



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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

Complaint no.:	1465 of 2022
Date of filing:	11.07.2022
Date of first hearing:	22.09.2022
Date of decision:	14.05.2024

Anil Kumar Suri S/o Sh. PL. Suri  
Seema Suri W/o Sh. Anil Suri  
R/o #L-6073, Devinder Vihar, Sector 56,  
Gurgaon- 122011, Haryana

...Complainants

Versus

Jindal Realty Pvt. Ltd.  
Through its Directors;  
DSM-648, 6<sup>TH</sup> Floor, DLF Towers,  
Shivaji Marg, Najafgarh Road,  
Motinagar, New Delhi- 110015

...Respondent

**CORAM:**

**Dr. Geeta Rathee Singh  
Chander Shekhar**

**Member  
Member**

**Present: -**

Adv. Vishal Singhal, Ld. Counsel for the complainants.

Adv. Drupad Sangwan, Ld. Counsel for the respondent  
through VC.

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

1. Present complaint dated 11.07.2022 has been filed by 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 complainants, the details of sale consideration, the amount paid by the complainants and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Jindal Global City, Sonapat, Haryana.
2.	Name of promoter	Jindal Realty Pvt. Ltd.
3.	Date of booking	13.11.2010
4.	Unit details	Villa No. E-70, Block- E, Sector-29, Sonipat 290 sq yard.
5.	Date of builder buyer agreement	14.02.2011
6.	Total Sale Consideration	₹69,02,756/-



	(As per BBA)	
7.	Amount paid by complainants(as alleged by complainants in their complaint)	₹81,43,155/-
8.	Due date of possession	<i>as per BBA, Clause 9(i) – "Subject to Force Majeure as defined herein and subject to timely grant of all approvals, permissions, NOCs, etc. and further subject to the Allottee(s) having complied with all his/her/its obligations under the terms and conditions of this Agreement and the Allottee(s) not being in default under any part of this Agreement including but not limited to the timely payment of the total Sale Consideration, Stamp Duty and other charges/fees/taxes/levies and also subject to the Allottee(s) having complied with all formalities or documentation as prescribed by the Developer, the Developer proposes to hand over the possession of the said Unit to the Allottee(s) within a period of 30 months from the date of execution of this Agreement with further grace period of 180 days."</i>
9.	Offer of possession	21.06.2018





10	Date of execution of conveyance deed	18.10.2018
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## B. FACTS OF THE COMPLAINT

3. That on 13.11.2010, the complainants approached the respondent company for booking of a residential unit in their project " Sonapat Global City" at Sector 33,34 & 35, Sonipat, Haryana.
4. That the respondent and the complainants entered into the Builder Buyer Agreement on 14.02.2011 for Villa No. E-70, Block No. E, Sonapat Global City. Total sale price for the plot is Rs. ₹69,02,756/- against which the complainants have paid an amount for Rs. ₹81,43,155/- till date. As per clause 9(i) of builder buyer agreement, respondent shall endeavour to give possession of the villa within a period of 30 months with 180 days as grace period from the date of execution of agreement subject to force majeure clause and timely approvals, grants, permissions and NOC's which works out to 14.02.2014.
5. That the respondent company had collected a sum of Rs. 27,93,468/- before starting the construction of the project from the complainants which is more than 10% of the price of the villa which is illegal and im contravention of the provisions of the RERA Act,2016.
6. That despite complainant's timely payments and requests for possession, respondent company kept on delaying the possession and made false



promises that the construction will be started soon. Complainants visited the site of the project in 2015 and were astonished to see that no construction had started to which the respondent replied that sectoral plans had been changed and the construction will start soon.

7. That the respondent company have incorporated one sided clauses in the buyer agreement which are disadvantageous for the allottee since it provides meagre rate of compensation on delay of offer of possession whereas exorbitant interest rate @ 18% are charged from the allottees in case for delay of payments.
8. That on 11.06.2018, respondent company received the occupancy certificate and offered possession for villa in question on 21.06.2018 and further sought additional amount towards balance sale consideration and upon complainant's request for compensation and interest on delayed possession fraudulently made complainants sign on unfair terms of a document which are liable to be set aside.
9. That on 18.10.2018, conveyance deed was executed in favour of the complainants but respondent company rejected the complainants request for interest on delayed possession. Further, the complainants relied upon the CA NO 6239 OF 2019 Wg Cdr Arifur Rehman vs. DLF Hon'ble Southern Homes Pvt Ltd where hon'ble Supreme Court has observed that allottee is entitled to claim delayed possession interest even after execution of conveyance deed.





10. That the respondent company has executed the builder buyer agreement dated 14.02.2011 with the complainants before the period of alleged force majeure i.e, 04.11.2011 till 09.02.2015 but respondent had accepted payment of Rs. 27,96,468/- from the complainants without disclosing the factum of force majeure.
11. That upon grievance, the complainants filed a complaint before Hon'ble Adjudicating Officer vide no. 1418/2019 whereby a sum of Rs. 5,20,000 were granted to them as compensation vide order dated 04.03.2021.
12. Further, the complainants preferred an appeal before the Hon'ble Appellate Tribunal vide no. 305/2021 contested the impugned order passed by the learned Adjudicating officer after which Hon'ble Real Estate Appellate Tribunal has held that complainants are entitled to file complaint before RERA Authority with regard to issue of grant of delay interest.

**C. RELIEF SOUGHT**

In view of the aforesaid submission the complainants humbly pray for the following reliefs:

1. To pay interest on the entire amount of Rs. 81,43,155/- (Rupees Eighty-one lakh forty-three thousand one hundred fifty-five only) at prescribed rate of interest under RERA Act for the entire period of delay beyond the deemed date of possession till the actual



handing over of possession on 18.10.2018, as per RERA Act. It is submitted that 18% per annum is the interest rate, which the respondent(s) charged under the buyer's agreement in case of delay in payment of installment.

2. To pay interest on Rs. 2796468/- which the respondent unlawfully held during the force majeure period and gained undue advantage from. There are several precedents towards this issue as pointed out above.
3. To award a sum of Rs. 1,10,000/- (Rupees One Lakh Ten Thousand Only towards litigation cost.
4. To refund 50% of GST paid by the complainants.
5. To pay a sum of Rs 40,000/- lost by complainants due to loan forfeiture which resulted due to the respondent's act of suppressing the information about the force majeure.
6. Any other order or relief which this Hon'ble Real Estate Regulatory Authority, Haryana deems fit and proper in the facts and circumstances of the case, may kindly be passed in favour of the Complainants and against the Respondent(s).

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

Learned counsel for the respondent filed detailed reply on 17.10.2022 pleading therein: -



- (i) That the present complaint is without merits and the facts mentioned by the complainants in their pleadings are denied by the respondent in toto.
- (ii) Respondent has admitted allotment and execution of floor buyer agreement in favor of complainants. It is stated in the reply that after completion of development work in the area, construction of the unit of the complainants was started in the month of september, 2015. After completion of construction work of the said, respondent applied for occupation certificate to the office of District Town Planner, Sonapat and received the same on 11.06.2018. Thereafter, offer of possession was made to complainants on 21.06.2018. Conveyance deed was executed between the parties on 18.10.2018. Complainants after taking over of physical possession approached Hon'ble Adjudicating Officer vide complaint no. 1418/2019 whereby a sum of Rs. 5,20,000 were granted to them as compensation vide order dated 04.03.2021. Thereafter, complainants also preferred an appeal before the Hon'ble Appellate Tribunal vide Appeal no. 305/2021 and contested the impugned order passed by the learned Adjudicating Officer after which Hon'ble Real Estate Appellate Tribunal has dismissed the said appeal vide order dated 16.05.2022.





- (iii) In addition to the above, it is highlighted that the agreement between the parties contains an arbitration clause. As such, any dispute should be referred to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996. Given the presence of this arbitration clause, it is submitted that the complaint is not maintainable before this Hon'ble Authority and should be dismissed in favor of arbitration.
- (iv) That the project is being developed in terms of License no. 71 of 2009. The subsequent issue regarding revision of sectoral plan by the DTCP affected the layout and zoning plans which prevented the respondent-promoter from carrying the development works. Prior to arbitrary revision of sectoral plan, the promoter had obtained approval of layout plan on 08.04.2010 and zoning on 21.09.2011. Said change of sectoral plans adversely affected the area of 13.77 acres of the township and it mandated revision and submission of fresh layout for the township which resulted in frustrating the entire work till that day at site. Copies of the initial and final layout with zoning plans and approvals are attached herewith for reference as Annexure R-9. Final layout plan was approved by the competent authority on 09.02.2015. Period utilised for taking approval of revised sectoral plan cannot be counted towards commitment period by virtue of clause 9(Commitment



period) and 20 (force majeure) of BBA. Complainants were aware of the fact pertaining to force majeure.

- (v) That the rights and obligations of the parties stand concluded after offer of possession and registration of conveyance deed dated 18.10.2018 and complainants were left with no claim of any nature against the respondent. Moreover, the complainants have signed an indemnity cum undertaking dated 18.10.2018 stating that he had taken the possession of the unit to his entire satisfaction and proper inspection and verification and the complainants have no claim against the respondent.
- (vi) It is submitted that GST came into effect on 01.07.2017, the construction of residential complexes or a part thereof were covered under the taxable service. Under clause 7 of the BBA it is clearly specified that all government charges and taxes including but not limited to service tax, whether levied now or in future as well any retrospective tax is to the account of the buyer.
- (vii) That the respondent submits that the complaint is barred by limitation and this Hon'ble Court does not have jurisdiction to entertain a time barred claim.
- (viii) That the complaint is not maintainable in law since the complainants are no more allottees as per the RERA Act, 2016 and complainants are estopped from their own conduct since they have



themselves admitted that they have no claim pending against the respondent.

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

13. During oral arguments learned counsel for the complainants reiterated the facts of the case and insisted upon delay interest for the period 14.08.2013 to 21.06.2018. He argued that only because the possession has been taken over and conveyance deed has been executed, the allottee does not lose his right to claim delayed possession interest. He further argued that finding given in **complaint no. 808 of 2020 titled as Indu Sangwan v/s Jindal Realty Private Limited** with respect to the force majeure period is wrong and Authority needs to re-apply its mind while passing this judgement.

Learned counsel for the respondent reiterated arguments as were submitted in written statement. The complainants, having already accepted possession, executed the conveyance deed, without raising any objections, is now precluded from bringing forth any claims. He referred to para 21 of complaint no. 808 of 2020 titled as Indu Sangwan v/s Jindal Realty Private Limited wherein Authority has give its observation with respect to the period of force majeure. Relevant para of the said order is being reproduced below:





*The obligation to deliver possession within a period of 36 months from builder buyer agreement was not fulfilled by respondent. There is delay on the part of the respondent and the plea taken by respondent is that there was arbitrary revision in sectoral plan of the project by DTCP during the period ranging from 04.11.2011 to 09.02.2015. Said period cannot be counted towards commitment period as construction work was not carried out by respondent during said period. This issue has already been dealt at length by this Authority in order dated 24.01.2019 passed in complaint no. 569/2018-Roshan Malwal vs Jindal Realty Pvt Ltd. Relevant para of order is reproduced below for reference:-*

- 7. The Authority after hearing the parties and going through the record observes that the possession which was required to be delivered in terms of buyer's agreement on 19.11.2014 has not yet been delivered. However, the delay in the delivery of possession is on account of revision of the sectoral plan of the Town and Country Planning Department. When the department was in process of revising the zoning and layout plan, the respondent submitted a representation opposing such revision. However, the department did not accede to his request and had carried out revision of sectoral plan. The matter regarding revision of sectoral plan remained pending from 14.11.2011 to 09.02.2015 and therefore, the respondent could not carry out any construction work during such period. The Authority is of the considered opinion that the respondent cannot be held liable to pay delay compensation for the period during which he could not carry out the construction work due to the revision of the sectoral plan.*
- 8. In the present case when the construction activity could not be carried out due to revision of sectoral plan, the deemed date of possession which in normal circumstances was to lapse on 19.11.2014 must be deemed lapsed after 36 months of the date of finalization of sectoral plan. The*



*sectoral plan had been finalized on 09.02.2015 and on addition of 36 months period prescribed in the buyer's agreement for completion of the project, the deemed date of possession comes out to 09.02.2018. So, the respondent can be held liable for paying delay compensation to the complainant from 09.02.2018 till the date on which the actual possession will be offered to the complainant."*

*Accordingly, due date of possession in this case comes out to 09.02.2018. Possession was offered on 30.06.2018 after receipt of occupation certificate on 21.06.2018. Delay of around 4 months is still there in offering the possession of the unit to the complainant for which respondent is accountable.*

He submitted that there is a delay of approximately 4 months in offering possession in the present complaint as well.

#### **F. ISSUES FOR ADJUDICATION**

14. Whether the complainants are entitled to reliefs claimed by them in terms of provisions of RERA Act of 2016?

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

**G.I Objection regarding maintainability of complaint after execution of conveyance deed and signing of indemnity cum undertaking.**

One of the averments of respondent is that present complaint is not maintainable after execution of conveyance deed on 18.10.2018 as rights and obligations of both parties already stands concluded. Said issue has already been dealt at length vide order dated 14.02.2023 passed in *complaint no. 808 of 2020 titled as Indu Sangwan v/s Jindal Realty*





**Private Limited** this case. Relevant part of the order is reproduced below for reference:-

*"5.1 Whether signing of indemnity bond cum undertaking dated 06.09.2018 and conveyance deed dated 18.10.2018 and letter of handover dated 29.11.2018 at the time of possession extinguishes the right of the allottee to claim delay possession charges?"*

*The respondent is contending that at the time of taking possession of the residential floor vide unit hand over letter dated 29.11.2018, the complainant had certified herself to be fully satisfied with regard to the size, measurement, location, services, quality of work of the unit, installations etc and also admitted and acknowledge that she does not have any claim of any nature whatsoever against the respondent and that upon acceptance of possession, the liabilities and obligations of the respondent as enumerated in the buyer's agreement, stand fully satisfied. The relevant para of the unit handover letter relied upon reads as under:*

*"The Allottee, hereby, confirm and declare that she has taken exclusive, peaceful, vacant physical possession of the aforesaid floor as stated hereinabove, after due inspection at my/our end to my/our complete satisfaction and henceforth have no claim against the owners of any nature whatsoever and on any account in terms of the floor buyer agreement".*

*At times, the allottee is asked to give the indemnity bond cum undertaking before taking possession. The allottee has waited for long for her cherished dream home and now when it is ready for possession, she either has to sign the indemnity\_bond cum\_undertaking and take possession or to keep struggling with the promoter if indemnity bond cum-undertaking is not signed by her. Such an undertaking/ indemnity bond given by a person thereby giving up her valuable rights must be shown to*





have been executed in a free atmosphere and should not give rise to any suspicion. If a slightest of doubt arises in the mind of the adjudicator that such an agreement was not executed in an atmosphere free of doubts and suspicions, the same would be deemed to be against public policy and would also amount to unfair trade practices. No reliance can be placed on any such indemnity bond-cum-undertaking and the same is liable to be discarded and ignored in its totality. Therefore, this Authority does not place reliance on such indemnity-cum-undertaking. To fortify this view, the Authority place reliance on the NCDRC order dated 03.01.2020 in case titled as Capital Greens Flat Buyer Association and Ors. Vs. DLF Universal Ltd., Consumer case no. 351 of 2015, wherein it was held that the execution of indemnity-cum-undertaking would defeat the provisions of sections 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being an unfair trade practice. The relevant portion of the said judgment is reproduced herein below.

" Indemnity cum undertaking.

30.The developer, while offering possession of the allotted flats insisted upon execution of the indemnity-cum-undertaking before it would give possession of the allotted flats to the concerned allottee.

Clause 13 of the said indemnity-cum-undertaking required the allottee to confirm and acknowledge that by accepting the offer of possession, he would have no further demands/claims against the company of any nature, whatsoever. It is an admitted position that the execution of the undertaking in the format prescribed by the developer was prerequisite condition for the delivery of the possession. The opposite party, in my opinion, could not have insisted upon clause 13 of the Indemnity-cum' undertaking. The obvious purpose behind such an undertaking was to deter the allottee from making any claim against the developer, including the claim on

*Rathee*

account of the delay in delivery of possession and the claim on account of any latent defect which the allottee may find in the apartment. The execution of such on undertaking would defeat the provisions of Section 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being on unfair trade practice. Any delay solely on account of the allottee not executing such on undertaking would be attributable to the developer and would entitle the allottee to compensation for the period the possession is delayed solely on account of his having not executed the said undertaking-cum-indemnity.

The said judgment of NCDRC was also upheld by the Hon'ble Supreme Court vide its judgement dated 14.12.2020 passed in Civil Appeal nos. 3864- 3889 of 2020 against the order of NCDRC.

It is noteworthy that Section 18 of the RERA Act, 2016 stipulates for the statutory right of the allottee against the obligation of the promoter to deliver the possession within stipulated timeframe. Therefore, the liability of the promoter continues even after the execution of indemnity bond -cum-undertaking at the time of possession. Further, the reliance placed by the respondent counsel on the language of the handover letter that the allottee had waived off her right by signing the said unit handover letter is superficial. In this context, it is appropriate to refer case titled as Mr. Beatty Tony Vs. prestige Estate projects Pvt Ltd. (Revision petition no.3135 of 2014 dated 18.11.2014), wherein the Hon'ble NCDRC while rejecting the arguments of the promoter that the possession has since been accepted without protest vide letter dated 23.12.2011 and builder stands discharged of its liabilities under agreement, the allottee cannot be allowed to claim interest at a later date on account of delay in handing over of the possession of the apartment to him, held as under:





*"13. The learned counsel for the opposite parties submits that the complainant accepted possession of the apartment on 23/24.12.2011 without any protest and therefore cannot be permitted to claim interest at a later date on account of the alleged delay in handing over the possession of the apartment to him. We, however, find no merit in the contention. A perusal of the letter dated 23.12.2011, issued by the opposite parties to the complainant would show that the opposite parties unilaterally stated in the said letter that they had discharged all their obligations under the agreement. Even if we assume on the basis of the said printed statement that having accepted possession, the complainant cannot claim that the opposite parties had not discharged all their obligations under the agreement, the said discharge in our opinion would not extend to payment of interest for the delay period, though it would cover handing over of possession of the apartment in terms of the agreement between the parties. In fact, the case of the complainant, as articulated by his counsel is that the complainant had no option but to accept the possession on the terms contained in the letter dated 23.12.2011, since any protest by him or refusal to accept possession would have further delayed the receiving of the possession despite payment having been already made to the opposite parties except to the extent of Rs. 8,86,736/-. Therefore, in our view the aforesaid letter dated 23.12.2011 does not preclude the complainant from exercising his right to claim compensation for the deficiency on the part of the opposite parties in rendering services to him by delaying possession of the apartment, without any justification condonable under the agreement between the parties."*

*Said view was later reaffirmed by 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. "

Therefore, the Authority is of the view that the aforesaid unit handover letter dated 29.11.2018 does not preclude the complainant from exercising her right to claim delay possession charges as per the provisions of the RERA Act, 2016.

5.2 Whether the execution of the conveyance deed extinguishes the right of the allottee to claim delay possession charges?

The respondent submitted that the complainant had executed a conveyance deed dated 18.10.2018 and therefore, the transaction between the complainant and the respondent has been concluded and no right or liability can be asserted by respondent or the complainant against the other. Therefore, the



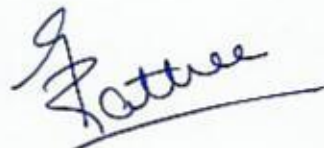
*complainant is estopped from claiming any interest in the facts and circumstances of the case. The present complaint is nothing but a gross misuse of process of law.*

*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 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 unit) is transferred. However, the conveyance deed does not mark an end to the liabilities of a promoter 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 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*

*Sathee*

*and upon taking possession, and/or executing conveyance deed, the complainant never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act.*

*It is relevant to point out here that in clause 49 of conveyance deed, the words used are 'the vendee (s) shall have no claim against the promoters/vendors with regard to any item of work, quality of work, materials, installations etc in the said floor or any ground whatsoever and all such claims, if any shall be deemed to have been waived'. Also, the contents of the indemnity bond is also reproduced which are as 'the indemnifiers have taken over the possession of the said floor to their entire satisfaction and after proper inspection and verification. The indemnifiers shall henceforth have no claim against the company of any nature whatsoever in respect of the size, measurement, location, services of the said floor and the indemnifiers shall be fully responsible for the same.' meaning thereby that the complainant/vendee(s) is left with no claim with regard to size, measurement, location of the unit. Neither in the conveyance deed nor in the indemnity bond, it has been mentioned that the complainant is left with no right to claim delay interest/compensation of any type from the promoter. Complainant herein is not putting forward any claim with regard to size, measurement, location, quality and material of work.*

*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."*

*Also, the para 35 of judgement dated 24.08.2020 titled as Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt, Ltd, (now Known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no.6239 of 2019) is reproduced herein below:*

*" 35. The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the 36 consumer forum by seeking a Deed of Conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."*

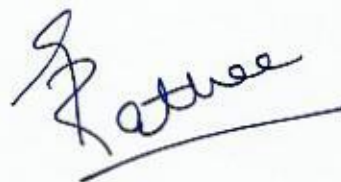
*Authority observes that all the agreements/ documents signed by the allottee reveals stark incongruities between the remedies available to both the parties. In most of the cases these documents and contracts are ex-facie one sided, unfair and unreasonable whether the plea has been taken by the complainant/allottee 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.*

*Rathee*

*The complainant/allottee has invested her hard-earned money and there is no doubt that the promoter has been enjoying benefits of 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, in furtherance to the Hon'ble Apex Court judgement and the law laid down in the Wg. Cdr. Arifur Rahman (supra), this Authority holds that even after execution of the conveyance deed, the complainant cannot be precluded from his right to seek delay possession charges from the respondent-promoter. Keeping in view the aforesaid discussion, it is decided that the complaint is maintainable."*

**G.II Objections raised by the respondent regarding force majeure conditions and delay in handing over of possession of unit.**

The obligation to deliver possession within a period of 36 months from builder buyer agreement was not fulfilled by the respondent. There is delay on the part of the respondent, and the plea taken by respondent is that there was arbitrary revision in sectoral plan of the project by DTCP during the period from 04.11.2011 to 09.02.2015, due to which it could not carry out construction work therefore said period not counted towards commitment period.





This issue has already been dealt at length by this Authority in its order dated 24.01.2019 passed in **Complaint no. 569/2018-Roshan Malwal vs Jindal Realty Pvt Ltd.** Relevant para of the order is reproduced below for reference:-

*"7. The Authority after hearing the parties and going through the record observes that the possession which was required to be delivered in terms of buyer's agreement on 19.11.2014 has not yet been delivered. However, the delay in the delivery of possession is on account of revision of the sectoral plan of the Town and Country Planning Department. When the department was in process of revising the zoning and layout plan, the respondent submitted a representation opposing such revision. However, the department did not accede to his request and had carried out revision of sectoral plan. The matter regarding revision of sectoral plan remained pending from 14.11.2011 to 09.02.2015 and therefore, the respondent could not carry out any construction work during such period. The Authority is of the considered opinion that the respondent cannot be held liable to pay delay compensation for the period during which he could not carry out the construction work due to the revision of the sectoral plan.*

*8. In the present case when the construction activity could not be carried out due to revision of sectoral plan, the deemed date of possession which in normal circumstances was to lapse on 19.11.2014 must be deemed lapsed after*



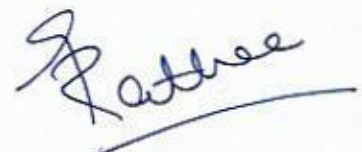
*36 months of the date of finalization of sectoral plan. The sectoral plan had been finalized on 09.02.2015 and on addition of 36 months period prescribed in the buyer's agreement for completion of the project, the deemed date of possession comes out to 09.02.2018. So, the respondent can be held liable for paying delay compensation to the complainant from 09.02.2018 till the date on which the actual possession will be offered to the complainant."*

Thus, same ratio of law applies to the present complaint as well.

**G-III- Objections raised by the respondent regarding Arbitration clause in the agreement.**

Respondent has raised an objection that this Hon'ble Authority doesn't have jurisdiction to entertain the present complaint, as it has been specifically mentioned/stated in clause 21 of the agreement that all the disputes shall be refer to arbitration being conducted by sole arbitrator.

With regard to the above issue, the Authority is of the opinion that jurisdiction of the Authority cannot be fettered by the existence of an arbitration clause in the agreement as it may be noted that Section-79 of the RERA Act bars the jurisdiction of civil courts about any matter which falls within the purview of this Authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, Section 88 of the RERA Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the Authority puts reliance on catena of judgments of the Hon'ble Supreme





Court, particularly on *National Seeds Corporation Ltd. v. M. Madhusudhan Reddy and Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the Authority would not be bound to refer parties to Arbitration even if the agreement between the parties had an arbitration clause.

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

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

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

*It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal*



*established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra) the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act*

.....

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

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

*"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996*



*and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength of an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."*

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



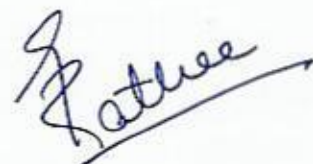
such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.

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

**G-IV- Objections raised by the respondent regarding complaint being barred by limitation.**

Respondent has taken objection that complaint is grossly barred by limitation. Reference in this regard is made to the judgement of Apex court Civil Appeal no. 4367 of 2004 titled as **M.P Steel Corporation v/s Commissioner of Central Excise.**

*"It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian*





*Limitation Act, 1963.” 20. In Kerala State Electricity Board v. T.P”*

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

#### **OBSERVATIONS AND DECISION OF THE AUTHORITY**

14. 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) Admittedly, respondent was under obligation to deliver possession on 14.02.2014 in terms of Clause 9.1 of builder buyer agreement dated 14.02.2011 but possession got delayed on account of force majeure conditions i.e, revision of sectoral plan of the project. Possession was offered to complainants on 21.06.2018 after obtaining occupation certificate on 11.06.2018. In terms of principles laid down by the Authority in *complaint no. 569/2018-Roshan Malwal vs Jindal Realty Pvt Ltd* and *complaint no. 1048/2018-Nirmala Chaudhary & Parul Chaudhary vs Jindal Realty Pvt Ltd*, the deemed date of possession



works out to 09.02.2018. A valid offer of possession supported with occupation certificate was issued to complainants on 21.06.2018 and thereafter conveyance deed got executed on 18.10.2018. There is delay of 4 months and 12 days in offering a valid possession by the respondent to the complainants. 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".*

15. 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;*

16. 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 shall be such as has been prescribed under Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017. 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".*

17. 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. 14.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
18. In view of aforesaid observations and reasoning, the Authority hereby concludes that the complainants are entitled to the delay interest from 09.02.2018 (deemed date of possession) to 21.06.2018 (date on which a valid offer was sent to complainants after obtaining occupation certificate dated 11.06.2018). On perusal of page 15 of the complaint filed by the complainants (table of payments) it is revealed that complainants have



not made any payment during the period of 04.11.2011 to 09.02.2015. Force majeure period in the present project is from 04.11.2011 to 09.02.2015. Complainants have not made any payment during this period therefore; no interest will be awarded for the said period to the complainants.

Complainants have also sought interest on the amount of Rs. 27,96,468/- (paid prior to force majeure) paid by the complainants towards the villa held by the respondent during force majeure period. This issue had already been decided by this Hon'ble Authority vide order dated 25.03.2021, in **complaint no. 1672 of 2019 titled Sunita Singh versus Jindal Realty Pvt. Ltd** wherein Hon'ble Authority observed that the amount paid by the complainants have been admitted by the respondent and has been utilized for development and construction of the project. Thus, amount collected by the respondent had been utilized for development of project and respondent has fulfilled his duty by offering possession of the unit to the allottee after completing construction. Therefore, relying on the abovementioned judgment, Authority observes that interest on the amount paid by the complainants prior to 09.02.2015 cannot be granted.

19. Authority has got calculated the interest on total paid amount from the deemed date of possession till the date of valid offer of possession at the





rate of 10.85% till and said amount works out to ₹ ...../- as per detail given in the table below:

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later till offer of possession	Interest Accrued till 21.06.2018(in ₹)
1.	61,44,273/- (amount paid till 09.02.2018)	09.02.2018	2,42,918/-
2.	7,41,243/-	28.03.2018	18,949/-
3.	82,267	20.06.2018	49/-
	Total-69,67,883/-		Total=₹2,61,916/-

20. Complainants have sought refund of excess amount of GST as additional burden of taxes has to be borne by complainants and respondent in equal share which has not been done in this case. Respondent is directed to act in accordance with the principles laid down in **complaint no. 569/2018 and 1048/2018** pertaining to CGST and SGST.
22. Complainants are also seeking relief of Rs. 1,10,000/- towards the litigation cost. In this regard 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. Nevertheless it is a matter of record that compensation has already granted to the complainants vide order dated 04.03.2021 in complaint no. 1418 of 2019.

23. Complainants have also sought relief that a sum of Rs. 40,000/- be paid as this sum is lost by complainants due to loan forfeiture which resulted due to the respondent's act of suppressing the information about the force majeure. In this regard it is observed that neither any document revealing the same has been placed on record nor any specific particulars dealing with regard to this has been incorporated in the pleadings. It is important to note that this charge has neither been argued nor pressed by ld. counsel for complainants at the time of hearing. Hence, complainant's prayer to award this relief cannot be granted.

#### **I. DIRECTIONS OF THE AUTHORITY**

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






(i) Respondent is directed to pay delay interest of Rs. 2,61,916/- to complainant. Interest shall be paid up till the time period provided under Section 2(z) of the Real Estate (Regulation and Development) Act, 2016. Further, respondent to bear burden of additional tax of GST in equal share with complainants and to refund excess amount, if any, taken on account of CGST and SGST to complainants.

(ii) A period of 90 days is given to the respondent to comply with the directions given by this Authority in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which, legal consequences would follow.

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

  
CHANDER SHEKHAR  
[MEMBER]

  
DR. GEETA RATHEE SINGH  
[MEMBER]