



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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

|                        |              |
|------------------------|--------------|
| Complaint no.:         | 1461 of 2022 |
| Date of filing:        | 13.06.2022   |
| First date of hearing: | 09.08.2022   |
| Date of decision:      | 27.10.2025   |

**1. Vikram Jain**

S/o Late Sh. Bhupinder Jain,  
R/o #693, Sector-17,  
Jagadhri Haryana

**2. Anjali Jain**

W/o Vikram Jain  
R/o #693, Sector-17,  
Jagadhri Haryana

.....COMPLAINANTS

Versus

**1. S.N. Realtors Pvt. Ltd.**

*Registered Office:* 7, Local Shopping Center,  
Kalkaji, New Delhi-110019

**2. M/s Omaxe Ltd.**

*Registered Office:* Omaxe House 7, Local Shopping Center,  
Kalkaji, New Delhi-110019

**3. Shanvi Estate Management Services Pvt. Ltd.**

*Registered Office:* Omaxe Square, Plot no. 14,  
Jasola New Delhi-110025

.....RESPONDENTS

**Present:** - Adv. Rupali Verma, counsel for the complainant.

Adv. Ankit Kumar, counsel for the respondent through VC.

**ORDER (NADIM AKHTAR –MEMBER)**

1. Present complaint has been filed by the complainants on 13.06.2022 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, 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 RERA, 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 project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

| S.No. | Particulars                      | Details                                                                             |
|-------|----------------------------------|-------------------------------------------------------------------------------------|
| 1.    | Name and location of the project | "Omaxe City, Yamuna Nagar", situated at Pabni Bilaspur Road, Yamuna Nagar, Haryana. |
| 2.    | RERA registered/not registered   | Not Registered                                                                      |



|    |                                           |                                                              |
|----|-------------------------------------------|--------------------------------------------------------------|
| 3. | Unit No.                                  | OCY/BLOCK-A/54                                               |
| 4. | Super area                                | 493.11 sq. Yds.                                              |
| 5. | Date of execution of Flat Buyer Agreement | 02.05.2013                                                   |
| 6. | Deemed date of possession                 | 02.05.2015 (24 months from the date of Flat buyer agreement) |
| 7. | Total Sale price (as per FBA)             | ₹36,44,703/-                                                 |
| 8. | Amount paid by the complainants           | ₹46,74,925/-                                                 |
| 9. | Offer of possession                       | Not given till date                                          |

#### A. FACTS OF THE COMPLAINT

3. That the Respondent company launched a Residential Township Project under the name and style of "Omaxe City, Yamuna Nagar", situated at Pabni Bilaspur Road, Yamuna Nagar, Haryana.
4. The Complainants were approached by the Respondents for booking a plot in the aforesaid project. Relying upon the representations and assurances made by the Respondents, the Complainants booked a unit by making an initial payment of ₹5,50,000/- through Cheque No. 675889 dated 24.11.2012.
5. Subsequently, the Respondents allotted to the Complainants Unit No. 54, Block A, admeasuring 493.11 sq. yds., in the said project, for a total Basic Sale Price (BSP) of ₹35,99,703/-.



6. The Complainants thereafter made further payments, aggregating to Rs. 46,74,925/-, via several cheques issued over the course of time. The detailed statement of these payments, along with acknowledgements, is annexed as Annexure C-1 (Colly).
7. The Respondents violated the provisions of Section 13(1) of the Real Estate (Regulation and Development) Act, 2016 by collecting more than 10% of the sale consideration in advance, without executing and registering a formal Agreement for Sale. It was only on 02.05.2013, after collecting substantial payment, that a Builder Buyer Agreement was executed between the parties annexed as Annexure C-2.
8. As per Clause 32(a) of the Agreement, the possession of the unit was to be delivered within 24 months, i.e., by 02.05.2015, with an additional grace period of 6 months, extending the final possession date to 02.11.2015.
9. Despite the passage of more than 9½ years since booking and over 7 years beyond the committed possession date, the possession of the unit has not been handed over to the Complainants.
10. The villa is still in a shabby and incomplete state, with unfixed and damaged fixtures. It is further learnt that the said unit is currently being used by the Respondents for storing inventory. Photographs evidencing the poor and



unusable condition of the villa, as taken by the Complainants on 13.06.2022, are annexed as Annexure C-3 (Colly).

11. On 10.12.2021, the Respondents sent an email purportedly offering possession, wherein complainant was intimated that possession letter for the plot in question has been dispatched by speed post on 12.10.2021. However, the said letter was never received by the complainants and was dispatched on previous address of the complainants which was closed since many years. Change of address was duly informed to the respondent. A copy of the said email is annexed as Annexure C-4.
12. The Respondents have also failed to obtain and furnish the Completion Certificate / Occupation Certificate, in contravention of Section 11(4)(b) of the RERA Act, 2016.
13. The Respondents are demanding arbitrary and illegal charges, including:
  - i. ₹16,20,853/- towards External Development Charges (EDC), which may include enhanced EDC, the recovery of which stands stayed by competent authorities;
  - ii. ₹17,29,298/- towards Interest Due, calculated at exorbitant and unjustified rates;



- iii. Unexplained escalation of Additional Cost from Rs. 25,000/- to Rs. 1,53,632.81/-.

Copies of Statements of Accounts dated 29.04.2022 and 17.01.2022 reflecting these illegal demands are annexed as Annexure C-5 (Colly).

12. The Respondents have further demanded maintenance charges, water charges, and sinking fund with effect from 01.07.2019, even though the Complainants were never offered lawful possession. Copies of the relevant tax invoices and demands issued by Respondent No. 3 are annexed as Annexure C-6 (Colly).
13. The Complainants made several visits to the site office and sent multiple representations requesting waiver of these illegal charges and early delivery of possession. However, no relief has been provided.
14. Representations were also addressed to NAREDCO and to the Hon'ble Prime Minister of India, highlighting the fraudulent practices and inaction by the Respondents. Copies of such representations dated 02.04.2022 are annexed as Annexure C-7 (Colly).
15. Shockingly, on 21.05.2022, the Respondents issued a letter unilaterally cancelling the unit allotted to the Complainants, without any valid basis or due process. This act is in direct contravention of the proviso to Section 11(5)



of the RERA Act. A copy of the said illegal cancellation letter is annexed as Annexure C-8.

16. Despite these hardships, the Complainants have not opted for a refund and continue to seek possession of the unit, along with relief for the undue delay, illegal charges, and mental agony suffered.
17. As per Section 18(1) of the RERA Act, 2016, the Complainants are entitled to monthly interest for every month of delay beyond the promised possession date. Additionally, under Clause 35 of the Agreement, they are entitled to compensation @24% p.a., which the Respondents themselves levy on the Complainants.
18. The complainants have also filed an application dated **05.09.2024**, wherein a complete information regarding the payments made by the complainants, along with the respective dates of such payments, have been furnished. The Authority has duly taken the said application on record for consideration and adjudication of the present matter.

**B. RELIEFS SOUGHT**

19. Complainants have sought following reliefs:



- i. To direct the concerned respondents to immediately hand over the physical possession of the unit complete in all respects, after obtaining and making available the completion and occupation certificate thereto.
- ii. To direct the concerned respondents to compensate complainants for the delay in offer of possession of the unit complete in all respects, by paying interest @ 24% per annum for the delay with effect from the due date of possession i.e. 02.05.2015 till actual handing over of possession of the unit complete in all respects, after obtaining and making available the completion and occupation certificate thereto.

OR/ALTERNATIVELY,

in case the Ld. Authority observes that the interest @24% per annum for delay is outside the purview and jurisdiction,

To direct the concerned respondents to compensate the complainants for the delay in offer of possession of the unit complete in all respects, by paying interest as prescribed under the Real Estate (Regulation And Development) Act 2016 read with Haryana Real Estate (Regulation & Development) Rules, with effect from the due date of possession, i.e., 02.05.2015 till actual handing over of possession of the unit complete in all respects, after obtaining and making available the completion and occupation certificate thereto, on the



entire deposited amount of ₹46,75,925/- (Rupees Twenty Nine Lakh, Ninety Five Thousand, Two Hundred and Thirty Six only) which has been deposited against the unit in question so booked by the complainants.

- iii. To set aside the illegal and exaggerated demands qua External Development Charges (E.D.C.), interest due', 'additional cost' etc., for the reasons mentioned in the complaint, and to issue the necessary directions to the concerned respondents in this regard.
- iv. To direct the respondent to pay a sum of ₹25,00,000/- on account of grievance, frustration, caused to the complainants by the miserable attitude of the respondent and deficiency in service and for causing acute mental agony to the complainants, along with interest from the date of filing the present complaint till its realization.
- v. The registration, if any, granted to the Respondent for the project namely, "Omaxe City Yamuna Nagar", situated in the revenue estates of Yamuna Nagar, District Yamuna Nagar, Haryana, under RERA read with relevant Rules may be revoked under Section 7 of the RERA for violating the provisions of The Act and the terms/ conditions of the RERA registration certificate.



- vi. To impose penalty on the respondent under section 61 of the Act for contravention of the provisions of the Act, as elaborated in the
- vii. The complaint may be allowed with costs and litigation expenses of Rs. 1,50,000/-;
- viii. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the instant complaint.

**C. REPLY ON BEHALF OF RESPONDENTS**

Respondents have filed a detailed reply on 08.08.2022, pleading therein that:-

- 20. The complaint is not maintainable before this Hon'ble Authority on the following grounds:
  - i. That this Hon'ble Authority does not possess the territorial jurisdiction to entertain the present complaint. That Clause 58 of the Builder Buyer Agreement dated 02.05.2013 clearly provides that all disputes relating to the allotment shall be subject to the jurisdiction of courts in Yamuna Nagar and Delhi. Accordingly, the present complaint deserves to be dismissed on the ground of lack of territorial jurisdiction.
  - ii. That the alleged dispute is liable to be referred to Arbitration under Section 8 of the Arbitration and Conciliation Act, 1996 (as amended by the 2015



Amendment Act), in view of Clause 57 of the Builder Buyer Agreement dated 02.05.2013, which provides for resolution of disputes through arbitration.

- iii. That the complaint suffers from non-joinder of necessary parties. The Complainants have stated that they availed financial assistance for the said unit and have been repaying EMIs. However, the said financial institution has not been impleaded as a necessary party to the proceedings. In the absence of the financing institution, the reliefs sought are incomplete and the complaint deserves to be dismissed on this ground.
- iv. That the unit allotted to the Complainants stands cancelled vide letter dated 21.05.2022, a fact admitted by the Complainants themselves. However, perusal of the Relief Clause reveals that the Complainants have not sought any relief to set aside the cancellation letter dated 21.05.2022. In the absence of such a prayer, the present complaint is not maintainable and is liable to be dismissed.
- v. That the Complainants have deliberately failed to disclose that the possession of the unit was offered to them vide letter dated 23.04.2015. This offer was duly communicated and dispatched. Copy of the Offer of Possession letter dated 23.04.2015 along with dispatch proof is annexed as Annexure R-1. Even after the said offer, numerous reminders were issued, urging the



Complainants to come forward for possession and to clear outstanding dues.

Despite these reminders, the Complainants failed to act.

- vi. That there exists no cause of action in favour of the Complainants to approach this Hon'ble Authority. Possession was already offered on 23.04.2015 and was followed by multiple reminders. Despite this, the Complainants failed to take possession and clear dues, resulting in cancellation of the unit on 21.05.2022. Hence, due to their own default, the Complainants have no enforceable claim.
- vii. That the Complainants are themselves defaulters in the matter. They repeatedly defaulted in making timely payments of installments. Numerous reminders and final notices were issued requesting the Complainants to clear their dues and take possession. Additionally, the Offer of Possession also included demand of outstanding amounts, which remained unpaid. To substantiate this, copies of reminders and demand letters 02.04.2013, 29.04.2013, 21.05.2015, 18.07.2015, 15.09.2015, 27.10.2015, 23.08.2018, 21.04.2018, 10.12.2020 and 19.07.2021 are annexed as Annexure R-2 to R-11, respectively.
- viii. That the Complainants' conduct is malafide and lacks bona fides. After making a part payment on 31.08.2015, the Complainants remained silent till



the year 2022, before raising grievances. Having remained inactive for such a prolonged period despite the offer of possession and reminders, the current complaint appears to be a last-minute attempt to make baseless allegations without merit. The delay clearly indicates that the Complainants had no genuine intent to take possession.

**D. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENTS**

21. Adv. Rupali S. Verma appeared on behalf of the complainant and submitted that she has been recently engaged in the present complaint. She apprised the Authority that the Vakalatnama/Power of Attorney has been filed by her on 24.10.2025. She further reiterated the basic facts of the case, emphasizing that the complainants purchased a plot in Omaxe City, Yamuna Nagar, in 2013. Respondents were obligated to deliver possession of the unit by 02.05.2015. However, the respondents have failed to deliver possession, instead unjustly demanding additional External Development Charges (EDC) with interest. The respondents lack a Completion/occupation Certificate, thereby violating legal provisions. The complainants seek 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



30 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.

22. On the other hand, when case was called up none appeared on behalf of respondent. However, later Adv. Ankit Kumar appeared on behalf of respondent and requested the Authority to mark his presence. His request is accepted.

**E. ISSUES FOR ADJUDICATION**

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

**F. 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:

24. The complainants initially booked Plot No. 54, Block-A, measuring 493.11 sq. yds. in the respondent's project, "Omaxe City, Yamuna Nagar." A Buyer's Agreement was executed between the parties on 02.05.2013. The complainants have made a total payment of ₹46,74,925/- in lieu of the total



sale consideration of ₹36,44,703/-, opting for a time-linked payment plan as per the agreement. The complainants are aggrieved by the respondent's failure to offer possession within the stipulated timeframe and are seeking relief in the form of possession along with interest for the delay an execution of conveyance deed.

25. The primary issue before the Authority is to determine which respondent is responsible for delivering possession of the booked unit to the complainants. Upon careful examination of the buyer's agreement dated 02.05.2013, it is evident that the agreement was executed solely between the complainants, (Vikram Jain and Anjali Jain), and Respondent No. 1, (M/s S.N. Realtors Pvt. Ltd.). There is no mention of Respondent No. 2 and 3 being parties to this agreement. Furthermore, the buyer's agreement bears only the signatures of Respondent No. 1. Additionally, the payment receipts submitted by the complainants 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.

26. As per clause 32(a) of the agreement dated 02.05.2013, *the company shall complete the development of the plot/project within 24 months from the date of signing of this agreement by the buyer*". As per this clause, respondent was obligated to deliver possession of the booked unit to the complainants by 02.05.2015.

27. **Findings on the objections raised by the respondent in his reply.**

*Objections raised by respondent that as per Clause 58 of the Builder Buyer Agreement, all disputes relating to the allotment shall be subject to the jurisdiction of courts in Yamuna Nagar and Delhi.*

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 which is very much under the jurisdiction of the Authority. Therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

*Objections raised by respondent that alleged dispute is liable to be referred to Arbitration under Section 8 of the Arbitration and Conciliation Act, 1996*



***in view of Clause 57 of the Builder Buyer Agreement, which provides for resolution of disputes through arbitration***

With regard to the above issue, the Authority is of the opinion that jurisdiction of the Authority cannot be fettered by the existence of an arbitration clause in the agreement as it may be noted that section-79 of the RERA Act bars the jurisdiction of civil courts about any matter which falls within the purview of this Authority, or the Real Estate appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the RERA Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the Authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly on *National Seeds Corporation Ltd. v. M. Madhusudhan Reddy and Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the Authority would not be bound to refer parties to Arbitration even if the agreement between the parties had an arbitration clause. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017*, the National



Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

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

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

*It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra) the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act*

*.....*

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



While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the application form, the Hon'ble Supreme Court in case titled as *M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629- 30/2018 in civil appeal no. 23512-23513 of 2017* decided on 10.12.2018 has upheld the aforesaid judgement of NCDRC 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. S. 60 of Competition Act, S. 81 of IT Act, IBC, etc, it held *“there is no doubt in the mind of this court that giving a purposive interpretation to sections 79, 88 and 89 of the RERA Act, there is no bar under the RERA Act from application of concurrent remedy under the Arbitration & Conciliation Act, and thus, there is no clash between the provisions of the RERA Act and the Arbitration & Conciliation Act, as the remedies available under the former are in addition to, and not in supersession of, the remedies available under the Arbitration & Conciliation Act.”* Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code. Therefore, in view of the above judgements and considering the provisions of the Act, the Authority is of the view that complainants are well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and Real Estate (Regulation and Development) Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this Authority has the



requisite jurisdiction to entertain the complaint and that the dispute does not required to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the Authority is of the view that the objection of the respondents stands rejected.

*Objections raised by respondents that complaint suffers from non-joinder of necessary parties as complainants have availed financial assistance for the said unit and have been repaying EMIs. However, the said financial institution has not been impleaded as a necessary party to the proceedings.*

The Authority finds no merit in this objection. The financial arrangement between the complainants 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 complainants to fulfill the payment obligations under the buyer agreement. The disbursement of the loan amount, its repayment, and any contractual obligations between the complainants 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. The respondent cannot 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,



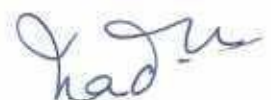
affirming that the presence of the financial institution is not necessary for adjudicating the present complaint.

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

The respondent no. 1 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 complainants. 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.

***Objections raised by respondent that after making a part payment on 31.08.2015 the Complainants remained silent for till the year 2022, before raising grievances. The delay clearly indicates that the Complainants had no genuine intent to take possession.***

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.

***Objections raised by respondent that complainants have defaulted in making timely payments of installments. Numerous reminders and final notices were issued requesting the Complainants to clear their dues and take possession.***

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 complainants 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 complainants made payments according to the progress. Additionally, the complainants paid a total amount of ₹46,74,925/- in lieu of the total sale consideration of ₹36,44,703/-, indicating that the complainants had already paid much more than the total sale consideration.

The respondent objection, claiming that the complainants have defaulted in making timely payments to the respondent 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 complainants have made maximum payments, there is no default on the complainant's part. Therefore, the respondent's claim that the complainants are 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 is invalid, as the complainants have fulfilled payment obligations. On the other hand, the respondent's failure to deliver possession by the agreed date is in breach of RERA. The complainants are, therefore, entitled to seek relief under RERA provisions.

***Objection raised by the respondent that complainants have failed to make payment to the respondent w.r.t the EDC, interest due and other charges.***

In this regard, it is observed that the complainants had opted for a time linked plan and had paid more than the total sale consideration to the complainants. Since the delay caused is attributed to the respondent, it cannot burden the complainants with the charges/taxes etc. which were not applicable at the time of deemed date of possession, which in present case was 02.05.2015. 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



Government/local authorities for major 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 complainants, 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 complainants receive 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.

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

With regard to the same, The Authority observed that the respondent was obligated to deliver possession of the unit to the complainants by 02.05.2015. However, the respondent has failed to fulfill this obligation to date. It is undisputed that the complainants have already paid more than the total sale consideration. As per the time-linked payment plan opted by the complainants, 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.



28. **Another issue that requires adjudication by the Authority is whether the offer of possession made by the respondent on 23.04.2015 is legally valid or not?**

The Authority observes that, under the Real Estate (Regulation and Development) Act, 2016, a valid offer of possession must be accompanied by the issuance of the Occupation Certificate/ Part completion certificate from the competent authority. In the present complaint, the Respondent has not obtained the Occupation Certificate/ Part completion certificate till date. Accordingly, the Authority finds it appropriate to conclude that the offer of possession made by the Respondent on 23.04.2015 is legally invalid, as it was not supported by the Occupation Certificate/ Part completion certificate.

29. **Findings on the relief sought by the complainants 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 complainants intend 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 the Buyer agreement dated 02.05.2013, provides for handing over of possession within 24 months from the date of signing buyer agreement which comes to **02.05.2015**.

30. 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 02.05.2013. As per Clause 32(a) of the agreement and the observations as recorded in Para 27 of this order, possession of the unit should have been delivered by 02.05.2015. 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 10 years. Even after a lapse of 10 years, respondents are not in a position to offer legally valid possession of the unit to complainants since respondent company has yet to receive for completion/occupation certificate in respect of the unit booked. Complainants, however, do not wish to



withdraw from the project and is rather interested in getting the possession of their unit. 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 complainants on 23.04.2015 without accompanied by Occupation certificate/Part completion certificate. Thus making it an invalid offer of possession. So, the Authority hereby concludes that the complainants are entitled for the delay interest from the deemed date i.e., 02.05.2015 up to the date on which a valid offer is sent to him after receipt of Occupation certificate/Part 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., 27.10.2025 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.85%.



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 10.85% (8.85% + 2.00%) from the due date of possession till the date of a valid offer of possession.

Authority has got calculated the interest on total paid amount from due date of possession, i.e., 02.05.2015 till the date of this order i.e. 27.10.2025 which works out to ₹52,80,002/- and further monthly of ₹43,080/- as per detail given in the table below:

| Sr. No. | Principal Amount<br>(in ₹) | Deemed date of<br>possession or date of<br>payment whichever is<br>later | Interest Accrued<br>till 27.10.2025<br>(in ₹) |
|---------|----------------------------|--------------------------------------------------------------------------|-----------------------------------------------|
| 1.      | 179985.15                  | 2015-08-31                                                               | 198548                                        |
| 2.      | 3417925                    | 2015-05-02                                                               | 3893363                                       |
| 3.      | 20000                      | 2015-08-31                                                               | 22063                                         |
| 4.      | 921589.19                  | 2015-08-31                                                               | 1016635                                       |
| 5.      | 1792.85                    | 2015-08-31                                                               | 1978                                          |



|                          |                |            |                |
|--------------------------|----------------|------------|----------------|
| 6.                       | 133632.81      | 2015-08-31 | 147415         |
| <b>TOTAL</b>             | <b>4674925</b> |            | <b>5280002</b> |
| <b>Monthly interest:</b> | ₹43,080/-      |            |                |

31. Further, the complainants are seeking compensation of ₹25,00,000/- on account of grievance, frustration, mental agony caused to the complainants and ₹1,50,000/- as litigation expenses . 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.

32. Further, with regard to the relief sought by the complainants mentioned in Para 18 (v) and (vi) of this order, the complainants have neither pressed upon nor argued during the hearing. Therefore, the Authority deems it appropriate not to adjudicate on these reliefs.

#### **G. DIRECTIONS OF THE AUTHORITY**

33. 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:

1. Respondent no. 1 shall make legally valid offer of possession to the complainants 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.
2. Respondent is directed to pay upfront delay interest of ₹52,80,002/- till date of order i.e, 27.10.2025 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 of ₹43,080/- till the offer of possession after receipt of completion certificate.

3. Complainants 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.
4. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e, 10.85% by the respondent/ promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.
5. The respondent shall not charge anything from the complainants which is not part of the agreement to sell.

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



.....  
**NADIM AKHTAR**  
**[MEMBER]**