



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

<b>Complaint no.:</b>	<b>1015 of 2023</b>
<b>Date of filing:</b>	<b>27.04.2023</b>
<b>Date of first hearing:</b>	<b>05.07.2023</b>
<b>Date of decision:</b>	<b>20.02.2024</b>

1.Mr. Bhim Singh, S/o Sh. Ram Das,

R/o House no. 2273, Sector – 3,Near Mahindra Model School

Rohtak, Pin-124001

2.Mrs.Babita Rani, W/o Sh. Bhim Singh,

R/o House no. 2273, Sector – 3,Near Mahindra Model School

Rohtak, Pin-124001

....COMPLAINANTS

VERSUS

M/S Parsvnath Developers Ltd,

Parsvnath Metro Tower, Near Shahdara Metro Station

Shahdara, Delhi-110032

....RESPONDENT

**CORAM:**

**Dr. Geeta Rathee Singh**

**Member**

**Chander Shekhar**

**Member**

**Present:**

Adv. Sushil Malhotra, Learned counsel for the Complainants.

Adv. Rupali S. Verma, ld. counsel for the respondent, through video conference.

### **ORDER**

1. Present complaint has been filed on 27.04.2023 by the complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

#### **A. UNIT AND PROJECT RELATED DETAILS**

2. The particulars of the unit booked by complainant, the details of sale consideration, the amount paid by the complainant and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	"Parsvnath City" Rohtak, Haryana
2.	Unit no.	Old Plot No. A-117 in Block A. New Plot No. A-65
3.	Area	Old Plot Area 300 Sq. Yard New Plot Area 299 Sq. Yard



4.	RERA registered/ not registered	Unregistered
5.	Date of booking	28.10.2009
6.	Date of Plot/Builder Buyer Agreement	04.07.2012
7.	Deemed date of possession	<p>04.07.2014</p> <p>Clause 8(a) “ The Developer shall endeavour to complete the internal development works of the Colony within twenty four (24) months from the date of signing of this Agreement subject to force majeure, restraints or restrictions from any courts/ authorities, circumstances beyond the control of the Developer and subject to timed payments by the Buyers For the purposes of this clause/agreement the date of submission of application with the competent authority for obtaining completion certificate in respect of internal development of the Colony shall be reckoned as the date of completion of development of the Colony No claim by way damages compensation shall lie against the developer in case of delay in handing over possession on account of any of the said reasons and the Developer shall be entitled to extension of time for completion of internal development</p> <p>As per clause 8(b), “developer shall offer possession of the plot on completion of internal development works on the land</p>





		area under the relevant licence in the Colony. The Buyer shall be entitled to the possession of the plot only after all the amounts payable by him under this Agreement have been paid and sale deed executed and registered in favour of the Buyer. The Developer on completion of internal development shall issue final call notice to the Buyer, who shall within 30 days thereof, remit all dues, execute sale deed and take possession of the plot .”
8.	Basic sale price	Rs. 15,81,750/-
9.	Amount paid by complainant	Rs. 25,07,263/-
10.	Offer of possession	30.06.2020

## B. FACTS OF THE COMPLAINT

3. In the present case, complainants in the year 2009 had applied for a plot in an upcoming project of the respondent by the name of 'Parsvnath City' at Rohtak by remitting an amount of ₹ 2,37,500/- on 12.10.2009 through cash. Said amount is reflected in customer ledger dated 31.05.2020, annexed as Annexure C-2. That plot buyer agreement was executed between the parties on 04.07.2012. Complainants were allotted plot bearing no. A-117, Block A admeasuring 300 sq. yards the project of the respondent. A copy of the plot buyer agreement is annexed as Annexure C-3.



4. That the land parcel on which the project was to be constructed was under dispute as HSIIDC had acquired a land measuring 1938 acres which included the land measuring 14 acres belonging to associate company of the respondent. The respondent promotor had got license no 36 of 2010 for said parcel of land only on 07.05.2010. However, the respondent had pre-launched the project in June 2009 before license was issued. Present complainants are the allottee/original allottee since 12.10.2009.
5. That the complainants had paid more than Rs 22 Lakh to the respondent by the 2013. Further by 21.04.2023, complainants have paid an amount of Rs. 25,07,263/- in respect of the booked unit which covers the complete payout of EDC/IDC and 100% of the basic payment of the sale consideration.
6. That as per clause 8 (a) & (b) respondent promised to deliver possession of the unit within 24 months from the date of signing of the buyers agreement i.e July 2014.
7. That even after a gap of more than 6 years respondent had failed to offer possession to the complainants. It was only in the year 2020, that the respondent issued letter of offer of possession to the complainants on 30.06.2020 along with demand letter. However, said demand letter was without the inclusion of delayed possession interest as per RERA Rules. No Intimation about the receiving of occupancy certificate or completion certificate was intimated by the respondent. A copy of Letter of offer of Possession with final account statement is annexed as Annexure C-4.



8. That in the said offer of possession, respondent had unilaterally changed the unit of the complainants from A-117, A Block to a new plot bearing no. A-065, with change in all specifications like location, direction and size of plot as originally allotted plot no. A-117 situated at Parsvnath City, Rohtak having an area of 300 Sq yard against plot no. A-117, whereas the newly allotted plot had an area of 299 Sq. yard.
9. It is further submitted that basic amenities like electrification, water, supply, road and green belt, park etc. have not been provided at site. Respondent was not in a position to offer possession to the complainants. It is further submitted that the project in question has not received completion certificate, therefore the offer of possession dated 30.06.2020 was not a valid offer of possession.
10. That on 21.10.2022 complainants took the final possession of the plot and executed the conveyance deed of the plot. A copy of Conveyance Deed dated 21.10.2022 is annexed as Annexure C-5.
11. It is alleged by the complainants that respondent has delayed the possession of the plot for more than 6 years. The offer of possession was issued to the complainants without payment of delayed possession charges. Complainants had no option but to accept said offer of possession and execute conveyance deed, however, complainants are still entitled to receive delayed possession charges for the delay caused in delivery of possession. In support of their contentions, complainants have cited

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judgments passed in the recent matter titled *Mohinder Kumar Jain Vs Pioneer Urban Land and Infrastructure Limited (Complaint no. 2340 of 2019)* by Haryana Real State Regulatory Authority, Gurugram on 05.11.2020 whereby granting the Delayed Possession Charges in the case whereas the Conveyance deed was already executed. The Honorable bench also relied upon the judgement of the Apex court in the case of *Wg. Cdr. Arifur Rahman Khan and DLF Southern Homes Pvt. Ltd.* Copy of Judgement in Case no. 2340 of 2019 of HRERA, Gurugram is annexed as Annexure C-6.

12. Complainants have filed the present complaint seeking payment of delayed possession charges from the respondent on account of delay caused in delivery of possession beyond stipulated time.

**C. RELIEFS SOUGHT:-**

13. In view of the facts mentioned above, the complainant prays for the following relief(s):-
  - a) Pass an appropriate award of upfront payment directing the respondent to provide delayed possession charges on Amount Rs. 25,07,263/- for the period from 12.10.2012 to till today at prescribed rate of interest.
  - b) That pass an order of delay possession interest at the prescribed rate for every month of delay from date of decision of this complaint till

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the receipt of completion certificate and development of project with the required specifications.

- c) Direct the respondent company to place on record the latest customer ledger.
- d) Provide Rs. 50,000/- as the litigation charges.
- e) It is also prayed to Ld. Authority may pass any order in favor of complainant in the interest of Justice looking into facts and circumstances of case with in four corners of pleadings.

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

Learned counsel for the respondent filed reply on 05.12.2023, contesting the complaint on the following grounds:

- 14. Respondent in its reply has contended that an offer of possession was issued to the complainants on 30.06.2020 along with final statement of accounts (FSA) with a request to clear dues within 30 days and get the No Objection Certificate (NOC)/No Dues Letter for taking over possession of the said plot.
- 15. That the complainants in the present complaint had failed to adhere to the payment plan and were duly informed about non-payment of instalments or having committed default in making the payments of instalments/overdue repeatedly through various reminders dated





15.10.2012, 08.11.2012, 24.01.2013, 11.06.2014, 21.08.2014 & 03.11.2020.

16. That despite issuance of offer of possession, complainants had failed to make payment of entire due amount and take possession. It was only in the year 2022, almost two years after offer of possession dated 30.06.2020, that the complainants had made the payment of entire due amount. That after clearing of the dues by the complainants, the respondent issued No Dues Letter on 19.10.2022. Thereafter on 21.10.2022, complainants signed and executed an undertaking towards the plot in question between both the parties. The relevant portion/ part of the undertaking is being reproduced hereunder:

*" I have settled all my grievances/issues mutually with the representative of the company in respect to the said booking of the said booking of the residential plot. In furtherance to the same, I agree and undertake that I shall not raise any claim or demand whatsoever in nature etc., arise under the terms of the Plot Buyer Agreement executed between myself and Company in respect of said booking of the residential Plot."*

A copy of signed and executed an undertaking is being annexed as Annexure R-3.

17. That on 21.10.2022, complainants signed and accepted the certificate of possession for said plot in Parsvnath City, Rohtak, Haryana. The relevant portion /part of the undertaking is being reproduced hereunder:



*" I/We have booked the captioned Plot A/065 in Parsvnath City -Rohtak,Haryana, on the terms enshrined in the Plot Buyer Agreement executed between the Company and me/us.*

*I /We have taken over the physical possession of the Plot duly demarcated, from the Company having saleable area of 299 Sq. Yards (250 Sq. Meters).*

*I/we confirm that the Plot has been developed as per agreed specification mentioned in the Plot Buyer Agreement."*

A copy of the certificate of possession is annexed as Annexure R-4.

18. That the present complaint is grossly barred by limitation and this Hon'ble Court does not have jurisdiction to entertain a time barred claim. Moreover, in absence of any pleadings regarding condonation of delay, this Hon'ble Court could not have entertained the complaint in the present form. In recent judgement by the Hon'ble Supreme Court in the case of ***Surjeet Singh Sahni Vs State of U.P and others, 2022 SCC online SC 249***, the Hon'ble Apex Court has been pleased to observe that mere representations does not extend the period of limitation and the aggrieved person has to approach the court expeditiously and within reasonable time.
19. That the complainants have failed to plead cause of action accordance with law.
20. That it is submitted that Conveyance deed/Sale Deed have already been executed between both the parties without any reservation and now the

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complainants have no locus standi to file present complaints because mutual obligation between both the parties stands discharged.

**E. ORAL SUBMISSIONS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT:**

21. During oral arguments learned counsels for the complainant and respondent reiterated the arguments as mentioned at Para 3 to 11 and para 10 to 16 of this order respectively which are not being repeated for the sake of brevity of this order.

**F. ISSUES FOR ADJUDICATION**

22. Whether the complainant is entitled to relief of delayed possession charges unit booked by him alongwith interest for delay in handling over the possession in terms of Section 18 of Act of 2016?

**G. Objection raised by respondent that the present complaint is barred by limitation**

23. Respondent had raised objection regarding maintainability of the complaint on ground of that complaint is barred by limitation. In this regard the Hon'ble Apex Court in Civil Appeal no. 4367 of 2004 *titled as M.P Steel Corporation v/s Commissioner of Central Excise* has held that the Limitation Act applies only to courts and not to the tribunals. Relevant para is reproduced herein:

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*19. 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."*

24. Authority observes that the Real Estate Regulation and Development Act, 2016 is a special enactment with particular a aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act 1963, thus, would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority established under the Act is a quasi-judicial body and not Court. Therefore, in view of above objection of respondent with respect to the fact that complaint is barred by limitation is rejected.

#### **H. OBSERVATIONS AND FINDINGS OF AUTHORITY**

25. The facts set out in the preceding paragraphs demonstrate that the complainants in this case had booked a plot bearing no. A-117, Block A in the project of the respondent namely 'Parsvnath City' situated at Rohtak. That as per clause 8 (a) and (b) of the plot buyers agreement dated 04.07.2012, possession of the plot was to be delivered within a period of two years from the date of agreement, i.e by the year 2014. However, the possession of the plot was grossly delayed by the respondent for almost six years. It was only on 30.06.2020 that an offer of possession was issued by the respondent for an all together different plot bearing number A-065, Block A situated in the same project. However, the complainants made



payment of remaining amount only in the year 2022 and accepted the said offer of possession vide certificate of possession dated 21.10.2022. Further, a conveyance deed in respect of the new plot i.e A-065 was also executed between the parties on 21.10.2022. It is an admitted fact that the delivery of possession of the unit has been delayed by the respondent by more than 8 years from the deemed date of possession as per the agreement entered between the parties. Complainants have filed present complaint seeking delayed possession charges for delay caused in delivery of possession from the deemed date of possession as per the buyers agreement.

26. The main point of contention between the parties is with regards to the fact that whether the complainants are entitled to receive delayed possession charges after conveyance deed has already been executed and all dues stands settled between the parties.
27. Learned counsel for the complainants has placed reliance on the judgment passed by the Apex Court in *Wg. Cdr. Arifur Rahman Khan and Ors. Vs. DLF Southern Homes Pvt. Ltd. and Ors* wherein it has been observed that the a purchaser will not lose its claim to delayed possession charges in case where conveyance deed has been executed. He has further cited judgment passed by Haryana Real Estate Regulatory Authority, Gurugram in matter titled *Mohinder Kumar Jain Vs Pioneer Urban Land and Infrastructure Limited (Complaint no. 2340 of 2019)* granting similar relief. It is argued





by the counsel for complainants that the respondent has delayed possession of the unit for more than 8 years. Complainants had booked the plot in question for a peaceful living and were constrained to take possession of the plot, however, the rights of the complainants cannot be hampered in the face of admitted delay.

28. The counsel for respondent contended that the transaction between the complainants and the respondent stands concluded after the execution of the conveyance deed between the parties. The complainants cannot be allowed to claim any interest in the face of the facts that conveyance deed stands executed after all dues have been cleared. Complainants had accepted the possession of the plot after due diligence and nowhere at the time of taking possession or execution of conveyance deed, have the complainants raised any objection to the same. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case.
29. Admittedly, possession of the plot booked by the complainants has been delayed for a period of nearly 8 years. Although complainants have accepted possession however, they are agitating for delayed possession charges for the apparent delay caused in delivery of possession. It is pertinent to mention that the complainants had previously been allotted plot bearing no. A-117, Block A admeasuring 300 sq. yds. AT the time of offer of possession the plot was changed to A-065, Block A admeasuring 299





sq. yds. Although the complainants, in their complaint have agitated that the plot had been unilaterally changed, however, complainants have filed the present complaint seeking possession of the plot bearing no. A-065 itself and nowhere in relief clause have claimed relief qua their previously allotted plot i.e A-117. Similarly, complainants have agitated that the plot area has been reduced from 300 sq. yds to 299 sq. yds but the same has not been prayed for in the relief clause. The complainants have also not placed on record any document showing therein that the change in allotment of plots had been agitated by them to the respondent or that they are grievously hurt by the same. Therefore, the present complaint is being proceeded taking into consideration plot bearing no. A-065 as the plot in question.

30. 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. It is the argument of the respondent counsel that the complainants are estopped from claiming any interest in the face of the facts that conveyance deed has already been executed between the parties. However, the Authority finds no merits in the said argument as the taking over of the possession and thereafter execution of conveyance deed is only respondent having discharged its liabilities as per the plot buyers agreement. Even in the face of apparent delay in issuing an offer of possession, respondent had failed to adjust delayed possession charges



admissible to the complainants for the delay caused in delivery of possession. Complainants who had invested their hard earned money could not have been expected to keep delaying taking over of possession and subsequent execution of conveyance deed for the sake of seeking delayed payment charges. However, it does not mean that the complainants have given up their claim for seeking the same.

31. Further, a conveyance deed is an instrument 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 of 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, implies that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer. 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. The relevant sections are reproduced hereunder:





*"11. Functions and duties of promoter*

*(1) XXX*

*(2) XXX*

*(3) XXX*

*(4) The promoter shall—*

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:*

*Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.*

*(b) XXX*

*(c) XXX*

*(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees"*

*"14. Adherence to sanctioned plans and project specifications by the promoter—*

*(1) XXX*

*(2) XXX*

*(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to*

*Signature*



*rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act....." (emphasis supplied)*

This view is affirmed by the Hon'ble NCDRC in case titled as Vivek Maheshwari Vs. Emaar MGF Land Ltd. (Consumer case no. 1039 of 2016 dated 26.04.2019) wherein it was observed as under:

" 7. It would thus be seen that the complainants while taking possession in terms of the above referred printed hand over letter of the OP, can, at best, be said to have discharged the OP of its liabilities and obligations as enumerated in the agreement. However, this hand over letter, in my opinion, does not come in the way of the complainants seeking compensation from this Commission under Section 14(1)(d) of the Consumer Protection Act for the delay in delivery of possession. The said delay amounting to a deficiency in the services offered by the OP to the complainants. The right to seek compensation for the deficiency in the service was never given up by the complainants. Moreover, the Consumer Complaint was also pending before this Commission at the time the unit was handed over to the complainants. Therefore, the complainants, in my view, cannot be said to have relinquished their legal right to claim compensation from the OP merely because the basis of the unit has been taken by them in terms of printed hand over letter and the Sale Deed has also been got executed by them in their favour.

8. ....The relationship of consumer and service provider does not come to an end on execution of the Sale Deed in favour of the complainants."

From above, it can be said that taking over the possession and thereafter execution of the conveyance deed can best be termed as respondent having discharged its liabilities as per the buyer's agreement, however upon taking

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possession, and/or executing conveyance deed, the complainants never gave up their statutory right to seek delayed possession charges as per the provisions of the said Act.

It has nowhere been mentioned in the conveyance deed that the complainants are left with no right to claim delay interest/compensation of any type from the promoter. 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: -

*"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."*

32. 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.

33. The complainants/allottees have invested their 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 respondent does not end with the execution of a conveyance deed. The essence and purpose of the Act was to curb the menace created by the developer/promoter and safeguard the interests of the allottees by protecting them from being exploited by the dominant position of the developer which he thrusts on the innocent allottees. Therefore, in furtherance to the Hon'ble Apex Court judgement this Authority holds that even after execution of the conveyance deed, the complainants cannot be precluded from their statutory right to seek delay possession charges from the respondent-promoter which already stayed accrued from the deemed date of possession till the handover of the possession. Accordingly, it is the failure of the respondent to fulfil its obligations as per the plot buyers agreement date 04.07.2012. Respondent should have delivered possession of the plot by the year 2014. However, the respondent has offered possession of the plot to the complainant on 30.06.2020 without receiving part completion/ completion certificate.

34. It is pertinent to mention that the complainants in their relief clause have prayed for delayed possession charges from the deemed date of possession till the receipt of completion certificate and development of project with required specifications. It is noteworthy to highlight that the respondent had issued an offer of possession to the complainants on 30.06.2020





without obtaining completion certificate. Complainants did not accept said offer of possession. However, complainants in the year 2022 after waiting for more than two years made payment of remaining amount to the respondent and accepted possession of the plot on 21.10.2022 without part completion/completion certificate. Complainants have themselves accepted the said offer of possession later on 21.10.2022 knowing the exact status and condition of the plot. They made an independent assessment after enjoying a cooling period of more than two years from the date of offer of possession in 2020. Complainants have not challenged the certificate of possession dated 21.10.2022. The complainants had taken possession of the plot in question well aware of all the facts and thereafter perfected the title/claim over said plot vide execution of conveyance deed dated 21.10.2022. Complainants are in legal possession of their plot and have been enjoying the same ever since 2022. Complainants have thereafter filed the present claim in the year 2023. The possession of the complainants has been delayed beyond stipulated time for more than 8 years but that period stopped on 21.10.2022 when the complainants voluntarily accepted possession of the plot after making payment of balance sale consideration. The contention of the complainants seeking delayed possession charges till receipt of completion certificate cannot be accepted as the complainants cannot be allowed to enrich themselves beyond their rightful entitlement by seeking further relief. Since the

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complainants had wilfully accepted the possession of the plot in question and have been further using the same for all these years, they cannot be allowed to lay claim at a latent stage after having enjoyed the possession till date. Delayed possession charges are to compensate the complainant/allottee for the delay caused in delivery of possession whereas in present complaint, complainants are already enjoying the possession of the plot, hence their claim to seek delay possession charges till completion certificate cannot be entertained. Therefore, the complainants are entitled to delayed possession charges from the deemed date of possession i.e 04.07.2012 till the date possession stands delivered/accepted by them i.e 21.10.2022.

35. In light of the aforementioned observations, Authority concludes that complainants herein are entitled to delayed possession charges from the deemed date of possession i.e 04.07.2014 till the date of certificate of offer of possession i.e 21.10.2022. Complainants herein are 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".*

*(iii) 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;*

36. 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. 20.02.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

37. Authority has got calculated the interest on total paid amount from due date of possession, i.e., 04.07.2014 till the date of certificate of possession i.e. 21.10.2022 which works out to ₹ 21,90,945/- as per detail given in the table below:



Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 21.10.2022 (in ₹)
1.	24,30,890/-	04.07.2014	21,90,945/-
<b>Total:</b>	24,30,890/-		21,90,945/-

38. It is pertinent to mention that complainant has claimed to have paid an amount of ₹ 25,07,263/- without proper receipt however as per customer ledger account annexed at page 36-37, the complainants have paid an amount of ₹ 24,30,890/- only. Therefore, only an amount of ₹ 24,30,890/- is being taken as the paid amount.

39. The complainants are seeking ₹ 50,000/- towards cost of legal expenses. 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 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.

#### H. DIRECTIONS OF THE AUTHORITY

40. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

Respondent is directed to pay delay possession charges of ₹ 21,90,945/- to the complainants for the delay already caused in handing over the possession within 90 days from the date of this order.

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

  
CHANDER SHEKHAR  
[MEMBER]

  
Dr. GEETA RATHEE SINGH  
[MEMBER]