



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>2995 of 2022</b>
<b>Date of filing:</b>	<b>10.11.2022</b>
<b>First date of hearing:</b>	<b>18.01.2023</b>
<b>Date of decision:</b>	<b>16.12.2024</b>

**Sanghmitra W/o Sh. Bijender**

House no.137, Shahpuriya, Jakhauli (37), Sonipat,  
Haryana-131023.

.....COMPLAINANT

Versus

- 1. Parker VRC Infrastructure Pvt. Ltd, through its Managing Director,**  
Regd. Address : #410, 4<sup>th</sup> floor, D-Mall, Netaji Subhash Place,  
Pitampura, New Ddelhi-110034.
- 2. Aakarshak Realtors Pvt. Ltd., Through its Managing Director**  
Regd. Address : #1332, D Sultan Singh Building, Behind BataShowroom,  
Kashmere Gate, Delhi-110006.
- 3. Javier Management ServicesPvt. Ltd, through its Managing Dircector**  
Regd. Address : Sector-62, Parker Mall, Village Rasoi, Kundli, Sonipat,  
Haryana.

.....RESPONDENTS

**CORAM: Nadim Akhtar**

**Member**

**Chander Shekhar**

**Member**

**Present:** - Mr. Ajay Gupta, Id counsel for complainant.

Mr. Gaurav Gupta, Id counsel for respondent no.1 and 2.

None present for respondent no.3.

**ORDER (NADIM AKHTAR-MEMBER)**

1. Present complaint has been filed by the complainants on 10.11.2022 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the RERA, Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

**A. UNIT AND PROJECT RELATED DETAILS**

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



S.No.	Particulars	Details
1.	Name of the project	"Parker VRC White Lily", at Sector-8, village Kumaspur, Sonipat, Haryana.
2.	Name of the promoter	Parker VRC Infrastructure Pvt. Ltd.
3.	Unit No. allotted	B-504, Tower B, 5 <sup>th</sup> floor
4.	Date of Builder Buyer Agreement	26.07.2013
5.	Due date of offer of possession	26.01.2017
6.	Possession clause in BBA	<b>Clause 6(i) :</b> <i>The Builder based on its present plans and estimates and subject to all exceptions, expect to complete construction of the said project and offer to make possession of the said Flat (s) to the Buyer within a period of 42 months from the date of signing of this agreement with a grace period of 6 (six) months subject to delays due to non availability of construction materials and labuors, or delay in payment of instalments by Buyers of other flats and /or delay due to force majeure conditions and reasons beyond control of the Builder in which case time for completion shall be deemed to reasonably extended. However if the construction is completed earlier, the possession thereof</i>



		<i>can be delivered even earlier. The objections of the Buyer in this regard shall not be tenable.</i>
7.	Total sale consideration	₹47,07,350/- as per Annexure-1 (Schedule of Payments)
8.	Amount paid by complainant	₹5,49,637/-
9.	Offer of possession	Given on 15.04.2019

## B. FACTS OF THE COMPLAINT

1. Case of the complainant is that complainant had applied for a flat in project namely; "White Lily" being developed by respondent M/s Parker VRC Infrastructure Pvt. Ltd at Sector-8, NH-1, Village Kamaspur, Sonipat, Haryana in the year 2013 and respondents allotted flat no. B-504, 5<sup>th</sup> floor having super area 160.26 sq. mt. in the said project of the respondents.
2. That complainant made the payment of ₹2,50,00/- vide cheque no. 378876 dated 04.02.2013 and ₹2,99,637/- vide cheque no. 345686 dated 26.03.2013 to the respondents and respondents issued receipts dated 04.02.2013 and 26.06.2013 with regard to the said payments. Copies of receipts are annexed as Annexure C-3.
3. Thereafter Builder Buyer Agreement (BBA) was executed between the parties on 26.07.2013 in which the total sale consideration of ₹37,70,850/- was mentioned (as per pleadings). Complainant made



total payment of ₹5,49,637/- against the total sale consideration. Copy of builder buyer agreement is annexed herewith as Annexure C-1.

4. That after that complainant had suffered huge financial losses, due to that complainant failed to make timely payment to respondents. For showing her bona-fide complainant approached the respondent officials and made verbal request that she will clear her account at the time of possession of above mentioned flat.
5. That between the periods of 2015-2020 no effective communication was initiated by the respondent and only verbal assurances were given by the respondents. Officials of respondents did not asked for pending Principal amount/ dues from complainant till the date of possession. Also as per the agreement, respondents made a commitment to complete the aforementioned project by stipulated time. As per Clause 6.1 of aforesaid agreement, respondents had agreed to handover the possession within 42 months from the date of signing of agreement to sell with a grace period of 6 (Six) months. Due to this reason complainant did not approach the respondent till the year of 2020 and the complainant was not even aware about the updates of construction of the project. However till date, the possession of the aforesaid flat has not been delivered to complainant.
6. That on 12.10.2021, respondent No.3 sent a letter to complainant for waiver of interest on payment of outstanding maintenance charges in



respect of unit in White Lily No. B-504, a copy of said letter is annexed as Annexure C-4.

7. Thereafter on 23.04.2022 respondent No.3 again sent a letter to complainant (Rebate on Unpaid Maintenance Charges Unit No. B-504) for seeking maintenance and electricity charges, stating that *"In case you will clear your outstanding dues towards maintenance charges on or before 15th May 2022, Rebate will be given at the Discretion of the Company."* A copy of said letter is annexed as Annexure C-5.
8. Complainant had requested for getting possession of concerned flat through personal visits, verbal request but the same had fallen on the deaf ears. That after receiving the letters from respondents, complainant approached the officials to show her willingness to clear her all pending dues and to discharge all the liabilities with respect to above mentioned flat. For that sole purpose, complainant submitted representations dated 12.09.2022 and 20.09.2022 to officials of respondents. The said letters were sent through registered post. Copies of said representations along with postal receipts are annexed herewith as Annexure C-6.
9. That Complainant got astonished to see the reply dated 03.10.2022 of her representations dated 12.09.2022 & 20.09.2022 by the respondents, which states that the company has cancelled her booking



of Unit No. B-504 in white Lily Project, situated at Sector-8, Sonipat, Haryana, vide letter dated 07.08.2022. A copy of same is annexed as Annexure C-7.

10. That respondents failure to handover the assured returns/ interest on the amount deposited by the complainant against the flat is a violation of Section 18 of the RERA Act, 2016.
11. That respondent failure to pay the assured returns as promised to the complainant, on the basis of which the complainant purchased and deposited the part amount against the concerned flat, is violation of section 11(4) & 12 of the Act. Therefore, complainant approached this Authority for her grievances.

### C. RELIEFS SOUGHT

12. Complainant has sought following relief :

- (i) To direct the respondents to handover the possession of concerned flat to complainant after deduction of compensation that complainant is entitled for.
- (ii) To direct the respondent to hand over the complainant the balance/ pending amount of Assured Returns with interest.
- (iii) To impose penalty on respondent for not complying with the necessary mandate of the various provisions of the RERA Act, Rules as well as Regulations, interalia.



**D. REPLY ON BEHALF OF RESPONDENT**

13. As per reply dated 12.04.2023, following submissions have been made by the respondent :

- (i) That the complainant does not fall under the definition of Allottee as per section 2(d) of the Act. It is pertinent to mention here that the complainant is a subsequent purchaser of the unit in question as the booking was originally made by M/s Dhyan Buildtech Pvt. Ltd. on 04/02/2013 under construction linked payment plan and unit B-504 situated at White Lily, Sector-8 was allotted thereupon. As such the said unit was transferred in favour of the complainant in the year 2013 in the capacity of subsequent purchaser. Therefore, present complaint is not maintainable in the present form and also there is no locus standi to the complainant to file this complaint. The complainant has unnecessarily dragged the answering respondents into an unwarranted litigation and as such the answering respondents are also entitled for compensatory costs from the complainant.
- (ii) That the complainant is an investor and entered into builder buyer agreement in respect of the unit in question in order to earn profits by selling off the same after fetching good premium from the market. But as the Real Estate market was not giving good returns at the relevant time, the complainant kept mum during the entire period and





did not respond to any reminders, letters and legal notices of the answering respondents. Now when the allotment of the complainant has been cancelled and sold off to third party and real estate market is giving good returns, the complainant by concocting a story that earlier she was having financial crunches and now she is ready to pay the amount. This averment of the complainant is admitted fact that she has defaulted in complying with the payment schedule and herself acted in breach of the terms and conditions of the Builder Buyer Agreement. It is a well settled principle of law that one who does not do equity cannot expect equity in her favour. As such, the complainant is not entitled to seek any relief from this Hon'ble Authority qua the Answering Respondents. Hence her complainant is liable to be dismissed.

- (iii) That since the day of allotment of the unit in favour of the complainant, the complainant has paid only an amount of Rs.5,49,637/- against the said booking and that too last payment was made in the year 2013. The complainant was aware that as per the Builder Buyer Agreement dated 26/07/2013, the complainant is required to make timely payments as per construction linked payment plan. For this very reason, the complainant also applied for home loan amounting of Rs.26,09,359/- from Axis Bank and also supplied copy of sanction letter dated 21.09.2013 to the answering



respondents but the complainant out of mala-fide and ulterior motives did not proceed further with the booking made with the answering respondents. The copy of Loan Sanction Letter dated 21/09/2013 is attached as Annexure-R1.

(iv) That answering respondents, served letter dated 11/07/2017 and legal notices dated 30/08/2017 to the complainant, but the complainant did not make any payment despite verbal requests and written demands of the answering respondents. On the other hand, the answering respondents, despite default on the part of the complainant, continued with the construction of the project by arranging funds and completed the project in the year 2018, which is evident from the fact that the Project "White Lily" of the answering respondents has received Occupancy Certificate dated 07/03/2019 from the Directorate of Town and Country Planning, Chandigarh. The copies of letter dated 11/07/2017, Legal Notice dated 30/08/2017 and Occupation Certificate dated 07/03/2019 are attached as Annexure-R2 to R4.

(v) That the answering respondents, despite material default of non-payment by the complainant made an offer of actual physical possession of the unit vide letter dated 15/04/2019 subject to payment of remaining amount along with interest towards the booking. But the complainant, despite receipt of all the offers and



reminder letters, did not come forward to contact the answering respondents. It is clearly visible from the act and conduct of the complainant that she was never interested in continuing with the booking but now has approached this Hon'ble Authority to seek relief against the answering respondents out of mala-fide and ulterior motives, to cause undue financial losses to the answering respondents. Copy of letter dated 15/04/2019 is attached as Annexure-R5.

- (vi) That the complainant continuously defaulted in making payments from 2013 to 2022 and kept on ignoring the demand letters and legal notices sent by the answering respondents. That vide letters dated 24/01/2020, 20/02/2020 and 10/06/2020, the answering respondents again gave final opportunity to the complainant to clear her dues. But complainant remained deaf and dumb towards the repeated requests and demands. Finally respondents were left with no other option but to cancel her unit and cancelled the same vide letter dated 07/08/2020 and forfeited the amount deposited by her as per the terms of the agreement. After cancellation, the unit has been sold out by the answering respondents because a huge amount has been spent by the answering respondents to construct the unit and as such the complainant by depositing a meagre amount in the year 2013 cannot become entitled to hold the unit in her name forever and cause



irreparable losses and injuries to the answering respondents. The copies of letters dated 24/01/2020, 20/02/2020, 10/06/2020 and 07/08/2020 are collectively attached as Annexure-R6.

- (vii) That correspondence address of the complainant is same since the beginning. Despite having every knowledge of cancellation of her unit vide letter dated 07.08.2020 complainant has deliberately sent letter dated 20.09.2022 in order to create some fishy evidence. However, the opposite party replied to letter dated 20.09.2022 vide reply letter dated 03.10.2022.
- (viii) It is denied that the total sale consideration of the unit is Rs.37,70,850/-. It is submitted that car parking charges of Rs.2,00,000/- club membership charges Rs.75,000/- Power Backup 3KVA Rs.75,000/-, EDC/IDC Rs.5,00,250/- PLC park facing Rs.86,250/- form part of total amounting to Rs.47,07,350/-. It is further denied that the complainant has made a hoping amount of Rs.5,49,637/- for purchase of unit in White Lily project of the respondent in 2013. That Rs.5,33,161 + Rs.16476 tax has been deposited by the complainant in 2013.
- (ix) Furthermore, as per the terms and conditions of the agreement, the amount deposited by the complainant has been forfeited by the answering respondents on account of continuous default of terms and conditions of the agreement by the complainant. Therefore, the



complainant is not entitled for any possession and refund with interest. The present complaint deserved to be dismissed with heavy costs, in the interest of justice.

- (x) That the plea of the complainant that complainant suffered financial crunch did not holds good as complainant availed loan which is evident from the Loan Sanction Letter dated 21/09/2013 supplied by the complainant to the answering respondents.
- (xi) It is denied that between the periods of 2015- 2020 no effective communication was initiated by the respondent and only verbal assurances were given by the officials of answering respondents and that answering respondents did not ask for pending principal amount/dues from complainant till the date of possession. In reply, it is submitted that repeated verbal and written demands were sent to the complainant. When the complainant failed to make payments, Legal Notice dated 30/08/2017 and 12/09/2019 (Annexure- R7) were also sent to the complainant to clear her outstanding dues. Offer of possession letter dated 15.04.2019 has also been sent to the complainant but the complainant has not cleared the dues.
- (xii) Letter dated 24/01/2020 for Conveyance Deed has been sent to the complainant. Letters dated 20/02/2020 and 10/06/2020 for cancellation and forfeiture notice were sent to the complainant. Vide final letter dated 07/08/2020, the unit was cancelled. The amount



deposited by her has been forfeited as also detailed in the above-mentioned paras of this reply. After cancellation of unit, the complainant is left with no right and interest in the unit and is not entitled to seek any relief against the answering respondents.

(xiii) That the complainant cannot take undue advantage of the clause no. 6.1 of the agreement as the agreement is not in force after cancellation of her unit. It is denied that the complainant was not even aware about the updates of construction of the project.

(xiv) All the letters and legal notice sent by the answering respondents with this reply are sufficient to demolish her false case and falsify the story concocted by the complainant.

(xv) That respondent no. 3 is a maintenance company and may have sent the letter in routine manner to the unit holders. That the complainant is relying upon two letters dated 12/10/2021 and 23/04/2022 sent by respondent no.3. These letters have no effect on the rights of the complainant qua the answering respondents and are null and void, as the allotment of unit no. B-504 in White Lily Project in favour of the complainant has been cancelled by the answering respondents vide its letter dated 07/08/2020 which is also well within the knowledge of the respondent No.3. Any letter issued by the respondent No.3 does not affect any rights or liability of the answering respondents

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and does not create any cause of action qua the answering respondents to the complainant.

- (xvi) The letter /representation dated 12.09.2022 and 20.09.2022 are just to cover up her own defaults in making payment which led to cancellation of the unit of the complainant. That the fact of cancellation of her unit is very much in the knowledge of the complainant vide the letter dated 07/08/2020 as both letters dated 07/08/2020 and 03/10/2022 were sent to the same address of the complainant. It is pertinent to note that the letter was served on the same address as mentioned by the complainant in Memo of Parties of the complaint. The complainant cannot accept or deny receipt of letters sent by the answering respondents according to her convenience.
- (xvii) That the complainant has cooked up a false story which is very evident from the fact self-admitted by her that due to financial setback she requested the answering respondents that she will clear account at the time of possession so no effective communication was initiated by the respondents. For the sake of submission even her averment be treated as true then also after offer of possession letter dated 15/04/2019, the complainant did not come forward to clear the outstanding due amount. The complainant is herself a defaulter in payments and now she is claiming benefit of section 18 (interest) of



the RERA Act 2016. The complainant has filed this present false complaint just to extort money from the respondents.

(xviii) It is denied that assured returns have been promised to the complainant on the part amount.

(xix) The issues raised by the complainant are wrong and denied. It is submitted here that unit of the complainant has been cancelled vide letter dated 07.08.2020 and despite having knowledge of the same, complainant has filed present complaint by manipulating and distorting the facts before this Authority.

**E. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANT AND RESPONDENTS**

14. Ld. counsel for the complainant reiterated the facts of the complaint and stated that complainant want possession of the unit and ready to make rest of the payments against the total sale consideration of approximately 47 lakhs. Further, no relief is claimed with regard to assured amount.

On the other hand, ld counsel for the respondent reiterated the facts of the reply. He further stated that as per the terms and conditions of the builder buyer agreement amount has been forfeited and no amount remains to be refunded on the part of the respondents.

After hearing both the parties, Authority put specific query to the complainant whether complainant made any communications with the





respondent after issuance of offer of possession and cancellation notice issued by the respondent way back in year 2019 and 2022. To this, Id counsel for complainant stated that complainant made representations vide letters dated 12.09.2022 and 20.09.2022 and visited the office of the respondent. Further, he stated that complainant did not received any letters from the respondent side and only letter dated 12.10.2021 and 23.04.2022 were received from M/s Javier Management Services Pvt. Ltd, i.e, respondent no.3. To rebut this, Id counsel for respondent no.1 and 2 stated that all the letters were issued to address provided by the complainant and to support this postal receipts are also attached with the letters annexed.

#### **F. ISSUE FOR ADJUDICATION**

15. Whether the complainant is entitled for possession of the flat in terms of Section 18 of RERA, Act of 2016?

#### **G. OBSERVATIONS AND DECISION OF AUTHORITY**

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

- (i) With respect to the objection raised by the respondent that complainant herein is an investor, it is observed that the the complainant herein is the allottee/homebuyer who has made a



substantial investment from her hard earned savings under the belief that the promoter/real estate developer will handover possession of the booked unit in terms of buyer's agreement dated 26.07.2013 but her bonafide belief stood shaken when the promoter failed to handover possession of the booked flat. At this stage, complainant has approached this Authority for seeking possession of the flat in terms of provisions of RERA Act,2016 being allottee of respondent-promoter. As per definition of 'allottee' provided in clause 2(d) of RERA Act,2016, present complainant is duly covered in it and is entitled to file present complaint for seeking the relief claimed by her. Clause 2(d) of RERA Act,2016 is reproduced for reference:-

*"Allottee-in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter and includes the person who subsequently acquires the said allotment through sale, transfer, or otherwise but does not include a person to whom such plot, apartment or building as the case may be, is given on rent".*

Complainant has been allotted flat in the project of respondents by the respondents itself and said fact is duly revealed in builder buyer agreement dated 26.07.2013. Also, the definition of allottee as provided under Section 2 (d) does not distinguish between an allottee



who has been allotted a flat for consumption/self utilization or investment purpose. So, the plea of respondent to dismiss the complaint on the ground that complainant herein is investor does not hold merit and same is rejected.

(ii) Admittedly, flat in question was initially booked by M/s Dhyan Buildtech Pvt. Ltd by paying an amount of ₹2,50,000/- and said flat was transferred in name of the complainant on 04.02.2013 which is revealed from the receipt attached at page no.40 of the complaint. After that, complainant made payment of ₹2,99,63/- vide cheque and respondents issued receipt dated 26.06.2013 which is attached as Annexure C-3. Builder buyer agreement was executed between the complainant and respondents on 26.07.2013 with respect to flat no. B-504 having super area of 160.26 sq. mtr. on 5<sup>th</sup> floor in the project namely "Parker VRC White Lily", at Sector-8, village Kumaspur, Sonipat, Haryana. Complainant in her pleadings alleges that total sale consideration was ₹37,70,850/- whereas respondent alleges that it was agreed at ₹47,07,350/-. In this regard Authority deems it fit to take into considerations the relevant clauses of the builder buyer agreement, which are as follows:

*Clause 1.3 The Buyer hereby agrees and confirm that basic sale consideration amount for the said Flat is exclusive of EDC, IDC, all taxes, duties, levies on the inputs/purchases of the Builder i.e. VAT, Work Contract Tax, Surcharge,*



*Service Tax, Labour Cess, Education Cess or any other tax levied or to be levied, by whatever name called in relation to the construction or sale of the said Flat or the said project or any related or incidental activities. The cost of taxes mentioned above shall be charged proportionately. It is agreed that the basic sale consideration is subject to revision if the cost of raw material and labours increased significantly beyond normal inflation.*

*Clause 1.4 The Buyer shall also liable to pay car parking charges, club membership charges, preferential location charges (PLC) to the Builder as per the rates and charges as detailed in Annexure-I. The said charges are mandatory and reserved parking shall only be provided in the covered parking area. If buyer need any additional car parking space, the same shall be provided in open or covered parking area subject to availability and subject to such rates as fixed by builder.*

*Clause 1.5 The Buyer shall also pay allied charges towards cost of installation of electrical connection charges, lifts, elevators, electrical installations and fittings, fire fighting equipments, sanitary and water fittings and other equipments installed of capital nature in relation to the said project at such rates as decided by the builder.*

On conjoint readings of the above-mentioned clauses and further perusal of Schedule of payments annexed as Annexure I with builder buyer agreement at page no.38 of the complaint, Authority observes that complainant opted for construction linked plan and complainant herself agreed to pay basic sale consideration of ₹37,70,850/- which is exclusive of PLC, Club membership charges, car parking and other charges. That means parties themselves agrees in consonance with



the builder buyer agreement dated 26.07.20113 that total sale consideration of the flat will be ₹47,07,350/-.

- (iii) As per clause 6(i) of the builder buyer agreement dated 26.07.2013, respondent was under an obligation to hand over possession of the flat within 42 months from the date of signing of the builder buyer agreement. That means, deemed date of for handing over of possession comes to 26.01.2017. It is matter of fact that complainant made payment of only ₹5,49,637/- towards the sale consideration till 2013 before the deemed date occurs. Thereafter, no communications took place between the parties from the year 2013 till deemed date of possession, i.e, 26.01.2017. After deemed date of possession, respondents issued notice to pay the outstanding dues on 11.07.2017 to the complainant mentioning that construction activity is going in full swing at the project and shall be completed very soon and requested the complainant to pay the outstanding dues towards the flat. Respondents sent legal notice dated 30.08.2017 to the complainant mentioning that as per the clause 7(i) of the builder buyer agreement complainant was under an obligation and agreed to make timely payment. It is also mentioned in the said notice that complainant is liable to pay ₹61,86,774/- towards outstanding amount and interest thereupon failing which respondents have right



to cancel the allotment/booking and forfeit the earnest money which is 15% of the consideration amount.

- (iv) On 07.03.2019, respondents received the occupation certificate which is annexed as Annexure R4 from the concerned department and thereafter, respondent issued offer of possession to the complainant on 15.04.2019. Meaning thereby, said offer of possession is valid offer as per the terms and provisions of RERA Act of 2016. Respondents issued letter dated 24.01.2020 requesting the complainant to clear the holding charges and get the conveyance deed executed. On 20.02.2020 and 10.06.2020, notices titled as "Cancellation and Forfeiture Notice" were issued giving final opportunities to the complainant to clear the outstanding dues to avoid cancellation of flat and final cancellation notice dated 07.08.2020 was issued titled as "*Forfeiture notice on account of non payment of dues in accordance with builder buyer agreement dated 26.07.2013 executed between the you and company*".

Despite giving so many reminders, opportunities and not receiving any communications from the complainant side, respondent issued final letter dated 03.10.2022, mentioning that unit stood cancelled after the lapse of time given in letter dated 07.08.2020 and requested the complainant to return and submit the original builder buyer



agreement, original receipts and allotment letters to company/respondents.

- (v) Authority during the course of hearing asked specific question to the complainant as to what communications were made by complainant after passing of deemed date of possession, i.e, 26.01.2017 or offer of possession dated 15.04.2019 till filing of the captioned complaint, i.e, on 10.11.2022.

To, this ld counsel for complainant stated that he had no correspondences with the respondents till 2020. However, after receiving letter dated 12.10.2021 for waiver of interest on payment of outstanding maintenance charges in respect of unit and letter dated 23.04.2022 issued by the respondent no.3 regarding rebate on unpaid maintenance charges for the unit, complainant had requested for getting the possession of the concerned flat through personal visits and also made representations vide letters dated 12.09.2022 and 20.09.2022 showing complainant's willingness to clear the outstanding dues and discharge all the liabilities with respect to the flat.

Stand of ld. counsel for respondent no.1 and 2 regarding issuance of letter by respondent no.3, i.e, maintenance agency is that maintenance agency may have sent the letters in routine manner to the



unit holders. However, letters dated 12/10/2021 and 23/04/2022 sent by respondent no.3 have no effect on the rights of the complainant because respondent no.1 and 2 had already cancelled the unit of the complainant vide its letter dated 07/08/2020 which is also well within the knowledge of the respondent no.3 and therefore said letters are null and void. Any letter issued by the respondent no.3 does not affect any rights or liability of the respondent no.1 and 2 and does not create any cause of action qua the answering respondents to the complainant.

In this regard, Authority observes no communications were made by the complainant with the respondents between the year 2013 till 2022. It is only when the respondent no.3 issued letters dated 12.10.2021 and 23.04.2022 to the complainant, complainant made representations vide letters dated 12.09.2022 and 20.09.2022 with respondents. In reply to said representations of the complainant, respondents issued letter dated 03.10.2022 informing the complainant that unit of the complainant is cancelled and to collect payment of balance amount, after forfeiture, if any. It is pertinent to mention here that present complaint is filed on 10.11.2022, that is after receiving the cancellation notice from the respondent. Complainant did not take any steps nor raised any objection regarding the alleged cancellation. At that time complainant had the cause of action against the





respondent and she could have approached the appropriate forum then only, however, complainant chooses to remain silent from date cancellation.

- (vi) As per the terms and provisions of the agreement it is the duty of buyer to comply with the terms of payment and other terms and conditions of agreement. In case buyer defaults in making timely payment and commit breach of any other terms and conditions, respondent has agreed to forfeit the 15% of basic sale price. In present case, builder buyer agreement was executed prior to coming into force of Real Estate (Regulation and Development) Act of 2016, therefore, terms and conditions of the agreement will prevail. As per terms and conditions of agreement buyer/complainant defaulted in making payments without any justifiable reasons. Further reliance can be placed on clause 2 of the agreement which deals with Earnest Money. Relevant clause is reproduced for reference:

*Clause 2 The Buyer has entered into this Agreement on the condition that out of the amount(s) paid/payable by him/her for the said Flat, the Builder shall treat 15% of the Basic Sale price as earnest money to ensure fulfillment by the Buyer of the terms and conditions as contained in the application and this Agreement.*

*The Buyer hereby authorizes the Builder to forfeit out of the amounts paid/payable by him/her, the earnest money as aforementioned in the event of the failure of the Buyer to perform his/her obligations or fulfill all the terms and conditions set out in*



*this Agreement executed by the Buyer including but not limited to the occurrence of any event of default as described in this Agreement or in the event of failure of the Buyer to sign and return the maintenance Agreement in its original form to the Builder within thirty (30) days from the date of receipt from the Builder/its dispatch by the Builder.*

As per said clause of the builder buyer agreement, buyer shall be liable to forfeiture of the amount of earnest money being 15% of the basic price in case of breach of agreement. Here the complainant has breached agreement as she has not paid her due installments even after receiving several reminders. The complainant under this clause has authorized the builder to forfeit the earnest money as aforementioned out of the amount paid/payable by him/her, in the event of the failure of the buyer to perform his/her obligations. Further, it is a general principle of law that unless an Act specifically provides for its coming into force with retrospective effect, it is to be ordinarily construed to be effective with prospective effect. The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules



after the date of coming into force of the Act and the Rules. However, in the cases of pre-RERA builder buyer agreement executed before the date of coming into force of the Act and the Rules, the provisions of the agreement shall prevail. Considering the said clause, respondent had forfeited the said amount of ₹5,49,637/- paid by the complainant and cancelled the unit vide cancellation letter dated 07.08.2020. The amount forfeited by the respondent is well within the range of 15% as agreed in the BBA by the complainant.

- (vii) Respondent applied for occupation certificate before the concerned authorities and got the occupation certificate on 07.03.2019. After receiving occupation certificate, an offer of possession was made to the complainant on 15.04.2019 with the request to pay the outstanding dues. Hence prima facie, it appears that offer made by the respondents was valid legal offer of possession as per the provisions of RERA Act of 2016. However, the complainant did not accept the same for reasons best known to the complainant. Authority observes that complainant has failed to place on record even a single document which shows that after receiving offer of possession on 15.04.2019, complainant was willing in taking possession of the unit. Also complainant has failed to place on any documentary proof proving that the unit was not complete at the time



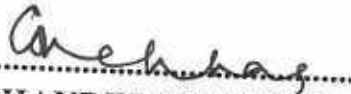
of offer of possession by the respondent. In above situation, it is important to refer to sub section (10) of section 19 of RERA act of 2016, which states that complainant is also under an obligation to accept the offer of possession within two months. In the present case, no documents or written communications have been attached by the complainant to substantiate the claim that complainant approached the respondent for taking possession of the flat and respondent refused to hand over the possession of the flat. This shows that complainant fails to fulfill its duty as embodied in the provisions of the RERA Act of 2016.

- (viii) Thus, consequent upon the considerable consideration, the Authority is constrained to conclude that present complaint is nothing but a ill-advised luxurious litigation and a classic example of litigation to enrich oneself at the cost of another and to waste the precious time of this Authority. The Real Estate (Regulation and Development) Act, 2016 is a beneficial /social legislation enacted by the Parliament to put check on the malpractices prevailing in the real estate sector and to address the grievance of the allottee who have suffered due to the dominant position of the promoter. However, it is a moral obligation on the part of complainant to invoke the provisions of the Act with a clear and bonafide intent and not as a tool/instrument for enrichment.



(ix) In view of above explanations, Authority observes that no cause of action survives in favour of the complainant and therefore, present complaint is dismissed.

17. File be consigned to the record room after uploading of the order on the website of the Authority.

  
.....  
CHANDER SHEKHAR  
[MEMBER]

  
.....  
NADIM AKHTAR  
[MEMBER]