

37. Further complainant has alleged that on the date of issuance of allotment letter, i.e. on 22.07.2019, respondent created a further demand of Rs.21,72,000/- which was paid on the same day itself i.e. before the execution of agreement for sale. However, he submitted that receipt was issued only on 20.08.2019 i.e. after a month of payment. Authority observes that there is no proof that such payment was accepted by respondent before executing builder buyer agreement. Infact perusal of the customer ledger dated 20.08.2019 shows that this amount of Rs.21,72,000/- was accepted on 20.08.2019 i.e. after the agreement for sale.
38. However, Authority observes that Rs.6,00,000/- amounting to approximately 17% of the total sale consideration, was accepted by respondent before the execution of agreement for sale. Thus, there lies no ambiguity with respect to the fact that respondent had demanded and accepted more than 10% of the total sale consideration before execution of builder buyer agreement. It is reiterated that the agreement for sale in the present case was executed subsequent to the enactment of RERA Act, 2016 and Rules and Regulations made thereunder. Provisions of Section 13 had already come into play, and despite the same, respondent went





ahead and accepted amount over and above what is permissible under Section 13 of the RERA Act, 2016. Such an act and conduct of the respondent is a blatant violation of Section 13(1) of the RERA Act, 2016. Authority is not hesitant to state that such an act by respondent is a misadventure and a classic example of misuse of its superior position.

**Issue no.2: Whether complainants are entitled to relief of possession along-with delay interest for delay in handing over the possession in terms of Section 18 of Act of 2016?**

39. The facts set out in the preceding paragraph demonstrate that promoter has failed to complete the construction of the project within the time as agreed between the parties in the buyer's agreement. As per clause 36 of the builder buyer agreement dated 07.08.2019, respondent was obliged to deliver the possession of the plot by 31.12.2019. Now, even after a lapse of 5 years, respondent has not offered possession of the unit. Complainants, however, does not wish to withdraw from the project and are rather interested in getting the possession of his unit.
40. Though it is an admitted fact that offer of possession has not been made till date, nevertheless respondent in its reply has averred that as per clause 36 and 37 of the agreement, it undertook to complete the development work by 31.12.2019 with a grace period of 6 months. And further as per clause 38 of the agreement, if there is a delay due to force majeure



conditions or circumstances beyond the control of respondent, then it shall be entitled to a reasonable extension of time for offering possession of the plot. Furthermore, respondent has pleaded that its project was delayed due to occurrence of following force majeure circumstances;

- a. Stoppage of construction during the year 2018, 2019, 2020 and 2021 by the order of EPCA, HSPCB, NGT and the Hon'ble Supreme Court of India;
  - b. Outbreak of COVID 19 pandemic with lockdown imposed in 2021 and 2022.
  - c. The Environment & Pollution (Prevention & Control) Authority has imposed ban on the use of diesel generator set with effect from 15.10.2020, which has further led to delay in the construction being raised.
41. Respondent has pleaded that it is liable to get "6 months grace period" on account of provision in clause 36 and 37 of the agreement for sale. It is pertinent to mention that on perusal of clause 36 and 37 it can be discerned that there is no mention of grace period. Same is reproduced as under:

*"Clause 36. The developer had undertaken to develop or complete the development of the said township latest by 31.12.2019, and obtain the occupancy certificate and on receipt of the same will offer possession of the plot to the buyer.*



*Clause 37. In case there is a delay due to force majeure conditions (defined hereinafter) or circumstances beyond the control of the developer, the developer shall be entitled to a reasonable extension of time for offering possession of the Plot"*

Thus, both the clauses do not mention the word "grace period for 6 months", though it mentions the word "reasonable extension of time".

The word "reasonable extension of time" does not mean the word "grace period for 6 months". Therefore, Authority concludes that as grace period finds no mention in the clauses of agreement for sale as pleaded by respondent, it necessarily implies that it is not entitled to any grace period.

42. Now it is imperative to discern if reasonable extension on account of "force majeure circumstances" can be granted in favour of respondent. It is pertinent to mention here that the word "*force majeure*" for the purpose of claiming extension has been defined under explanation to Section 6 of the RERA Act, 2016. Same is reproduced as under:

*"For the purpose of this section, the expression "force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project."*

Further, respondent has pleaded that as per clause 37, it is liable for reasonable extension on account of "*force majeure circumstances*" which



are defined hereinafter in clause 74 of the agreement. Clause 37 and Clause 74 of the agreement is reproduced as under:

*"Clause 37. In case there is a delay due to force majeure conditions (defined hereinafter) or circumstances beyond the control of the developer, the developer shall be entitled to a reasonable extension of time for offering possession of the Plot.*

...

*74. "Force Majeure" means any event or combination of events or circumstances beyond the control of a Party which cannot be prevented, or cause to be prevented, and which adversely affects and makes it impossible to perform obligations under this Agreement, which shall include:*

- i) Acts of God, i.e. flood, earthquake, natural disasters or acts of like nature;*
- ii) War and hostilities of war, riots or civil commotion of a prolonged nature;*
- iii) Any event or circumstance analogous to the foregoing; and*
- iv) Any action/proceeding by the Government/statutory Authorities or judicial authority."*

43. On perusal of definition of "force majeure circumstances" as defined by respondent in its agreement for sale dated 07.08.2019 and as already defined under explanation to Section 6 of the RERA Act, 2016, it can be discerned that respondent has deviated from the definition as provided under RERA Act, 2016 by including any action/ proceeding by the government/ statutory Authority or judicial Authority. And as has been observed in the preceding paragraphs, if anything is inconsistent with the provisions of RERA Act, 2016, then as per Section 89 of the Act,



provisions of RERA Act, 2016 shall prevail and have an overriding effect. Thus, definition of force majeure circumstances incorporated in the agreement for sale by respondent is arbitrary and non-applicable to present complaint.

44. Now, on perusal of circumstances as pleaded by respondent to be force majeure circumstances, Authority observes as under:

a. Respondent has pleaded the fact that construction was stopped due to orders of EPCA, HSPCB, NGT and Hon'ble Supreme Court of India. It is pertinent to mention that any event that occurred before the date of signing of agreement shall have no bearing on the agreement for sale dated 07.08.2019 and respondent cannot be allowed benefit of such prior events. On perusal of direction dated 29.10.2018 issued by Environment Pollution (Prevention and Control) Authority, it can be discerned that such direction has no bearing on present complaint as it was issued prior to the execution of agreement for sale. Further, if we analyse directions passed by Environment Pollution (Prevention and Control) Authority dated 01.11.2019, 04.11.2019, 08.11.2019 and 11.11.2019 whereby construction activities were halted from 1.11.2019 to 14.11.2019, it can be concluded that such period of 14 days falls within the date of execution of agreement dated 07.08.2019 and deemed date of possession dated 31.12.2019. Authority observes that such directions are issued every year by competent Authorities/ boards



and same does not fall in the definition of "force majeure circumstance" as defined under RERA Act, 2016. Such event cannot be claimed as a force majeure circumstance as these are generally to be kept in mind while planning the development of the project. Furthermore, orders of NGT and Hon'ble Supreme court as pleaded by respondent have not been annexed or argued by respondent. Thus the same stands rejected. Therefore, the plea of force majeure on account of factors as mentioned above by respondent stands rejected.

- b. Next event claimed by respondent as force majeure circumstance is lockdown due to Covid 19 pandemic in 2021 and 2022. Bare reading of clause 36 makes it clear that due date of possession was 31.12.2019, whereas covid 19 lockdown was imposed later in the month of March, 2020, i.e. subsequent to the deemed date for handing over of possession. Now the question is if the respondent can be given concession of force majeure event as mentioned in clause 37 that occurred subsequent to lapse of stipulated time as provided in the agreement. In this regard, reference has been made to order of Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. vs. Vedanta Ltd & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020 dated 29.05.2020*, wherein Hon'ble Delhi High Court has dealt with the issue of delay in construction due to covid 19 and has observed that:



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

*... The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September, 2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself. "*

The Authority has adopted the same ratio of law and observes that respondent cannot be given the benefit of halt in work due to covid-19 pandemic as this force majeure event has occurred subsequent to the stipulated date for handing over of possession.

- c. Further ban imposed by Environment Pollution (Prevention and Control) Authority on use of diesel generator as pleaded to be a force majeure event was imposed on 15.10.2020. It is pertinent to mention that as observed in preceding paragraphs, such event occurred subsequent to the deemed date of possession, thus such event as a force majeure event stands rejected.



45. Thus, by merely pleading "force majeure conditions" without fulfilling its obligations, respondent cannot be allowed to take benefit of his own wrong. Therefore the plea of respondent to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected. Thus, Authority holds that deemed date of possession will be as decided in the agreement for sale i.e. 31.12.2019.
46. In these circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which the respondent is liable to pay, interest for the entire period of delay caused at the rates prescribed along-with possession. Respondent in this case has not made any offer of possession to the complainants till date. The Authority hereby concludes that the complainants are entitled for the delay interest from the deemed date, i.e., 31.12.2019 till date on which a valid offer is made. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

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

*Explanation.-For the purpose of this clause-*

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





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

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

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

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

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., 14.01.2025 is 11.10 %. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10 %.

47. Hence, Authority directs respondent to pay delay interest to the complainants for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and



Development) Rules, 2017, i.e., at the rate of SBI highest marginal cost of lending rate (MCLR) + 2 % which as on date works out to 11.10 % (9.10% + 2.00%) from the due date of possession, i.e., 31.12.2019 till the date of a valid offer of possession.

48. Authority has got calculated the interest on total paid amount from due date of possession, i.e., 31.12.2019 till the date of this order, i.e. 14.01.2025, which works out to ₹15,98,546 /- and further monthly interest of Rs. 27,075/- as per detail given in the table below. However it is made clear that complainants will be entitled for monthly interest till valid offer of possession, duly supported with payables and receivables as per RERA Act, 2016 and Rules of 2017, is made to the complainants by the respondent.

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 14.01.2025 (in ₹)
1.	6,00,000/-	2019-12-31	3,36,102/-
2.	1,00,000/-	2019-12-31	56,017/-
3.	21,12,000/-	2019-12-31	11,83,079/-
4.	12,000/-	2019-12-31	6,722/-
5.	48,000/-	2021-12-03	16,626/-
<b>Total</b>	<b>28,72,000/-</b>		<b>15,98,546/-</b>

*Rathee*

Monthly interest:	28,72,000/-		27,075/-
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### I. DIRECTIONS OF THE AUTHORITY

49. 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(I) of the Act of 2016:

(i) Respondent is directed to pay upfront delay interest of ₹15,98,546 /- (till date of order i.e. 14.01.2025) to the complainants towards delay already caused in handing over the possession within 90 days from the date of this order and further monthly interest @ ₹ 27,075/- till the offer of possession after receipt of occupation certificate.

(ii) Complainants will remain liable to accept possession as per provisions of Section 19 of the RERA Act, 2016 and pay balance consideration amount to the respondent at the time of valid possession offered to her.

(iii) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.



(iv) Penalty of Rs.1,00,000/- is imposed on respondent for violating provisions of Section 13(1) of the RERA Act, 2016. This penalty be deposited in the Authority within 90 days from the date of this order.

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



CHANDER SHEKHAR  
[MEMBER]



DR. GEETA RATHEE SINGH  
[MEMBER]

