



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Date of decision:	10.02.2025
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Sr. No.	Complaint No(s)	Complainants	Respondents
1.	2539 of 2023	Ravinder Pal Singh S/o Sh. Mastaan Singh R/o House no. 113, Sector-8, Vikas Vihar, Near Prem Nagar, Ambala City, Haryana- 134003	1. M/s S.N. Realtors Pvt. Ltd. (a wholly owned subsidiary of M/s Omaxe Ltd.) Office at- 7, Local Shopping Centre, Kalka Ji, New Delhi-110019 2. M/s Omaxe Ltd. Office at- SCO No. 174, Commercial Belt, Sector-17, HUDA, Jagadhari, Yamunagar through its Manager

[Handwritten Signature]

2.	2540 of 2023	Balpreet Kaur W/o Ravinder Pal Singh R/o House no. 113, Sector-8, Vikas Vihar, Near Prem Nagar, Ambala City, Haryana- 134003	1. M/s S.N. Realtors Pvt. Ltd. (a wholly owned subsidiary of M/s Omaxe Ltd.) Office at- 7, Local Shopping Centre, Kalka Ji, New Delhi- 110019 2. M/s Omaxe Ltd. Office at- SCO No. 174, Commercial Belt, Sector-17, HUDA, Jagadhari, Yamunagar through its Manager
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CORAM: Nadim Akhtar Member
Chander Shekhar Member

Present:- Adv. Sanjay jain, Counsel for the Complainants (in both complaints)

Adv. Manjinder Kumar Counsel for the Respondents in complaint no. 2539 of 2023

Adv. Gautam Goyal, counsel for respondents in complaint no. 2540 of 2023

ORDER (NADIM AKHTAR - MEMBER)

1. This order shall dispose of above captioned two complaints filed by the complainants before this Authority 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.

2. These two complaints are taken up together as facts and grievances of both the complaints more or less are identical and relate to the same project of the respondents, i.e., "Omaxe City, Yamuna Nagar", situated a Pabni, Bilaspur Road, Jagadhari, District Yamuna Nagar, Haryana. The fulcrum of the issue involved in these cases pertains to failure on the part of respondent/promoters to deliver timely possession of unit in question. Complaint No. 2539 of 2023 titled "Ravinder Pal Singh versus M/s S.N. Realtors Pvt. Ltd. and Anr." has been taken as lead case for disposal of these two matters.

A. UNIT AND PROJECT RELATED DETAILS:

3. The particulars of the project have been detailed in the following table:

Sr. No.	Particulars	Details
1.	Name and location of project	Omaxe City, Yamuna Nagar", situated a Pabni, Bilaspur Road, Jagadhari District Yamuna Nagar, Haryana
2.	Nature of the Project	Residential Township
3.	Name of the Promoters	M/s S.N. Realtors Pvt. Ltd. and M/s Omaxe Ltd.
4.	RERA registered/not registered	Un-registered

had

4. Further the details of sale consideration, the amount paid by all the complainants and proposed date of handing over of the possession have been given in following table:

Sr. No	Complaint no.	Flat No. and area	BUYER AGREEMENT	DEEMED DATE OF POSSESSION	TOTAL SALES CONSIDERATION (IN RS.)	TOTAL AMOUNT PAID BY THE COMPLAINANTS AS PER RECEIPTS (IN RS.)
1	2539 of 2023	Plot no. 215, Block- A Area- 328.90 sq. yds.	Buyer Agreement- 12.04.2013	12.04.2015 (24 months from the date of execution of the agreement)	₹24,45,970/-	₹22,78,545/-
2	2540 of 2023	Plot no. 216, Block- A Area- 328.90 sq. yds.	Buyer Agreement- 12.04.2013	12.04.2015 (24 months from the date of execution of the agreement)	₹24,45,970/-	₹22,80,921/-

B. FACTS OF THE COMPLAINT No. 2539 OF 2023

5. Complainant in his complaint has stated that the officials of the respondent company induced the complainant to purchase a plot in their project namely,

"Omaxe City, Yamuna Nagar", located at Pabni, Bilaspur Road, Tehsil Jagadhri, District Yamuna Nagar, Haryana. They assured the complainant of a hassle-free purchase and a well-developed project. Based on these assurances, the complainant booked a plot in the project and was allotted *Plot No. 215, measuring 328.90 sq. yds., in Block-A.*

6. As per the buyer's agreement dated 12.04.2013, the total cost of the plot was ₹24,45,970/-. The complainant made full payment of the plot between the years 2012 to 2014 through a loan obtained from LIC Housing Finance Limited, Ambala Cantt. The respondents provided a No Objection Certificate (NOC) to LIC Housing Finance Limited, dated 10.07.2013. Copies of the buyer's agreement, NOC, and payment receipts are annexed as Annexures C-1 to C-10.
7. Despite full payment, the respondents have failed to deliver the possession and execute the Sale Deed in favor of the complainant, in clear violation of the agreement.
8. The complainant has repeatedly requested the respondents to hand over possession and register the Sale Deed, but they have unjustly demanded additional External Development Charges (EDC) with interest.
9. The complainant sought clarification regarding the EDC charges, but the respondents failed to provide details until April 2023, when they verbally



demanded ₹3,500/- per sq. yd. with interest. Upon further insistence, they issued a written statement on 26.08.2023, claiming total dues of ₹13,12,657.20 plus interest of ₹13,42,658.30 (Annexure C-11). These charges are unjustified, as the complainant was never informed of such high EDC rates and interest. Respondents have refused to grant possession of the plot unless these charges are paid.

10. The complainant has discovered that the respondents lack a Completion Certificate from the competent authority, which is why possession has not been granted despite full payment since 2013-14. (Copy of information obtained through RTI is annexed as Annexure C-12).
11. Further, the respondents have not registered the project with the Real Estate Regulatory Authority (RERA), violating legal requirements and committing fraud against the complainant.
12. Despite directions from the Town & Country Planning Department and the Hon'ble High Court, the respondents are illegally demanding inflated EDC charges from the complainant. The applicable EDC should be based on 2013 rates, without interest, making their claim unlawful. Since the respondents lack a Completion Certificate, the complainant is entitled to delayed possession charges under the RERA Act.



C. RELIEFS SOUGHT

13. Complainant has sought following reliefs:

- a. Complainants pray before this Hon'ble Authority to pass an order to direct the Respondent to deliver the possession of the plot in question and to get the sale deed registered in the name of the complainant and respondents be also directed to pay the delayed possession charges to the complainant along with interest @ 24% per annum from the date when the same were due till the payment and the complainant is also entitled to compensation charges also as per the provisions of the Act.
- b. Cost of the Complaint be allowed.
- c. Pass any other order which this Hon'ble Authority deems fit and proper.

D. REPLY ON BEHALF OF RESPONDENTS

14. The complaint is not maintainable before this Hon'ble Authority on the following grounds:

- a. As per Clause 58 of the Buyer's Agreement dated 12.04.2013, which states that only courts in Yamuna Nagar and Delhi shall have jurisdiction over disputes concerning the allotment.
- b. Under Clause 57 of the Buyer's Agreement, disputes must be referred to Arbitration under Section 8 of the Arbitration & Conciliation Act, 1996 (as



- amended in 2015). The respondents have not waived their right to arbitration, and the matter should be referred accordingly.
- c. The complainant availed financial assistance from a financial institution but failed to implead it as a necessary party. Since the complainant has referred to loan payments in the complaint, the financial institution must be included.
- d. As per the complainant's own version, the last payment was made in 2014. The complaint, filed after nearly a decade, is time-barred and deserves dismissal on this ground alone.
- e. The booking of the unit was made in 2012, prior to the enactment of the Real Estate (Regulation & Development) Act, 2016. Moreover, as the project is not registered under RERA, the complaint before this authority is not sustainable.
- f. As per Section 19(6) of the RERA Act, an allottee must make payments as per the agreement, and possession is subject to timely payment. Since the complainant defaulted in payments, they cannot now claim delay in possession. Any interest levied on outstanding dues was in strict accordance with the terms of the agreement, which both parties are bound by.



- g. The complainant has suppressed the fact that possession was offered in 2018, along with multiple reminders to take possession and clear outstanding dues. The complainant deliberately ignored these communications, making the complaint liable for dismissal.
- h. The project was completed, and conveyance deeds for similarly placed allottees were executed on 29.12.2017. This proves that the development was completed, and possession was available. (Annexure A-1).
- i. The complainant repeatedly failed to clear outstanding dues despite several reminders and final notices. Due to non-compliance, the unit was cancelled on 21.05.2022 (Annexure R-2).
- j. Multiple reminders were issued from 2013 to 2021 for payment of outstanding amounts, including final opportunity notices, offer of possession letters, and requests for execution of the sale deed. Copies of letters/reminders (Annexure R-3 to R-27) substantiate this claim.
- k. The complainant remained silent from May 2014 to May 2022, only raising issues after the cancellation of the unit. Since the offer of possession was made in 2018, there is no valid reason for the complainant's delay in taking possession or raising grievances.



E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS

15. Learned counsel for the complainant reiterated the basic facts of the case, emphasizing that the complainant purchased a plot in Omaxe City, Yamuna Nagar, in 2013 and made full payment by 2014. However, the respondent company has failed to deliver possession or execute the sale deed, instead unjustly demanding additional External Development Charges (EDC) with interest. The respondents lack a Completion Certificate and have not registered under RERA, thereby violating legal provisions. The complainant seeks possession, cancellation of unlawful charges, and compensation for the delay. Furthermore, the counsel highlighted that the complainant has annexed the statement of account at Page 39 of the complaint book to substantiate the payments made. He also clarified that any remaining amount is to be paid only upon receiving a legally valid offer of possession from the respondents, which has not been provided till date.
16. When case was called up, none appeared for respondents in Complaint no. 2539 of 2023. However, later Adv. Manjinder Kumar appeared and requested the Authority to mark his presence on behalf of the respondents. His request is accepted.



17. On the other hand, Advocate Gautam Goyal appeared on behalf of the respondent in Complaint No. 2540 of 2023 and stated that the respondent has already applied for a part completion certificate from the competent authority, as evidenced by Annexure R-7 on page 25 of the reply. He further argued that the complainant failed to make the required payment towards the External Development Charges (EDC) demanded for the allotted unit. The Authority inquired about the deemed date of possession in the complaint. In response, the respondent's counsel cited the buyer's agreement dated 12.04.2013, which required the respondent to hand over possession within 24 months, along with an additional grace period of six months. Based on this, the deemed date of possession was set as 12.10.2015. Additionally, the respondent's counsel mentioned that several demand letters had been attached to the reply book, but the complainant failed to comply with them. When asked by the Authority, whether the respondent had obtained the Completion Certificate (CC) as of today, the counsel admitted that it had not been obtained. The Authority further inquired about the outstanding amount to be paid by the complainant. The respondent's counsel referred to page 10 of the reply book, where a reminder letter dated 22.12.2014 was annexed, indicating that the remaining balance payable by the complainant was ₹13,35,275/-. The



Authority noted that the complainant had already paid 95% of the total sale consideration.

F. ISSUES FOR ADJUDICATION

18. Whether the complainant is entitled to get possession of the booked plot along with delay interest in terms of Section 18 of Act of 2016?

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

In light of the background of the matter as captured in this order and also the arguments submitted by the learned counsels for both the parties, the Authority observes as follows:

19. The complainant initially booked Plot No. 215, Block-A, measuring 328.90 sq. yds. in the respondent's project, "Omaxe City, Yamuna Nagar." A Buyer's Agreement was executed between the parties on 12.04.2013. The complainant has made a total payment of ₹22,78,545/- out of the total sale consideration of ₹24,45,970/-, opting for a time-linked payment plan as per the agreement. The complainant is aggrieved by the respondent's failure to offer possession within the stipulated timeframe and is seeking relief in the form of possession along with interest for the delay an execution of conveyance deed.
20. The primary issue before the Authority is to determine which respondent is responsible for delivering possession of the booked unit to the complainant. Upon careful examination of the buyer's agreement dated 12.04.2013, it is



evident that the agreement was executed solely between the complainant, (Ravinder Singh), and Respondent No. 1, (M/s S.N. Realtors Pvt. Ltd.) There is no mention of Respondent No. 2 being a party to this agreement. Furthermore, the buyer's agreement bears only the signatures of Respondent No. 1. Additionally, the payment receipts submitted by the complainant were issued by Respondent No. 1, and all demand letters annexed to the reply of the respondent were also issued by Respondent No. 1 only. These facts clearly establish that Respondent No. 1 was solely responsible for executing the terms and conditions of the buyer's agreement related to the unit in question. Therefore, the Authority concludes all rights and liabilities rest with Respondent No. 1, which is responsible for handing over possession of the unit along with interest accrued due to the delay.

21. Findings on the objections raised by the respondent in his reply dated 13.08.2024.

i. *Objections raised by the respondent regarding force majeure conditions.*

The respondent was obligated to deliver possession within the stipulated period of 24 months from the date of signing the Buyer Agreement. However, this obligation remains unfulfilled till date. The respondent has sought an additional grace period of six months, citing force majeure conditions. However, the respondent has failed to specify the circumstances or



occurrences that led to the delay in handing over possession to the complainant. In the absence of any valid explanation, the Authority finds no justification for granting an additional grace period. So, the plea of respondents to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

- ii. ***Objection that the booking of the unit was made in 2012, prior to the enactment of the Real Estate (Regulation & Development) Act, 2016. Moreover, as the project is not registered under RERA, the complaint before this authority is not sustainable.***

One of the averments of respondent is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act, 2016. Accordingly, respondent has argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the same cannot be examined under the provisions of RERA Act, 2016. In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of buyer agreements. After RERA Act, 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be



fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as **Madhu Sareen v/s BPTP Ltd** decided on 16.07.2018. Relevant part of the order is being reproduced below:

"The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller."

Further, as per recent judgement of Hon'ble Supreme court in Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021, it has already been held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects. Furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of



obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaint.

Execution of buyer agreement dated 12.04.2013 is admitted by the respondent. Said buyer agreement was binding upon both the parties. As such, the respondent is under an obligation to hand over possession on the deemed date of possession and in case, the respondent failed to offer possession on the deemed date of possession, the complainant is entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

- iii. ***Objection that RERA does not apply retrospectively to agreements made before its implementation and cannot alter the binding terms of the pre-existing FBA. The Haryana RERA Rules, 2017, also clarify that ongoing projects must disclose existing agreements, but such disclosures do not affect the validity of those agreements.***

Reference can be made to the case titled M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. (supra), wherein the Hon'ble Apex Court has held as under:-

“41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held

prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.

45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest.

53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."



The provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the Rules applicable to the acts or transactions, which were in the process of the completion though the contract/ agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

Further, the issue as to where project shall be considered as “ on-going project” has been dealt with and settled by the Hon’ble Supreme court in **Newtech Promoters and developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021** herein reproduced:.

“ 37. Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all “ongoing projects” that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including



allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority."

Wherein Hon'ble Apex held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects. Furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder.

- iv. *As per the complainant's own version, the last payment was made in 2014. The complaint, filed after nearly a decade, is time-barred and deserves dismissal on this ground alone.*

Reference in this regard is made to the judgement of Hon'ble Apex court Civil Appeal No. 4367 of 2004 titled as "M.P Steel Corporation v/s Commissioner of Central Excise". Relevant part of the said judgment is reproduced here under:-

"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.

- v. ***Objections raised by respondent that as per Section 19(6) of the RERA Act, an allottee must make payments as per the agreement, and possession is subject to timely payment. Since the complainant defaulted in payments, they cannot now claim delay in possession. Any interest levied on outstanding dues was in strict accordance with the terms of the agreement, which both parties are bound by.***

With regard to this objection raised by the respondents, Section 19(6), of the Real Estate (Regulation and Development) Act, 2016 are reproduced below:

19(6)"Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any."

The complainant opted for a Time Linked Payment Plan (TLP) and made payments as per the demands raised by the respondents during each stage.

The respondents admitted that the complainant made payments according to



the progress. Additionally, the complainant paid a total amount of 22,78,545/- out of plot's total value of ₹24,45,970/-, indicating that the complainant had already paid 95% of the consideration.

The respondent objection, claiming that the complainant is a defaulter under Sections 19(6), of the Real Estate (Regulation and Development) Act, 2016 (RERA), and therefore cannot seek relief under RERA, lacks merit. Sections 19(6), impose obligations on the buyer to make timely payments and take possession when the promoter issues a notice of possession. However, since the complainant has made maximum payments, there is no default on the complainant's part. Therefore, the respondent's claim that the complainant is not entitled to relief under RERA is unsustainable. Under RERA, the promoter is responsible for completing the project on time and obtaining all necessary approvals. Failure to meet these obligations allows the buyer to seek relief under RERA, such as compensation for delays or even possession with interest.

Authority concludes that, the respondent's objection under Sections 19(6), of RERA is invalid, as the complainant has fulfilled payment obligations. On the other hand, the respondent's failure to deliver possession by the agreed date is in breach of RERA. The complainant is, therefore, entitled to seek relief under RERA provisions.



- vi. *That under Clause 57 of the Buyer's Agreement, disputes must be referred to Arbitration under Section 8 of the Arbitration & Conciliation Act, 1996 (as amended in 2015). The respondents have not waived their right to arbitration, and the matter should be referred accordingly.*

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 complainant 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 Appellate 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 aforesaid 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 judgment passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the



Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

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

Therefore, in view of the above judgments and considering the provisions of the Act, the Authority is of the view that complainant is 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.

- vii. *That Clause 58 of the Buyer's Agreement dated 12.04.2013, states that only courts in Yamuna Nagar and Delhi shall have jurisdiction over disputes concerning the allotment.*

As per notification no. 1/92/2017/ITCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be entire Haryana except Gurugram District for all purpose with office situated in Panchkula. In the present case the project in question is situated within the planning area of Yamuna Nagar district. Therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

- viii. *Objection raised by the respondent that the complainant availed financial assistance from a financial institution but failed to implead it as a necessary party. Since the complainant has referred to loan payments in the complaint, the financial institution must be included.*

The Authority, however, finds no merit in this objection. The financial arrangement between the complainant and the financial institution is an



independent transaction that does not concern the respondent. The loan was merely a mode of financing chosen by the complainant to fulfill the payment obligations under the buyer agreement. The disbursement of the loan amount, its repayment, and any contractual obligations between the complainant and the financial institution has no bearing on the respondent's duty to deliver possession of the plot as per the terms of the buyer agreement. Furthermore, the respondent has already issued a No Objection Certificate (NOC) to the financial institution, allowing the loan disbursement, thereby acknowledging the complainant's full payment towards the unit. The respondent cannot now claim that the financial institution is a necessary party to the dispute when the primary issue at hand is the failure to deliver possession despite full payment. Thus, the Authority rejects the respondent's objection, affirming that the presence of the financial institution is not necessary for adjudicating the present complaint.

- ix. *Objection raised by the respondent that complainant has failed to make payment to the respondent w.r.t the EDC, IDC and other charges which amounts to ₹13,12,657.20/-*

In this regard, it is observed that the complainant had opted for a time linked plan and had paid almost 95% of the total sale consideration to the complainant. Since the delay caused is attributed to the respondent, it cannot



burden the complainant with the charges/taxes etc. which were not applicable at the time of deemed date of possession, which in present case was 12.04.2015. Further with regard to the External Development Charges, Authority is of the view that respondent has not received occupancy/completion certificate for the project in question till date. Therefore, in general circumstances, respondents cannot legally charge External Development Charges (EDC) without obtaining the occupancy certificate (OC), as doing so would be a breach of their obligations under the Real Estate (Regulation and Development) Act, 2016 (RERA). External Development Charges (EDC) are levied by the local authorities for infrastructure development such as roads, sewage, and water supply. However, the respondent cannot demand such charges unless the project is complete and the OC/CC has been obtained. Section 11(4)(b) of RERA mandates that the promoter (respondent) is responsible for obtaining the completion and occupancy certificates. Without fulfilling this key obligation, the respondents cannot place additional financial demands on the complainant, including enhanced EDC. Furthermore, the judgment of the Delhi High Court in 2013. "**Supertech Ltd. v. Emerald Court Owner Resident Welfare Association**", reinforced that developers must obtain necessary approvals, such as the Occupancy Certificate (OC), before



imposing further charges or handing over possession. Without an OC/CC, the project is considered incomplete, and buyers cannot be charged additional amounts, including EDC. Therefore, this judgment makes it clear that after the year 2015, any demand raised by the respondent on account of external development charges without obtaining occupancy certificate/ completion certificate for the project in question would be considered illegal and unjustified. This liability will arise only after the complainant receives a legally valid possession offer, ensuring that payment obligations regarding these charges are tied to the completion of the project and the availability of associated services. Until that time, any demand for payment of such charges remains unjustified and invalid.

- x. ***Objection by the respondent that due to default on the part of complainant, the respondent vide letter dated 21.05.2022 cancelled the unit of the complainant.***

With regard to the same, The Authority observed that the respondent was obligated to deliver possession of the unit to the complainant by 12.04.2015. However, the respondent has failed to fulfill this obligation to date. It is undisputed that the complainant has already paid 95% of the total sale consideration. As per the time-linked payment plan opted by the complainant, the remaining amount was due at the time of a legally valid offer of possession. However, the records clearly indicate that the respondent has not



made any such valid offer of possession. Instead of fulfilling its contractual obligation, the respondent unjustly canceled the complainant's allotment on 21.05.2022, despite being at fault for failing to deliver possession within the stipulated time. In light of these facts, the Authority finds the cancellation unjustified and deems it appropriate to set aside the cancellation letter dated 21.05.2022.

- xi. **Findings on the relief sought by the complainant i.e to direct the respondent to handover possession of booked unit alongwith delayed possession charges at the prescribed interest per annum.**

In the present complaint, the complainant intends to continue with the project and is seeking delayed possession charges as 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”.

Clause 32(a) of buyer agreement dated 12.04.2013 provides for handing over of possession and is reproduced below:-

“The complainant shall complete the development of the Plot/Project within 24(Twenty Four) months from the date of signing of the agreement by the Buyer(s) or within an extended



period of 6 (six) months. Completion of development of the Plot within such 30 (thirty) months is subject to force majeure conditions (as mentioned in Clause b hereunder) and subject to timely payment by the Plot Buyer(s) or subject to any reasons beyond the control of the company.....”

Clause 32(a) of the Buyer agreement dated 12.04.2013, provides for handing over of possession within 24 months from the date of signing buyer agreement which comes to **12.04.2015**.

- xii. **Finding w.r.t grace period:** The promoters had agreed to handover the possession of plot within 24 months from the date of signing of buyer agreement. The agreement further provides that promoter shall be entitled to a grace period of 6 months after expiry of 24 months for filing and pursuing the grant of completion certificate with respect to the unit in question. Since, the later clause of approval/sanctioning of building plan is vague, ambiguous and arbitrary, 24 months from the date of execution of buyer agreement is taken as the date for calculating the deemed date of possession, i.e., 12.04.2015. As a matter of fact, the promoter did not apply to the concerned Authority for obtaining completion certificate/occupation certificate within the time limit prescribed by the respondent/promoter in the floor buyer agreement, i.e, immediately after completion of construction works within 24 months. Thus, the period of 24 months expired on 12.04.2015. As per the settled principle no



one can be allowed to take advantage of its own wrong. Accordingly, this grace period of 6 months cannot be allowed to the promoter.

22. In view of above observations given in preceding paragraphs of this order, Authority summarizes its observations in the matter as under:

- i. Buyer agreement that finally crystallized the terms of agreement was executed between both the parties on 12.04.2013. As per Clause 32(a) of the agreement and the observations as recorded in Para xi of this order, possession of the unit should have been delivered by 12.04.2015. It is an admitted fact that construction of the project had been delayed beyond the time period stipulated in the buyer's agreement and delivery of possession of the unit has also been delayed by the respondents by more than 9 years. Even after a lapse of 9 years, respondents are not in a position to offer legally valid possession of the unit to complainant since respondent company has yet to receive for completion/occupation certificate in respect of the unit booked. Respondents have only applied for the grant of part completion certificate on 25.10.2017. Fact remains that respondents are not in position to handover immediately possession of the booked unit. Complainant, however, does not wish to withdraw from the project and is rather interested in getting the possession of their unit. Learned counsel for the complainant has clearly stated that complainant is ready to wait for possession of unit after completion of



construction and receipt of completion certificate. In such circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the unit, the allottee can also demand, and the respondent is liable to pay, interest for the entire period of delay caused at the rates prescribed. As per pleadings of the respondent in this case respondent has made an offer of possession to the complainant in the year 2018 without accompanied by completion certificate. Moreover, respondents have neither attached any copy of offer of possession along with their reply nor have mentioned any specific date as to when that offer of possession was exactly made. Thus making it an invalid offer of possession. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date i.e., 12.04.2015 up to the date on which a valid offer is sent to him after receipt of completion certificate. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

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

Explanation.-For the purpose of this clause-



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

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

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

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

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

Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e., 10.02.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.



Hence, Authority directs respondent to pay delay interest to the complainant for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 11.10% (9.10% + 2.00%) from the due date of possession till the date of a valid offer of possession.

A. IN COMPLAINT NO. 2539 OF 2023

Authority has got calculated the interest on total paid amount from due date of possession, i.e., 12.04.2015 till the date of this order i.e. 10.02.2025 which works out to ₹24,89,688/- and further monthly of ₹19,402/- as per detail given in the table below:

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 10.02.2025
1.	₹22,78,545/-	12.04.2015 (Deemed date of possession)	₹24,89,688/-
	Total- ₹22,78,545/-		Total- ₹24,89,688/-
Monthly interest:			₹19,402/-

B. IN COMPLAINT NO. 2540 OF 2023

Authority has got calculated the interest on total paid amount from due date of possession, i.e., 12.04.2015 till the date of this order i.e. 10.02.2025 which works out to ₹24,92,284/- and further monthly of ₹19,422/- as per detail given in the table below:

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 10.02.2025
1.	₹22,80,921	12.04.2015 (Deemed date of possession)	₹24,92,284/-
	Total- ₹22,80,921/-		Total- ₹24,92,284/-
Monthly interest:			₹19,422/-

23. Further, the complainant is seeking cost of the complaint. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2021 titled as "M/s Newtech Promoters and Developers Pvt. Ltd.V/s State of U.P. & ors.", 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 complaint in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of compensation harassment, mental agony and undue hardship to complainants and litigation cost.

24. The respondent objects to the maintainability of the complaint, arguing that the unit was booked in 2012—prior to the enactment of the *Real Estate (Regulation and Development) Act, 2016* (RERA) and that the project is not registered under RERA. However, upon verification with the Authority's Project Section, it was confirmed that the project has never been registered, despite meeting the criteria for mandatory registration under Section 3(1) of the Act. It is important to note that RERA applies not only to new projects but also to ongoing projects that had not received a completion certificate at the time the Act came into force. Therefore, the developer's failure to register the project constitutes a violation of the Act, irrespective of the booking date. In view of this, the Authority finds the objection unsustainable and is constrained to initiate **suo motu** proceedings against the respondent for non-registration of the project under RERA.




H. DIRECTIONS OF THE AUTHORITY

25. 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 no. 1 shall make legally valid offer of possession to the complainant after obtaining completion certificate from the competent Authority. Further respondent is directed to execute conveyance deed within 90 days after handing over of valid legal possession to complainants.
- ii. Respondent is directed to pay upfront delay interest of ₹24,89,688/- in complaint no. 2539 of 2023 and ₹24,92,284/- in complaint no. 2540 of 2023 (till date of order i.e, 10.02.2025) to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order and further monthly interest @ ₹19,402/- in complaint no. 2539 of 2023 and ₹19,422/- in Complaint no. 2540 of 2023 till the offer of possession after receipt of completion certificate.
- iii. Complainant will remain liable to pay balance consideration amount to the respondent at the time legally valid possession is offered to him as per buyer agreement.



- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e, 11.10% by the respondent/ promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.
- v. The respondent shall not charge anything from the complainant which is not part of the agreement to sell.
26. **Disposed of.** File be consigned to record room after uploading of the order on the website of the Authority.


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]