



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no:</b>	922 of 2023
<b>Date of filing:</b>	09.05.2023
<b>Date of first hearing:</b>	25.07.2023
<b>Date of decision:</b>	28.01.2025

1. Kela Devi

W/o Sh. Mohinder Singh

R/o H-1/1, Sector 6,

Eldeco Estate One, Panipat-132103

2. Mohinder Singh

S/o Sh. Chajju Ram

R/o H-1/1, Sector 6,

Eldeco Estate One, Panipat-132103

....COMPLAINANTS

VERSUS

M/s Eldeco Infrastructure and Properties Ltd.

Through its directors

201-212, 2<sup>nd</sup> floor, Splendor Forum

Jasola, District Centre, New Delhi-110025

.... RESPONDENT

**CORAM: Dr. Geeta Rathee Singh**

**Member**

**Chander Shekhar**

**Member**

**Present:** - Adv. Sachin Miglani, Counsel for the complainant through VC.

None for respondent.

*Geeta Rathee*

**ORDER (DR. GEETA RATHEE SINGH -MEMBER)**

1. Present complaint has been filed on 09.05.2023 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 fulfill 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 unit booked by complainant, sale consideration, the amount paid by the complainant and details of project are given in following table:

S.No.	Particulars	Details
1.	Name of the project	Eldeco Estate One, Panipat
2.	Unit no. and area	H-I/1, Sector 6, Eldeco Estate One.
3.	Date of booking	10.09.2014
4.	Date of Builder Buyer Agreement	10.10.2014
5.	Due date of offer of possession	10.01.2018(including grace period of 6 months)
6.	Possession clause	C.1 The construction of the Said Villa is likely to be completed within a period of



		34 months of commence of construction with a grace period of 6 months subject to the receipt of requisite building revised ing plans/other approvals & permissions from the concerned authorities Force Majeure Conditions hereinafter) restraints or restrictions form any courts/authorities non-availability of building materials putes with contractors/work force etc. and circumstances beyond the control of the Company & to timely payments by the Allottee/s, in terms hereof. No claim by way of damages/compensation against the Company in case of delay in handing over possession of the said Villa on account of the allow but the completion schedule shall remain unaffected.
7.	Total Sales Consideration	Rs. 49,41,955/-
8.	Amount paid by complainant	Rs. 59,92,955/-
9.	Date of taking over possession	01.12.2018
10	Date of execution of conveyance deed	28.11.2022

*Rattee*

**B. FACTS OF THE CASE AS STATED IN THE COMPLAINT**

3. Complainants have made the following submissions in the present complaint:

- (i) That the complainants booked a simplex villa in the project of the respondent namely; "Eldeco Estate One, Panipat, by making a payment of booking amount of Rs.3,00,000/-. In respect of the said unit, a builder buyer agreement was executed on 10.10.2014. A copy of builder buyer agreement is annexed as Annexure A.
- (ii) That the complainant paid the total amount of Rs.59,92,955/- against the total sale consideration as per the payment plan as mentioned in builder buyer agreement. Ledger statement showing payment made by complainant to respondent is annexed as Annexure-B.
- (iii) That as per clause C(1) of the builder buyer agreement, respondent had agreed to deliver the possession of the said plot within 34 months + 6 months of commencement of construction subject to force majeure, court orders, non-availability of building material and circumstances beyond the control of the company and timely payment by the allottees.
- (iv) That respondent lured the complainants to take physical possession of the allotted unit without receiving the occupation certificate after which complainant took physical possession of the unit on

  
J. Patra



01.12.2018. Complainants have alleged that respondent was not in a position to offer valid possession as occupation certificate was not received by it from the concerned department. Respondent also assured the complainants that conveyance deed will be executed within few months. Chapter 4.10 of the Haryana Building Code, 2017 has been referred by the complainants wherein it is mentioned that owner shall not allow any person to occupy new building or part of new building unless occupation certificate has been issued by the competent authority. Respondent is in violation of the said provision of Haryana Building Code, 2017. Respondent has failed to deliver possession of the villa to the complainants in terms of the agreement and has handed over the possession of the villa to allottees to save themselves from delayed possession charges as till date the respondent has not received occupation certificate from the concerned department.

- (v) That as per Section 17 sub clause 1 of the Real Estate (Regulation and Development) Act, 2016 the promoter is under obligation to execute the registered conveyance deed in favour of the allottee, however till date respondent has not executed conveyance deed in favour of the complainants.
- (vi) That official of the respondent mis-guided the complainants that they are not able to execute the conveyance deed in favour of the



complainants because competent authority is not registering the conveyance deed, after which some of the allottees filed civil writ petition no. 12135/2021 before the Hon'ble Punjab and Haryana High Court seeking direction to the authorities to register the properties of the complainant and other co-allottees. Hon'ble Punjab and Haryana High Court has disposed the said petition on 26.07.2021 wherein it was ordered that there would be no bar on executing sale/transfer deed pertaining to such properties by the competent authority. Copy of said order is annexed as Annexure D. Even after passing of the order by the Hon'ble High Court respondent was not executing the conveyance deed. It was after numerous requests and reminders respondent had executed the conveyance deed in favour of the complainants on 28.11.2022 but no delayed possession charges were paid to the complainants at the time of executing conveyance deed.

**C. RELIEFS SOUGHT**

4. The complainant in their complaints have sought following reliefs:
  - (i) Direct the respondent to pay delay possession charges as per Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 and Order passed by this authority in Complaint No. 113/2018 titled Madhu Sareen Vs BPTP Ltd. as the possession offered by the



respondent to the complainant is not a legal offer as it was offered without obtaining occupancy certificate from the concerned authority

(ii) Direct the respondent to pay Rs. 5,00,000/- as compensation for mental and emotional harassment suffered due to illegal act of the respondent.

(iii) Direct the respondent to pay Rs. 1,00,000/- as litigation charges.

(iv) Any other or further order which this Hon'ble Authority deems fits in the interest of justice.

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

5. Learned counsel for the respondents filed a detailed reply on 08.11.2023 and contested the complaint on the following grounds: -

(i) That the complaint against projects which are not registered with this Hon'ble Authority under RERA is not maintainable and as such this Hon'ble Authority has no jurisdiction to entertain and adjudicate the present complaint which is liable to be dismissed on this score alone.

(ii) That there is clause M in the Allotment Certificate and Agreement dated 10.10.2014 under the head "JURIDICTION & LAWS OF INDIA" forming a binding contract between the parties vide which the parties by agreement have conferred jurisdiction upon delhi courts and as per settled law such a





clause in the agreement between the parties is legally sound and binding on the parties hence this Hon'ble Authority does not have the requisite jurisdiction to entertain the present complaint and the same deserves to be dismissed for this reason itself.

(iii) That it is most humbly submitted that the present case is hopelessly barred by limitation. It is settled principal of law that a stale claim should be thrown out at the thresh hold and the question of limitation should be considered by any Hon'ble court or authority, irrespective of the fact whether the same has been raised by the other side or not. It is relevant to refer to the judgment titled as **Khatri Hotels Pvt. Ltd. & another Versus Union of India and another Civil Appeal No. 7773 of 2011** wherein the Hon'ble Court very clearly laid down that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. successive violation of the right will not give rise to fresh cause & the suit will be liable to be dismissed if it is beyond the period of limitation counted form the day when the right sue first accrued.

(iv) That regarding delay and laches the Hon'ble court have given a very clear and categoric view that the one who sleeps over





his alleged rights is not entitled to any relief much less the one which is granted to a vigilant litigant who agitated his/her rights within time and those who kept waiting for result of cases filed by other cannot claim the same relief and the instant case deserves to be dismissed for this reason alone.

(v) That pursuant to its aforesaid business of Real Estate Development the Respondent inter-alia has developed a residential project consisting of plots Villas/Floors under the name and style of "ELDECO ESTATE ONE" (hereinafter "Project") on a parcel of land measuring 150.28645 acres situated at Sector-40 & 19-A, Panipat, Haryana after due approvals/permissions & sanctions from the competent authority, i.e., director, Town & Country Planning, Haryana in the present case.

(vi) That vide license Nos. 407-412 all dated 18.01.2006 license to develop a residential plotted colony on a land admeasuring 65.31 acres, ("Phase I") falling in Sector 40, Panipat was granted Thereafter, Vide license No. 36 dated 28.02.2008, license to develop a residential plotted colony for additional land admeasuring 55.8013 acre falling in Sector 40 & 19A ("Phase II") was granted to the answering respondent. It is of utmost importance to mention here that the master layout plan



was revised by DTCP in the year 2013 wherein the commercial area for phase II was reduced to 0.565 acres and therefore the EDC, SIDC, license fee & conversion charges were to be determined according to the revised plan, consequently, various representations were made since 2013 stating the EDC, SIDC, license fee & conversion charges shall be determined on the basis of revised area/approved area.

(vii) Part completion of phase I was granted on 13.05.2015 and part completion of Phase II was granted on 02.02.2018. Copies of Part completion Certificated date 13.05.2015 and 02.02.2018 are annexed herewith as Annexure-B and Annexure-C. Master layout plan was revised by DTCP in the year 2013 wherein the commercial area for phase II was reduced to 0.565 acres and therefore the EDC, IDC, license fee & conversion charges be determined according to the revised plan. Representations were made since 2013 for determination of these charges. Vide Office Order dated 28.02.2020, DTCP'S office acknowledged that the charges are levied on user basis and the same should be rectified by them. Till date the concerned department has failed to provide a resolution of this issue to the respondent resulting in holding back of grant of renewals and completion certificate etc., thereby clearly



establishing that there is no fault at the end of the respondent as the possession of villa involved in the present case is complete in all respects with all amenities and facilities and has already been given to the allottees on different dates and the complainants were served with final demand notice/offer of possession dated 15.06.2018 however, the complainants after completing the formalities took possession only on 01.12.2018 for their own reasons. Copy of office order dated 28.02.2020 passed by office of DTCP is annexed as Annexure-E (colly).

(viii) Due to pending correction of EDC/SIDC charges, outstanding against EDC/SIDC renewal of the license for Phase II is held up, which has further resulted in non-grant of occupation certificate of villa/floor falling in the Phase II, despite the construction being complete. Further, owing to the non-grant of OC the registration of the conveyance deed in favour of the home buyers like the complainants had been held up for some time by the Authorities without there being any fault at the end of the respondent as the development at the end of the respondent had been completed long back. Now, owing to intervention of Hon'ble High Court, the registration of conveyance deed in respect of the project of the respondent has been started by the competent authority i.e. Sub-Registrar



office concerned and this again established the stand of the answering respondent that there was no fault at the end of the answering respondent in the matter.

(ix) Another factor responsible for the same is that the Town and Country Planning Department has also asked about the status of electrical infrastructure from HVPN in support of the project and in pursuance to the same HVPN had further asked the UHBVN about the same. From a letter dated 08.03.2016 written by UHBVN it is clear that the Chief Administrator, HUDA vide letter dated 28.02.2016 has agreed to construct 33 K.V. sub-station at the project site. All the electrical infrastructure works within scope of the company had been completed by it as per approved scheme. However, UHBVN has been arbitrarily asking the company to deposit bank guarantee for the development of 33 KV sub-station whereas the same is clearly and actually in the scope of HUDA as it evident from the letter mentioned above and in fact this is nothing but the departmental game of passing the buck and arbitrary act and conduct at their end is delaying the formal issuance of completion certificate to the company and aggrieved by the situation the company has already written to

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the Hon'ble Chief Minister of Haryana as well as M.D. of HUDA.

(x) That the complainants have been handed over the possession of the simplex villa on 01.12.2018 along with all amenities and facilities in the project and the same was accepted by the complainant without any protest or demur of any sort, hence the present complaint is not maintainable even otherwise and is liable to be dismissed.

(xi) It is most humbly submitted that the conveyance deed has already been executed in favour of the complainants and furthermore, the terms of the agreement were to be read as a whole and the complainants accepted all the terms and took possession of the villa and is happily residing therein and is also reaping the benefits of appreciation in the price of the property. Complainants have filed this present malafide, time-barred and frivolous complaint in order to gain undue advantage. The possession of the villa was handed over without any delay to the complainant vide possession letter dated 01.12.2018 and a copy of the same has already been annexed. Conveyance deed was duly executed in favour of the complainant on 28/11/2022, which was duly accepted by the complainants without any protest or disapproval of any sort

  
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whatsoever. Complainants are not entitled to any alleged delayed possession charges as there has been no delay at all at the end of the respondent and the possession has been given to the complainant well within time completely as per the terms of the agreement between the parties.

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

7. During oral arguments, Id. Counsel for the complainants submitted that the complainants booked a simplex villa in the project 'Eldeco Estate One' located at Panipat developed by respondent on 10.09.2014 and paid ₹ 3,00,000/- as booking amount. Respondent allotted the villa in favour of the complainants and an agreement was executed between the complainants and the respondent on 10.10.2014 for simplex villa no. H-1/1, Sector-6, Eldeco Estate One, Panipat. As per the said agreement, complainants have to pay the balance amount as per the construction linked plan. The respondent was under obligation to delivered possession within 34 months with a grace period of 6 months from the date of the starting of the construction, which works out to 10.01.2018 in the present case. Complainants have made the payment of ₹59,92,955/- against the total sale consideration of ₹49,41,955/-. He argued that the





respondent was not in a position to execute the conveyance deed as respondent has not received the occupation certificate from the concerned department, nevertheless respondent allured the complainants to take the physical possession of the villa allotted to them. On the assurance given by the respondent, complainants took the physical possession of the villa on 01.12.2018. Conveyance deed was also executed between the parties on 28.11.2022. Complainants are seeking delay interest from the deemed date of possession till date of handing over possession i.e. 01.12.2018 for the delay caused in handing over the possession in terms of section 18 of the RERA Act, 2016 read with Rule 15 HRERA Rules, 2017.

Ld. Counsel for the respondent submitted that as per clause C(1) of builder buyer agreement possession was to be delivered to the complainants within 34 months with a grace period of 6 months from the date of the starting of the construction. He stated that the construction was started on 15.07.2016 thus period of 34+6 months has to be calculated from 15.07.2016. For proving his averment he referred to ledger account at annexure B of the complaint wherein at entry no. 13 it is written "at the time of excavation". He argued that it is the time of excavation when the actual construction of the project was started. Further, he submitted that intimation of offer of possession was sent to the complainant on 15.06.2018 and



complainants have taken physical possession on 01.12.2018, at that time complainants were well aware that respondent has not received the occupation certificate and they took possession without any protest.

In rebuttal, ld. counsel for the complainant referred to agreement dated 10.10.2014 wherein payment schedule for construction linked plan has been provided. Complainants have opted for construction linked plan and respondent has received the payments from the complainants from the year 2014 and is now claiming to start construction in the year 2016 which is unjustifiable.

**F. ISSUES FOR ADJUDICATION**

8. (i) Whether the execution of the conveyance deed extinguishes the right of the allottees to claim delay possession interest?
- (ii) Whether the complainant is entitled to delayed possession interest as claimed by him in terms of provisions of RERA Act of 2016?

**G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY**

9. Authority has heard arguments of both the parties and perused the documents available on the record. After going through the submissions made by both the parties, Authority observes as under:-

(i) With regard to objection raised by the respondent that the project in which the complainant is seeking possession is not registered with



this Hon'ble Authority and therefore, this Hon'ble Authority does not have jurisdiction to entertain the present complaint. It is observed that same has been dealt with and decided by the Authority in **complaint no. 191 of 2020 titled as Mrs. Rajni and Mr. Ranbir Singh vs Parsvnath Developers Ltd.** Relevant part of said order is being reproduced below:

*"Looked at from another angle, promoter of a project which should be registered but the promoter is refusing to get it registered despite the project being incomplete should be treated as a double defaulter, i.e. defaulter towards allottees as well as violator of Sector 3 of the Act. The argument being put forwarded by learned counsel for respondent amounts to saying that promoters who violate the law by not getting their ongoing/incomplete projects registered shall enjoy special undeserved protection of law because their allottees cannot avail benefit of summary procedure provided under the RERA Act for redressal of their grievances. It is a classic argument in which violator of law seeks protection of law by misinterpreting the provisions to his own liking.*

14. *The Authority cannot accept such interpretation of law as has been sought to be put forwarded by learned counsel of respondent. RERA is a regulatory and protective legislation. It is meant to regulate the sector in overall interest of the sector, and economy of the country, and is also meant to protect rights of individual allottee vis-a-vis all powerful promoters. The promoters and allottees are usually placed at a highly uneven bargaining position. If the argument of learned counsel for respondent is to be accepted, defaulter promoters will simply get away from discharging their obligations towards allottee by not getting their incomplete project registered. Protection of defaulter promoters is not the intent of RERA Act. It is meant to hold them accountable. The interpretation sought to be given by learned counsel for respondent will lead to perverse outcome.*





15. *For the foregoing reasons, Authority rejects the arguments of respondent company. The application filed by respondent promoter is accordingly rejected."*

(ii) Another objection that has been raised by the respondent is that vide clause M in of the Agreement, parties have conferred jurisdiction upon Delhi Courts and as per settled law such a clause in the agreement between the parties is binding on the parties. In this regard, it is observed that section 79 of the RERA Act, 2016 bars the jurisdiction of Civil Courts to entertain any suit or proceeding in respect of any matter which the Authority is empowered. It also prohibits any court or other authority from granting an injunction for any action taken or to be taken under the Act. Therefore, the plea taken by the respondent in this regard is rejected. Further, the real estate project in which unit of complainants is situated is located in District Panipat, and as per notification no. 1/92/2017-1TCP dated 25.11.2017 Authority has territorial jurisdiction to decide this matter.

(iii) 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"

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.

(iv) Respondents have alleged that the complainant had executed a conveyance deed dated 28.11.2022 and therefore, the complainant is estopped from claiming any interest under Section 18 of RERA Act, 2016. The present complaint is nothing but a gross misuse of process of law.

Now, the main issue to adjudicate before this Authority is whether the conveyance deed extinguishes the right of the allottee to claim delayed possession interest. In this regard it is important to look at the definition of the term, "deed", itself in order to understand the extent of the relationship between an allottee and promoter. A deed is a written document or an instrument that is sealed, signed and delivered by all the parties to the contract (buyer and seller). It is a contractual document that includes legally valid terms and is enforceable in a court of law. It is mandatory that a deed should be in writing, and both the parties involved must sign the document. Thus, a



conveyance deed is essentially one wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or movable. In this case, the asset under consideration is an immovable property. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration (usually monetary). Therefore, a conveyance deed, or 'Sale Deed' implies that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer.

From the above, it is clear that on execution of a sale/conveyance deed, only the title and interests in the said immovable property [herein the allotted plot] is transferred. However, the conveyance deed does not mark an end to the statutory liabilities of a promoter which have accrued before the signing of the conveyance deed since various sections of the Act provide for continuing liability and obligations of a promoter who may not under the garb of such contentions be able to avoid its responsibility. It can be said that taking over the possession and thereafter execution of the conveyance deed can best be termed as respondent having discharged its liabilities as per the buyer's agreement, however upon taking possession, and/or executing conveyance deed, the complainant never gave up their





statutory right to seek delayed possession charges as per the provisions of the said Act.

It is noteworthy to mention here that in **Appeal no. 272, 273, 274 of 2019 titled as Manju Arya vs M/s TDI Infrastructure Pvt Ltd**, Hon'ble Haryana Real Estate Appellate Tribunal Chandigarh vide order dated 19.01.2021 has observed that the cause of action which had already accrued to the allottee against the promoter due to non-fulfilment of the obligations as per the agreement for sale shall stand extinguished with the execution of the conveyance deed. Whatever statutory rights had accrued to the allottee prior to the conveyance deed cannot be defeated with the subsequent execution and registration of the conveyance deed. Relevant part of the order is reproduced below:

*"18. As far as appeal no.273 of 2019 is concerned, no doubt, the conveyance-deed was already executed and registered on the date of filing the complaint no.718 of 2018. But, in our view the execution and registration of the conveyance-deed will not absolve of the promoter of the liability which had accrued before the execution and 9 Appeal No.272,273 & 274 of 2019 registration of the conveyance-deed. The moment the delay has occurred in the delivery of possession, the statutory right to claim the compensation had occurred to the appellant which cannot be subsequently extinguished with the execution and registration of the conveyance-deed.*

*19. The learned Adjudicating Officer has referred to Section 11 sub section 4 (a) of the Act to dislodge the claim of the appellants which reads as under: -*

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"11. Functions and duties of promoter. — (4) The promoter shall— (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed."

20. As per the aforesaid provision of law, the promoter shall be responsible for all the obligations, responsibilities and functions under the provisions of the Act or the rules and 10 Appeal No.272,273 & 274 of 2019 regulations made thereunder or to the allottees as per the agreement for sale till the conveyance of all the apartments, plots or buildings, as the case may be. This provision does not say that the cause of action which had already accrued to the allottee against the promoter due to non-fulfilment of the obligations as per the agreement for sale shall stand extinguished with the execution of the conveyance-deed. Whatever statutory rights had accrued to the allottee prior to the conveyance-deed, cannot be defeated with the subsequent execution and registration of the conveyance-deed.

21. The Hon'ble Apex Court in case *Wg. Cdr. Arifur Rahman Khan and Ors. Vs. DLF Southern Homes Pvt. Ltd. and Ors.* 2020(3) RCR (Civil) 544 has laid down as under: -

"The developer in the present case has undertaken to provide a service in the nature of developing residential flats with certain amenities and remains amenable to the jurisdiction of the Consumer Fora. Consequently, we are unable to subscribe to the view of the NCDRC that flat purchasers who obtained possession or executed Deeds of Conveyance have lost their





*right to make a claim for compensation for the delayed handing over of the flats."*

*22. Thus, the Hon'ble Apex Court has categorically laid down that the purchasers will not lose their right to claim 11 Appeal No.272,273 & 274 of 2019 compensation for the delayed handing over of the unit on the ground that the possession has been delivered and deed of conveyance has been executed. This authority is squarely applicable to the controversy in hand.*

*23. Even though this judgment has been rendered by the Hon'ble Apex Court under the Consumer Protection Act, 1986 but the principle of law laid down by the Hon'ble Apex Court in the aforesaid judgment will also be applicable to the cases under the Act. Thus, we are of the considered opinion that mere execution of the conveyance-deed by the respondent/promoter qua plot no.663, Block no.L, TDI City at Kundli, Sonipat, Haryana (Complaint No.718/2018, Appeal No.273/2019) will not extinguish the right of the appellant/allottee to claim the compensation which had already accrued to her much before the execution of the conveyance-deed."*

Authority observes that all the agreements/ documents signed by the allottee reveals stark incongruities between the remedies available to both the parties. In most of the cases, these documents and contracts are ex-facie one sided, unfair and unreasonable whether the plea has been taken by the complainant/allottee while filing its complaint that the documents were signed under duress or not. The right of the allottee to claim delayed possession charges shall not be abrogated simply for the said reason.





The complainant/allottee has invested his hard-earned money and there is no doubt that the promoter has been enjoying benefits and the next step is to get their title perfected by executing a conveyance deed which is the statutory right of the allottee. Also, the obligation of the developer - promoter does not end with the execution of a conveyance deed. The essence and purpose of the Act was to curb the menace created by the developer/promoter and safeguard the interests of the allottees by protecting them from being exploited by the dominant position of the developer which he thrusts on the innocent allottees. Therefore, Authority holds that even after execution of the conveyance deed, complainants cannot be precluded from their statutory right to seek delay possession charges from the respondents-promoter which already stayed accrued from the deemed date of possession till the handover of the possession.

(v) Factual matrix of the case is that complainant booked a villa in the project of the respondent on 10.09.2014 after paying an amount of Rs. 3,00,000/-. Builder buyer agreement was executed between the parties on 10.10.2014 and an amount of Rs. 59,92,955/- stands paid. Physical possession of the villa has been taken by the complainants on 01.12.2018 and conveyance deed has also been executed on 28.11.2022. Complainant's contention is that as per the builder buyer agreement deemed date of possession works out to 10.01.2018 (34+6





amounts from the complainant during the period of November 2014 to July 2016 and was bound to start the construction within reasonable time to claim that deemed date of possession must be taken from the date of excavation. Innocent complainant by no means could have understood the unjustifiable clause of the builder buyer agreement which started the period after 2 years of making huge payments by him. Reference is made to **Civil Appeal no. 12238 of 2019** titled as **Pioneer Urban Land & Infrastructure Ltd v/s Govindan Raghavan**. Operative part of the said judgment is being reproduced below:

*Section 2 (r) of the Consumer Protection Act, 1986 defines 'unfair trade practices' in the following words :  
" 'unfair trade practice' means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice ... ", and includes any of the practices enumerated therein. The provision is illustrative, and not exhaustive.*

*In Central Inland Water Transport Corporation Limited and Ors. v. Brojo Nath Ganguly and Ors.,<sup>4</sup> this Court held that :*

*"89. ... Our judges are bound by their oath to 'uphold the Constitution and the laws'. The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and equal protection of the laws. This principle is that the courts will not enforce and will, when called*






*upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them.*

*It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not 4 (1986) 3 SCC 156.*

*It applies where both parties are businessmen and the contract is a commercial transaction. ... These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances." (emphasis supplied) 6.7. A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the Agreement dated 08.05.2012 are ex-facie one-sided, unfair, and unreasonable. The*



*incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2 (r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the Builder.*

*7. In view of the above discussion, we have no hesitation in holding that the terms of the Apartment Buyer's Agreement dated 08.05.2012 were wholly one-sided and unfair to the Respondent – Flat Purchaser. The Appellant – Builder could not seek to bind the Respondent with such one-sided contractual terms.*

In this case, respondent promoter and complainants were not having equal bargaining power and respondent promoter was in a dominant position. Complainant was bound to sign on dotted lines of builder buyer agreement. Said clause in the builder buyer agreement is ex-facie one-sided, unfair, and unreasonable and cannot be enforced. Authority holds that deemed date of possession will be reckoned from builder buyer agreement in the present complaint. Therefore, deemed date of possession is worked out as 10.02.2018 (34+6) months from the date of builder buyer agreement.

(vi) Complainants in their complainant have submitted that an amount of Rs. 59,92,955/- has been paid against the villa however perusal of ledger annexed as annexure B shows that an amount of Rs. 60,16,555/- has been paid by the complainants. Authority observes that since this is the latest ledger account issued by the



respondent in the name of the complainants amount as shown to have been paid by the complainants in said ledger has to be relied upon.

(vii) Authority observes that deemed date of possession in the present case was 10.02.2018, possession of villa was offered to complainants on 15.06.2018 and they took physical possession on 01.12.2018 thereafter conveyance deed got executed on 28.11.2022. There is delay of 9 months 3 weeks and 4 days (295 days) months approx.. in offering possession by the respondent to the complainant. Complainant herein is entitled to delayed possession charges which is provided under the proviso to Section 18 (1) of the Act,

Section 18 (1) proviso reads as under :-

*“18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-*

.....

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed”.*

(viii) The definition of term ‘interest’ is defined under Section 2(z) 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;

(ix) Consequently, as per website of the State Bank of India, i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date, i.e., 28.01.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

(x) Payment of delayed possession charges at the prescribed rate of interest.

Interest for every month of delay, till the handing over of possession at such rate, as it has been prescribed under rule 15 of the rules.

Rule 15 has been reproduced as under;

*"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub. sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be*



replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public".

(xi) In view of aforesaid observations and reasoning, the Authority hereby concludes that the complainant is entitled for the delay interest from 10.02.2018 (deemed date of possession) to 01.12.2018 (date of taking over physical possession).

(xii) Authority has got calculated the interest on total paid amount from the deemed date of possession till the date of offer of possession at the rate of 11.10% till date and said amount works out to ₹4,50,427/- as per detail given in the table below:

Sr. No.	Principal Amount (in Rs.)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 01.12.2018(in Rs.)
1.	32,78,739/-	10.02.2018	2,94,143
2.	6,95,243/-	12.03.2018	56,029/-
3.	13,90,487/-	13.06.2018	72,732/-
4.	6,28,486/-	11.07.2018	27,523/-
	Total = Rs. 59,92,955/-		Rs. 4,50,427/-


(xiii) Complainants are seeking compensation on account of mental and emotional harassment and cost of litigation. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors." (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and

*Ratna*

Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses and compensation.

**H. DIRECTIONS OF THE AUTHORITY**

11. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the RERA Act of 2016 to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:
- (i) Respondent is directed to pay delayed possession interest of Rs. 4,50,427/- to the complainant towards delay caused in handing over the possession within 90 days from the date of this order.
12. **Disposed off.** File be consigned to the record room after uploading of the order on the website of the Authority.

  
.....  
**CHANDER SHEKHAR**  
[MEMBER]

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