



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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

Complaint no.:	2533 of 2022
Date of filing:	12.10.2022
Date of first hearing:	06.12.2022
Date of decision:	05.08.2025

Ms. Laltesh and Mr. Bhudev Singh

Address: Chhawa(190), Kosli, Rewari,

Haryana- 123302

....COMPLAINANT(S)

VERSUS

M/s MG Housing Pvt. Ltd.,

Address: 12<sup>th</sup> floor, Himalayan House,

23 Kasturba Gandhi Marg, New Delhi- 110001.

....RESPONDENT(S)

**CORAM:**

**Dr. Geeta Rathee Singh**

**Member**

**Chander Shekhar**

**Member**

**Present:**

Adv. Shikhar, Proxy counsel for Adv. Harshit Batra, Counsel for complainant.

None for respondent.

**ORDER:**

1. Present complaint has been filed on 12.10.2022 by the complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

**A. UNIT AND PROJECT RELATED DETAILS**

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

S.No.	Particulars	Details
1.	Name of the project	Anandam Estate, Sector- 19 and 24 Dharuhera, District Rewari (Haryana)
2.	Plot no.	C-19 (Block C)
3.	Area	194 sq. yards.
4.	RERA registered/ not registered	Lapsed Project Registration no. was- 49 of 2017.
5.	Date of Booking	12.09.2015



6.	Date of Plot Buyer Agreement	10.03.2016
7.	Deemed date of possession	30.09.2018 <i>Clause 36- The developer undertakes to complete the development work of the said township latest by 30.09.2018.</i>
8.	Total price	Rs. 52,74,200/-
9.	Amount paid by complainants	Rs. 10,45,000/-
10.	Offer of possession	Not offered
11.	Occupation Certificate	Not received
12.	Date of cancellation	28.05.2020

**B. FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY COMPLAINANTS:**

3. That Ms. Laltesh and Mr. Bhudev Singh are the allottees of the project of the respondent namely, "Anandam Estate" located at Sector- 19 and 24, Dharuhera, district Rewari (Haryana).
4. That on 07.10.2015, complainants were allotted a plot no. C-19 in Block C admeasuring 194 sq. yards in the respondent's project after which plot buyer agreement dated 10.03.2016 was executed between the parties. As per clause 36 of the plot buyer agreement executed between the parties the possession of the plot was to be delivered by 30.09.2018.





5. Complainants had opted for a development linked payment plan as specified in schedule C of the agreement and have paid an amount of Rs. 10,45,000/- against his allotted plot. Even after almost 7 years of the booking of the Unit, it has not been developed and possession has not been offered to the Complainants.
6. That the Complainants stopped the further payment of instalments because no development work was carried at the site. The principle of law in this regard is laid down by the Hon'ble Supreme Court of India in **Haryana Urban Development Authority Vs. Mrs. Raj Mehta, Appeal (Civil) 5882 of 2002**, decided on 24.09.2004, wherein it was noted that if the builder is at fault in not delivering possession of the units/plots, it cannot expect the allottee(s) to go on paying installments to it, in the following words:

*"As possession was not being offered till 12th May 1997 the Appellants are not entitled to charge interest even though there may be delayed payments by the Respondent. If Appellants are at fault in not delivering possession they cannot expect Respondent/allottees to go on paying instalments to them"*

7. That further clause 69 of the agreement clearly states that the allottees, in case of default by the developer can stop making payments to the developer as demanded by the developer. It is submitted that the absence of completion of construction and development work constitutes default

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of the developer and the complainants rightly stopped making further payments in absence of the construction and development of the said unit.

8. That respondent has illegally cancelled the plot of the complainants vide letter dated 28.05.2020. Respondent caused deficiency in service by not developing the project timely but simultaneously raised the demand letter for the payment of the instalments. The Cancellation letter dated 28.05.2020 is marked and annexed as annexure C4. No delay payment charges can be demanded from the complainants in case of non-payment due to non-development, as has been noted by the Hon'ble Supreme Court in **Haryana Urban Development Authority Vs. Mrs. Raj Mehta, Appeal (Civil) 5882 of 2002**, as reiterated above.
9. That the said cancellation notice is in violation of section 11 (5) of the RERA Act, 2016 and the agreement which also provided stoppage of payment upon non-development as per Clause 69, as noted above. Accordingly, the cancellation letter dated 28.05.2020 is liable to be recalled and the respondent is liable to give possession of the plot after attaining the completion certificate.
10. That possession of the said plot has not been offered till date after a long period of almost 7 years of booking and has consequently caused the complainants to go through mental agony and financial distress. It is further submitted that taking advantage of the dominant position and



malafide intention, the respondent had restored to unfair trade practices by harassing the complainants by way of delaying the project by diversion of the money from the innocent and gullible buyers.

11. That the Complainants have approached the respondent personally and enquired about the status of construction and development of the said unit of the complainants. However, the respondent did not pay any heed to the request of the complainants and kept on evading the complainants.

12. That in light of the mala fide conduct of the respondent and delay in offering the possession of the Unit, the respondent is clearly liable to pay the interest for every month of delay till date as per section 18 of the Act. It is the failure of the promoter to fulfill his obligations, responsibilities as per the agreement to hand over the possession within the stipulated period. Complainants are entitled to delayed possession at the prescribed rate of interest till the handover of possession as per provisions of section 18(1) of the Act read with rule 15 of the HRERA Rules.

**RELIEF SOUGHT:**

13. In view of the facts mentioned above, complainants prays for the following relief(s):-

(a) To direct the respondent to set aside the cancellation of allotment of the said unit;





b) To direct the respondent to provide the valid physical possession to the complainants after procuring the completion certificate along with the prescribed rate of interest @ MCLR+2% on delay in handing over of possession of the unit from the due date of possession till the actual date of physical possession of the unit;

c) To direct the respondent to provide a copy of the completion certificate of the project (the plot), as and when made available;

d) Grant any other relief as this Hon'ble Authority deems fit in the peculiar facts and circumstances of the present complaint.

**C. REPLY SUBMITTED ON BEHALF OF RESPONDENT:**

Ld. Counsel for the respondent filed detailed reply on 10.02.2023 pleading therein:

14. That the complainants have booked a plot No. C-19 admeasuring 194 sq. yds. in the project vide an application form dated 12.09.2015. Complainants and respondent had then entered into a plot buyer agreement dated 10.03.2016. As per the agreement executed by the complainants, the complainants were liable to pay the timely payment of the instalments due in accordance with the payment plan as agreed upon by them. Complainants are liable to comply with all the terms and



conditions specifically agreed by them towards the allotment of the plot in the project.

15. That respondent has been regularly informing the complainants about the status of the project. Respondent issued a demand letter dated 27.08.2019 towards the outstanding dues, the complainants, with malafide and dishonest intention and to malign the reputation and goodwill of the respondent, has approached this Hon'ble Authority raising frivolous pleas and grounds while none exist in reality. Despite issuing several e-mails and reminders upon the complainants to clear the outstanding dues, the complainants chose to maintain conspicuous silence over the same. From the date when the complainants made last payment i.e., 27.02.2016 till date of cancellation i.e., 28.05.2020, an amount of Rs. 32, 23,000/- was due and payable by the complainants. However, the respondent had only received a sum of Rs. 10, 45,000/- from the complainants. The copies of e-mails dated 03.04.2019, 27.04.2019 and reminder letters dated 03.08.2019 and 12.12.2019 asking the complainants to clear their outstanding dues are annexed herewith and is marked as annexure r- 4.

16. That there is an arbitration clause in the agreement, the complainants without invoking arbitration proceedings should not be allowed to proceed with the present complaint. It is further submitted that the relationship of the complainants and the respondent is defined and decided by the plot buyer agreement executed between the parties. It is





submitted that a specific clause for referring disputes to arbitration, is included in the said agreement vide clause 81 of the agreement.

17. That as per clause 36 and 37 of the agreement the respondent undertook to complete the development work of the project by 31.03.2019 with a grace period of six months. Further the clause 38 of the agreement provided that if there is delay due to force majeure conditions or circumstances beyond the control of the respondent, the respondent shall be entitled to a reasonable extension of time for offering possession of the plot. It is pertinent to mention herein that the construction of the project was stopped several times during the year 2018, 2019, 2020 and 2021 by the order of EPCA, HSPCB, NGT and the Hon'ble Supreme Court of India. Ban on construction caused irreparable damage to the delivery timelines and the real estate developers' finances as the respondent was not able to undertake any construction work during the aforesaid period and the same was beyond the control of the respondent. The copies of orders are annexed herewith and are marked as annexure r- 5 (colly).

18. That delay in completion of the Project is also attributable to the unprecedented situation being faced due to outbreak of COVID and the subsequent second wave, the effects whereof have been felt throughout the globe with the real estate industry being no exception. The Force Majeure event on account of COVID first occurred on 19.02.2020 pursuant to which the Government of India's Procurement Policy



Division issued an order no. F18/4/2020-PPD recognizing the outbreak of COVID pandemic as a Force Majeure event. Thereafter, on 11.03.2020, the World Health Organization declared that the COVID-19 outbreak be characterized as a pandemic. This was followed by the Government of National Capital Territory of Delhi invoking provisions of the Epidemic Diseases Act 1897 on 12.03.2020 which signified the existence of a public health emergency in NCT of Delhi.

19. That even the Government of India announced its decision under notification (No. 33-4/2020/NDM-I) dated 14.03.2020 to treat COVID-19 as a "notified disaster". As such, all governmental authorities recognized that the COVID-19 was an unprecedented disaster. In fact, the entire Country was put under a lockdown and only essential services such as hospitals, ration shops etc. were allowed to operate. Therefore, the business operations of the Respondent were brought to a complete halt as they classified as non-essential services as per the said order and subsequent notifications/orders issued by various governments. As a result of these restrictions, the business operations of the Respondent came to a complete standstill.

20. That the Reserve Bank of India has also recognized the liquidity stress in the economy and introduced various policies vide Statement on Developmental and Regulatory Policies dated 27.03.2020. The Statement recognizes that due to lockdown nearly all of the businesses came to a



standstill which is leading inter alia to a sudden liquidity stress in the markets. It also emphasizes the need for "easing financial stress caused by COVID-19 disruptions by relaxing repayment pressures and improving access to working capital". Similarly, the Securities and Exchange Board of India ('SEBI') has issued various circulars exempting various entities from its compliance and disclosure requirements, listing obligations etc. As such, even SEBI has recognized that the businesses are unable to function and carry out even their day- to-day affairs due to prevailing mobility restrictions and other logistical challenges. The scale of these reforms shows the negative impact of the pandemic on the businesses in the country.

21. That Hon'ble Haryana Real Estate Regulatory Authority, Panchkula vide its Order dated 26.05.2020 had directed that the period from 25.03.2020 to 24.09.2020 shall be considered as "zero period" in respect all compliances or timelines specified under Real Estate (Regulation & Development) Act, 2016 ("Act") including but limited to deadline for completion of the Project. Besides the above, the Ld. Authority vide its another office order dated 02.08.2021, in view of unprecedented circumstances being faced due to second wave of COVID, had further extended the time by three (3) months from 01.04.2021 to 30.06.2021, considering COVID as a Force Majeure event. In view of above, the aforesaid period shall be excluded in computing the delay in completion





of the Project. Copies of orders passed by ld. authority is annexed to and marked as annexure R-6.

22. That in order to curb down the air pollution the Environment & Pollution (Prevention & Control) Authority, has reviewed the urgent action that needs to be taken for the implementation of the Graded Response Action Plan (GRAP) vide its notification dated EPCA-R/2020/L-38 dated 08.10.2020 and has imposed ban on the use of Diesel Generator set with effect from 15.10.2020, which has further led to delay in the construction being raised.

23. That 90 % of the construction cost is already being incurred as on date and major portion of the work has already been completed. since the money paid by the allottees have only been utilized for construction of the project thus, it is not feasible for the respondent to pay interest as sought for, since the project is nearing completion and the same will cause severe loss to the project and other allottees who are eagerly waiting for the possession of their respective plot.

**D. SUBMISSIONS ON BEHALF OF THE COMPLAINANT DATED 26.06.2024.**

24. Complainant has filed written submissions dated 26.06.2024. He has made the following submissions:-



(i) That the complainants have chosen development linked payment plan for the purchase of their plot however the respondent without reaching the respective milestones had illegally and arbitrarily raised the demands. As per the development linked payment plan Rs. 3,50,000/- was to be paid on booking, 15% of the basic sales price within 45 days of booking/on allotment whichever is earlier, 15% of the basic sales price within 90 days of booking, 15% of the basic sales price+25% of IDC &EDC+50% of PLC on block wise completion of electrical infrastructure work or 390 days whichever is later, 15% of the basic sales price+25% of IDC &EDC+50% of PLC on block wise completion of alignment and leveling work for roads or 510 days whichever is later, 10% of BSP + 25% of IDC &EDC on block wise completion of laying of roads or 630 days whichever is later, 10% of BSP on application of occupancy certificate, 10% of BSP+ stamp duty + all other charges including IFMS,UCC etc. on offer of possession.

(ii) As per the payment plan, the first three installments are time linked and the same have been validly paid by the complainants. The installments after that were contingent upon the development of the project by the Respondent. Respondent was under an obligation to deliver the possession of the unit by 30.09.2018 and here the Respondent has not even begun the construction by 2017. It is further submitted that the A to





H form is submitted on 24.04.2019 and as per that that day only 59.81% construction was completed. The Respondent has gravely delayed in the construction of the project and till this date has not completed the construction of the project and obtain the occupancy or completion certificate.

(iii) The Respondent did not send valid demands but only letters asking for the payment of sum of Rs. 32,00,000/- along with interest without substantiating against which installment and stage of development the said demand is being raised. That the amount of Rs. 32,00,000/- amounts to around 61% of the BSP. That as per the payment plan each installments was of 15% of the BSP that too on reaching the respective development stage. Despite Complainants efforts to seek clarity the Respondent kept on issuing various illegal demand letters to the Complainant and then illegally cancelled the unit of the Complainant. The respondent failed to complete construction as per the proposed timeline and raised the demands illegally without reaching respective milestones.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENTS:**

25.Ld. Counsel for the complainants put forth brief facts of the case. She stated that complainants booked a plot in the real estate development





project of the respondent namely "Anandam Estate", located at Sector 19 and 24 District Dharuhera, Haryana vide an application dated 12.09.2015. Consequent thereupon complainants were allotted plot bearing no. C-19 admeasuring 194 sq. yds. vide allotment letter dated 07.10.2015. Plot buyer agreement was executed between the parties on 10.03.2016. Complainants have paid an amount of Rs. 10,45,000/- against the total sales price of Rs. 52,74,200/-. As per clause 36 of the plot buyer agreement respondent was obligated to complete the construction work by 30.09.2018, however respondent has miserably failed to complete the construction within the prescribed time. Complainant are aggrieved by the fact that the respondent has illegally cancelled the allotment of the complainants vide letter dated 28.05.2020.

26.Ld. Counsel for the respondent orally submitted that the complainants were not willing to make the remaining payment with respect to the plot due to which respondent was left with no other option but to cancel their plot on 28.05.2020. He referred to page 14 of the additional affidavit on behalf of respondent wherein demand letter dated 15.10.2015 is annexed which shows that the amount due is Rs. 3,04,750/-. He also referred to another demand letter annexed at page 13 dated 04.12.2015 which shows that the total amount due is Rs. 9,59,500/-. He submitted that the last payment made by the complainants was on 27.02.2016 of Rs. 4,95,000/-. Complainants have failed to make any payment thereafter.



27. In rebuttal to these aforesaid submissions of counsel for respondent, ld. counsel for the complainants submitted that respondent had not raised any demand till the year 2019 and it is only in the year 2019 i.e., on 03.08.2019 letter for immediate clearance of dues amounting to Rs. 32,23,000/- was sent. Thereafter, again letter dated 12.12.2019 was sent to the complainants for clearance of dues of Rs. 32,23,000/- after which cancellation letter was sent on 28.05.2020 thereby cancelling the complainants unit in view of the continuous defaults in payments. The argument of ld. counsel for the complainants is that respondent has not raised any demand from 2016 up till August 2019 and suddenly in August 2019, respondent started sending reminders for clearance of dues of huge amount of Rs. 32,23,000/-.

28. She further stated that as per clause 18 of the plot buyer agreement developer shall have right to cancel the plot only after default in payment for three consecutive instalments and respondent has not complied with by the said clause. No demand letters were sent to the complainant before sending the cancellation letter dated 28.05.2020. She further stated that complainants are willing to make remaining payments along with interest.

#### **ISSUES FOR ADJUDICATION:**

29. (i) Whether cancellation letter dated 28.05.2020 issued by respondent was legal, rightful and valid on part of the respondent?





- (ii) Whether complainants are entitled to relief of possession along-with delay interest for delay in handing over the possession in terms of Section 18 of Act of 2016?

**OBSERVATION OF AUTHORITY:**

30. 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 that the respondent has raised a preliminary objection with respect to maintainability of the complaint;

- (i) Respondent has taken an objection that there exists an arbitration clause in the agreement for sale dated 10.03.2016 and complainants must invoke arbitration proceedings in the present case before coming before the Authority. In this regard, Authority observes that 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 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 and 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. Section. 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 require to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondent stands rejected.

31. Proceeding on the merits it is observed that the complainants had booked plot no. C-19, having an area of 194 sq. yard in the project of the respondent namely, "Anandam Estate" located at Sector- 19 & 24, Dharuhera, district Rewari (Haryana); An allotment letter was issued on 07.10.2015 and builder buyer agreement was executed between the parties on 10.03.2016; The total sale consideration of the plot was fixed



as Rs. 52,74,200/- against which complainants have paid an amount of Rs.10,45,000/-.

32. Admittedly, the possession of the plot in question should have been delivered by 30.09.2018. The complainants have alleged that instead of delivering possession the respondent had rather cancelled the allotment of the complainants vide cancellation letter dated 20.05.2020. The respondent in rebuttal has submitted that the allotment of the complainants has been cancelled on account of non-payment of dues. The complainants have made a payment of only an amount of Rs. 10,45,000/- out of the total sale consideration of Rs. 52,74,200/- . Further an amount of Rs. 32,23,000/- was due to be received from the complainants in respect of the consideration of the unit in question on 03.04.2019 Respondent had duly issued e-mails dated 03.04.2019 and 27.04.2019 to the complainants for making payment of balance amount and further sent reminder letters dated 03.08.2019 and 12.12.2019, however, complainants failed to make the payments due to which the respondent was constrained to cancel the allotment of the complainants.

33. In light of the opposing contentions of both parties it is observed that as per payment plan in the agreement for sale, complainant had opted for a mixed payment plan in which the first three installments were time linked payments and thereafter the payments were to be made as per subsequent





construction of the project in question. The first payment was made by the complainant on 09.09.2015 before execution of agreement for sale for an amount of ₹ 3,50,000/- .Subsequent to execution of agreement for sale respondent had issued two demand letters dated 15.10.2015 ( for ₹ 3,04,750/-) and 04.12.2015 (for ₹ 9,59,500/- including earlier demand of ₹ 3,04,750/-). Pursuant to these demands the complainant had made a further payment of ₹ 2,00,000/- on 29.12.2015 and then of ₹4,95,000/- on 27.02.2016. Thus out of the total demand of ₹ 9,59,500/- the complainant had made a payment of 6,95,000/- and only an amount of ₹ 2,64,500/- was left. Meaning thereby that the complainant had failed to honor only a part payment of ₹ 2,64,500/- out of the total demand made by the respondent under time linked payment schedule. Thereafter all the installments towards remaining sales consideration were contingent upon the development of the project by the respondent as they were construction linked payments.

34.As per buyers agreement the respondent was under an obligation to deliver the possession of the unit by 30.09.2018. However, the respondent failed to complete construction within stipulated time period and deliver possession of the unit to the complainant. Throughout the period from 04.12.2015 till 02.04.2019 the respondent did not issue any demand letter to the complainants nor apprised about the status of construction of the project. However, vide email dated 03.04.2019 the respondent abruptly





raised a demand of ₹ 36,15,762/- after a gap of three years without providing any update with regard to the status of construction at the site of the project. Thereafter, the respondent issued reminder emails dated 03.08.2019 and 12.12.2019 but no information was provided to the complainant. Rather than providing the construction progress update the respondent arbitrarily cancelled the allotment of the complainant vide letter of cancellation dated 28.05.2020. The respondent could not have randomly raised such a huge demand from the complainant without substantiating its claim with corroborating construction progress at the site. This conduct of the respondent was in complete violation of the terms agreed between the parties. It is further observed that the demand of ₹ 36,15,762/- is around 60% of the basic sale price whereas as per the payment plan each installments was to be of up to 15% of the BSP that too on reaching the respective development stage. The respondent failed to complete construction as per the proposed timeline and rather raised the impugned demand illegally from the complainant. Since this demand was not in consonance with the terms agreed between the parties thus the complainants could not have defaulted in making payment of this demand. Further, at the time of cancellation respondent was duty bound to refund the amount paid by the complainant after forfeiture of earnest money, however, the respondent illegally retained the amount paid by the complainant thus enjoying wrongful gains and causing wrongful loss to



the complainant. Therefore, in light of these facts, the cancellation letter dated 28.05.2020 is found to be unlawful and bad in the eyes of law and is therefore set aside.

35. The next issue in hand is that whether complainants are entitled to relief of possession along-with delay interest for delay in handing over the possession in terms of Section 18 of Act of 2016? As per clause 36 of the plot buyer agreement dated 10.03.2016, respondent was obliged to deliver the possession of the plot by 31.09.2018. Now, even after a lapse of 7 years, respondent has not offered possession of the unit. Complainants, however, does not wish to withdraw from the project and are rather interested in getting the possession of his unit.

36. Though is an admitted fact that offer of possession has not been made till date, nevertheless respondent in its reply has averred that as per clause 36 and 37 of the agreement, it undertook to complete the development work by 30.09.2018 with a grace period of 6 months. And further as per clause 37 of the agreement, if there is a delay due to force majeure conditions or circumstances beyond the control of respondent, then it shall be entitled to a reasonable extension of time for offering possession of the plot. Furthermore, respondent has pleaded that its project was delayed due to occurrence of following force majeure circumstances:





- a. Stoppage of construction during the year 2018, 2019, 2020 and 2021 by the order of EPCA, HSPCB, NGT and the Hon'ble Supreme Court of India;
- b. Outbreak of COVID 19 pandemic with lockdown imposed in 2021 and 2022.
- c. The Environment & Pollution (Prevention & Control) Authority has imposed ban on the use of diesel generator set with effect from 15.10.2020, which has further led to delay in the construction being raised.

37. Respondent has pleaded that it is liable to get "6 months grace period" on account of provision in clause 36 and 37 of the agreement for sale.. Same is reproduced as under:

*"Clause 36. The developer undertakes to develop or complete the development of the said township latest by 30.09.2018 with a grace period of 6 months to obtain the occupancy certificate and on receipt of the same will offer possession of the plot to the buyer.*

*Clause 37. In case there is a delay due to force majeure conditions (defined hereinafter) or circumstances beyond the control of the developer, the developer shall be entitled to a reasonable extension of time for offering possession of the Plot"*

It is pertinent to note that the grace period in said clause is for obtaining occupancy certificate only, respondent in its reply has not mentioned anything with respect to occupation certificate so it can

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safely be presumed that respondent has not obtained the occupation certificate till date, therefore, no grace period will be allowed to the respondent in the present case.

Now it is imperative to discern if reasonable extension on account of "force majeure circumstances" can be granted in favour of respondent. It is pertinent to mention here that the word "*force majeure*" for the purpose of claiming extension has been defined under explanation to Section 6 of the RERA Act, 2016. Same is reproduced as under:

*"For the purpose of this section, the expression "force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project."*

Further, respondent has pleaded that as per clause 37, it is liable for reasonable extension on account of "*force majeure circumstances*" which are defined hereinafter in clause 74 of the agreement. Clause 37 and Clause 74 of the agreement is reproduced as under:

*"Clause 37. In case there is a delay due to force majeure conditions (defined hereinafter) or circumstances beyond the control of the developer, the developer shall be entitled to a reasonable extension of time for offering possession of the Plot.*

...

*74. "Force Majeure" means any event or combination of events or circumstances beyond the control of a Party which cannot be prevented, or cause to be prevented, and*

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*which adversely affects and makes it impossible to perform obligations under this Agreement, which shall include:*

*i) Acts of God, i.e. flood, earthquake, natural disasters or acts of like nature;*

*ii) War and hostilities of war, riots or civil commotion of a prolonged nature;*

*iii) Any event or circumstance analogous to the foregoing; and*

*iv) Any action/proceeding by the Government/statutory Authorities or judicial authority."*

38. On perusal of definition of "force majeure circumstances" as defined by respondent in its agreement for sale dated 10.03.2016 and as already provided under explanation to Section 6 of the RERA Act, 2016, it can be discerned that respondent has deviated from the definition as provided under RERA Act, 2016 by including any action/ proceeding by the government/ statutory Authority or judicial Authority. And as has been observed in the preceding paragraphs, if anything is inconsistent with the provisions of RERA Act, 2016, then as per Section 89 of the Act, provisions of RERA Act, 2016 shall prevail and have an overriding effect. Thus, definition of force majeure circumstances incorporated in the agreement for sale by respondent is arbitrary and non-applicable to present complaint.

39. Now, on perusal of circumstances as pleaded by respondent to be force majeure circumstances, Authority observes as under:





- a. Respondent has pleaded the fact that construction was stopped due to orders of EPCA, HSPCB, NGT and Hon'ble Supreme Court of India. It is pertinent to mention that any event that occurred after the lapse of deemed date of possession i.e. 30.09.2018 have no bearing on the agreement for sale dated 10.03.2016 and respondent cannot be allowed benefit of such prior events. On perusal of direction dated 29.10.2018 issued by Environment Pollution (Prevention and Control) Authority, it can be discerned that such direction has no bearing on present complaint as it was issued after the lapse of deemed date of possession in present case. Authority observes that such directions are issued every year by competent Authorities/ boards and same does not fall in the definition of "force majeure circumstance" as defined under RERA Act, 2016. Such event cannot be claimed as a force majeure circumstance as these are generally to be kept in mind while planning the development of the project. Furthermore, orders of NGT and Hon'ble Supreme court as pleaded by respondent have not been annexed or argued by respondent. Thus the same stands rejected. Hence, the plea of force majeure on account of factors as mentioned above by respondent stands rejected.
- b. Next event claimed by respondent as force majeure circumstance is lockdown due to Covid 19 pandemic in 2021 and 2022. Bare reading of clause 36 makes it clear that due date of possession was





30.09.2018, whereas covid 19 lockdown was imposed later in the month of March, 2020, i.e. subsequent to the deemed date for handing over of possession. Now the question is if the respondent can be given concession of force majeure event as mentioned in clause 37 that occurred subsequent to lapse of stipulated time as provided in the agreement. In this regard, reference has been made to order of Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. vs. Vedanta Ltd & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020 dated 29.05.2020*, wherein Hon'ble Delhi High Court has dealt with the issue of delay in construction due to covid 19 and has observed that:

*"69... The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March, 2020 in India. The contractor was in breach since September, 2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.*

*... The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September, 2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself. "*



The Authority has adopted the same ratio of law and observes that respondent cannot be given the benefit of halt in work due to covid-19 pandemic as this force majeure event has occurred subsequent to the stipulated date for handing over of possession.

40. Further ban imposed by Environment Pollution (Prevention and Control)

Authority on use of diesel generator as pleaded to be a force majeure event was imposed on 15.10.2020. It is pertinent to mention that as observed in preceding paragraphs, such event occurred subsequent to the due date of possession, thus such event as a force majeure event stands rejected.

41. Another submission of the respondent is that the respondent is entitled to consider period from 25.03.2020 to 24.09.2020 and 01.04.2021 to 30.06.2021 as "zero period" in respect all compliances or timelines specified under Real Estate (Regulation & Development) Act, 2016 ("Act"). In this regard, Authority is of the view that date of completion as mentioned in the registration certificate is declared unilaterally u/s 4(2)(l)(c) of the Real Estate (Regulation and Development) Act, 2016 by the builder while registering the project before the Authority whereas the time period for handing over the possession to the allottee is committed by the builder as per the relevant clause of builder buyer's agreement. Perusal of the payment plan reveals that the payment plan agreed between the parties is a time linked payment plan for first 3 instalments and





construction linked for all other payments and said plan remained unchanged during the covid period also. There is no communication between the parties whereby the complainant allottee and the respondent promoter agreed to consider the force majeure period due to covid as zero period

42.By merely pleading "force majeure conditions" without fulfilling its obligations, respondent cannot be allowed to take benefit of his own wrong. Therefore the plea of respondent to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected. Hence, respondent was obligated to handover possession by 30.09.2018.

43.In these circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which the respondent is liable to pay, interest for the entire period of delay caused at the rates prescribed along-with possession. Respondent in this case has not made any offer of possession to the complainants till date. The Authority hereby concludes that the complainants are entitled for the delay interest from the deemed date, i.e., 30.09.2018 till date on which a valid offer is made. 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., 05.08.2025 is 8.90%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e.10.90%.

44.Hence, Authority directs respondent to pay delay interest to the complainants 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 8.90% (8.90% + 2.00%) from the due date of possession, i.e., 30.09.2018 till the date of a valid offer of possession.

45.Authority has got calculated the interest on total paid amount from due date of possession, i.e., 30.09.2018 till the date of this order, i.e. 05.08.2025, which works out to ₹7,80,795/- and further monthly interest of Rs.9,362/- as per detail given in the table below. However it is made clear that complainants will be entitled for monthly interest till valid offer of possession, duly supported with payables and receivables as per RERA Act, 2016 and Rules of 2017, is made to the complainants by the respondent.

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 05.08.2025 (in ₹)
1.	10,45,000/-	30.09.2018	7,80,795/-

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<b>Total</b>	10,45,000/-		7,80,795/-
<b>Monthly interest:</b>			₹ 9,362/-

## I. DIRECTIONS OF THE AUTHORITY

46.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 upfront delay interest of ₹7,80,795/- (till date of order i.e. 05.08.2025) to the complainants towards delay already caused in handing over the possession within 90 days from the date of this order and further monthly interest @ ₹ 9,362/- till the valid offer of possession after receipt of completion certificate/part completion certificate.
- (ii) Complainants will remain liable to accept possession as per provisions of Section 19 of the RERA Act, 2016 and pay balance consideration amount to the respondent at the time of valid possession offered to her.
- (iii) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate





i.e., 10.90% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

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



CHANDER SHEKHAR  
[MEMBER]



DR. GEETA RATHEE SINGH  
[MEMBER]

