HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**120 of 2022**
Date of filing:	**11.02.2022**
Date of first hearing:	**26.07.2022**
Date of decision:	**20.01.2026**

Meera Bhargava W/o Late Sh. Kamal Kumar Bhargava
R/o House No. J1/43, DLF, Phase-II,
Gurugram, Haryana 122002

....COMPLAINANT(S)

VERSUS

Omaxe Ltd.
Registered office at 7, Local Shopping Centre,
Kalkaji, New Delhi 110019

....RESPONDENT(S)

Complaint no.:	**121 of 2022**
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Present: - Adv. Amnish Goel, learned counsel for the complainants through video conference

Adv. Manjinder Kumar, learned counsel for the respondent through video conference

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. The above-captioned complaints have been taken together as a bunch since nature and facts of these complaints are identical and relates to three plots allotted to same complainant in the same project of the respondent namely 'Omaxe City' and similar reliefs have been prayed by the same complainant in all the above captioned complaints and are represented by same counsel. Also, the reply filed is similar in all three cases. This order is

passed taking complaint no. 120 of 2022 titled 'Meera Bhargava versus Omaxe Ltd. as lead case.

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

A. UNIT AND PROJECT RELATED DETAILS

3. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details of complaint no. 120 of 2022	Details of complaint no. 121 of 2022	Details of complaint no. 122 of 2022
1.	Name of the project	Omaxe City, Bahadurgarh	Omaxe City, Bahadurgarh	Omaxe City, Bahadurgarh
2.	Unit no.	OCJB/11	OCJB/72	OCJB/277
3.	Unit area	600 sq. yards	500 sq. yards	192.78 sq. yards
4.	Date of booking/provisional allotment	28.05.2008	28.05.2008	28.05.2008
5.	Date of builder buyer agreement	17.01.2014	17.01.2014	17.01.2014

6.	Due date of offer of possession (24+6 months)	17.07.2016	17.07.2016	17.07.2016
7.	Possession clause	Clause 28(a) That the company shall complete the development/construction of the plot within a period of 24 months from the date of signing of this agreement by the buyer or within an extended period of six months, subject to force majeure conditions (as mentioned in clause (b) hereunder) and subject to other plot buyer(s) making timely payment or subject to any other reasons beyond the control of the company.	Clause 28(a) Same as of 120 of 2022	Clause 28(a) Same as of 120 of 2022
8.	Total sale consideration	₹23,87,428.14/-	₹20,44,642.86/-	₹7,93,690.63/-
9.	Amount paid by complainants	₹19,73,571.42/-	₹16,44,642.85/-	₹6,34,108.50/-
10.	Offer of possession	07.02.2018	07.02.2018	Not made
11.	Date of Part Completion Certificate	04.05.2017	04.05.2017	04.05.2017

B. FACTS OF THE CASE AS STATED IN LEAD COMPLAINT NO. 120 OF 2022

4. That the present complaint is being filed by the complainant in her own capacity as well as being the legal successor of her late husband, Sh. Kamal Kumar Bhargava, who unfortunately expired on 02.02.2018. After the demise of the said allottee, his share in the subject plot was duly transferred in favour of the complainant by the respondent. Consequently, the entire ownership of the plot in question now vests solely with the complainant. A photocopy of the death certificate of Late Sh. Kamal Kumar Bhargava is annexed herewith as Annexure C-1.

5. That the respondent floated a scheme for allotment of residential plots in the year 2006 under their project namely "Omaxe City", situated at Jhajjar Road, Bahadurgarh, Tehsil Bahadurgarh, District Jhajjar, Haryana. Since the project and the subject plot is located within the territorial jurisdiction of this Hon'ble Authority, the present complaint is maintainable under Section 2(p) of the Real Estate (Regulation and Development) Act, 2016.

6. That the complainant and her late husband applied for allotment of land admeasuring 1400 sq. yards in the said project. Accordingly, an agreement dated 21.02.2006 was executed between the parties. However, a copy of the said agreement was never supplied to the complainant or her late husband despite repeated requests, on the pretext that the same would be provided after notarization, which never happened.

7. That vide letter dated 28.05.2008, the respondent issued a provisional allotment letter in pursuance of the agreement dated 21.02.2006, mentioning that the allotment was on a "First Come First Serve" basis and demanding payment of Rs.1325/- per sq. yard towards External Development Charges (EDC) and Infrastructure Development Charges (IDC). A copy of the provisional allotment letter dated 28.05.2008 is annexed as Annexure C-2.

8. That the respondent further informed that the total area of 1400 sq. yards would be allotted in the shape of three separate plots measuring 600 sq. yards, 500 sq. yards and 300 sq. yards respectively. However, vide letter dated 31.05.2008, the respondent allotted only 1292.78 sq. yards, as under:

- Plot No. 11 – 600 sq. yards
- Plot No. 72 – 500 sq. yards
- Plot No. 277 – 192.78 sq. yards

Thus, 107.22 sq. yards was illegally reduced from the originally committed area. Against the said allotment, the complainant and her late husband deposited a total amount of ₹19,73,571.42. Copy of the allotment letter dated 31.05.2008 is annexed as Annexure C-3.

9. That separate agreements were executed in May 2008 for the aforesaid three plots; however, copies of the executed agreements were never supplied to the complainant or her late husband, despite repeated demands, thereby deliberately withholding crucial contractual documents.

10. That due to separate allotments of three plots and multiple acts of omission and commission by the respondent, the complainant has filed three separate complaints before this Hon'ble Authority. The present complaint pertains exclusively to Plot No. OCJB/11, admeasuring 600 sq. yards.

11. That at the time of provisional allotment, the respondent assured that physical possession would be handed over within two years, i.e., by May 2010. However, despite receiving a huge sum of ₹19,73,571.42 by May 2008, the respondent never offered possession within the promised time.

12. That the late husband of the complainant visited the respondent's office repeatedly seeking a specific date of possession and copies of agreements and statutory approvals. Each time, the respondent avoided the issue on one pretext or the other and deliberately concealed material documents.

13. That shockingly, in January 2014, the respondent coerced the complainant and her late husband to execute a fresh agreement dated 17.01.2014, threatening cancellation of allotment and forfeiture of the deposited amount. Left with no alternative, they signed the agreement under duress and coercion.

14. That through the Agreement dated 17.01.2014, the respondent:

a. Extended the possession period by another 24 months + 6 months grace period, i.e., up to 17.07.2016.

b. Enhanced the sale consideration to ₹23,87,428.14/-.

c. Introduced new charges amounting to ₹3,38,857.14, including PLC, Club Cost, Electrical Equipment Cost, Utility Room Cost and IFMS.

d. Enhanced the rate from ₹1325/- to ₹1964.29 per sq. yard.

A copy of the Agreement dated 17.01.2014 is annexed as Annexure C-4.

15. That the agreement contained grossly one-sided clauses, absolving the respondent from liability for delay while empowering them to charge 18% interest from the complainant, clearly demonstrating unfair trade practice and abuse of dominant position.

16. That even after expiry of the extended possession period, no development was found at site till June 2016, despite lapse of nearly eight years from the provisional allotment.

17. That vide letter dated 06.05.2017, the respondent raised an arbitrary demand of ₹3,68,319.72, including unexplained interest and enhanced additional charges, without providing any breakup. Copy of the letter dated 06.05.2017 is annexed as Annexure C-5.

18. That upon objection, the respondent orally admitted issuance of the said demand letter by mistake and assured withdrawal, which was never done.

19. That vide letter dated 07.02.2018, the respondent allegedly offered possession for pre-development survey while development works were incomplete and no completion certificate was issued, rendering the offer

illusory. Copy of letter dated 07.02.2018 is annexed as Annexure C-6. That subsequent site inspection confirmed lack of basic development, and the respondent admitted that the completion certificate was yet to be obtained, proving that the possession offer was merely on paper. Vide letter dated 03.05.2018, the respondent again raised fluctuating and arbitrary demands and threatened cancellation and forfeiture. Copy of letter dated 03.05.2018 is annexed as Annexure C-7.

20. That the complainant's husband expired on 02.02.2018, without seeing possession of the plot, despite investing his lifetime savings. Subsequently, the respondents transferred his share in favour of the complainant vide letter dated 06.04.2019, annexed as Annexure C-8.

21. That even thereafter, the respondent continued issuing illegal demand letters, including letter dated 07.08.2019, demanding ₹4,84,035.97/-, without proof of completion of development works. That a bare perusal of the statement of account annexed with letter dated 07.08.2019 would clearly depict that the respondent demanded an amount of ₹1,41,588.20/- towards delayed interest, whereas vide earlier letter dated 03.05.2018, the respondent had demanded only ₹19,099.48/- under the same head. Thus, within a span of barely one year, the respondent arbitrarily enhanced the delayed interest by more than seven times, which is ex facie illegal, unjustified and impermissible under law. A copy of letter dated 07.08.2019 is annexed herewith as Annexure C-9.

22. That similarly, vide letter dated 06.08.2020, the respondent demanded ₹3,42,447.77/- along with interest of ₹1,93,171/-, totaling ₹5,35,618.77/-. However, contrary to the said demand, Annexure-A attached to the same letter reflected an outstanding amount of ₹5,70,389.55/-, thereby exposing glaring inconsistencies. Thus, by adding interest to the tune of ₹2,27,941.78/-, the respondent unilaterally concluded that ₹5,70,389.55/- was payable. Shockingly, the respondent also enhanced the total sale consideration to ₹25,43,960.97/- from ₹23,87,428.14/-, as mentioned in Annexure-B Part-II of Agreement dated 17.01.2014. Copy of letter dated 06.08.2020 is annexed as Annexure C-10.

23. That the respondent continued to raise irrational and fluctuating demands, which were never rectified despite repeated requests. Left with no option, the complainant addressed a detailed email dated 21.08.2020 to the customer care of the respondent, referring to a meeting with Mr. Dinesh Singla, official of the respondent, who categorically admitted that nothing was due and payable by the complainant. Despite such admission, illegal demands persisted. The complainant also requested supply of the original agreement dated 21.02.2006 and expressed her readiness to take possession upon settlement of accounts. Copy of email dated 21.08.2020 is annexed as Annexure C-11.

24. That in response, the respondent sent a vague reply dated 24.08.2020, merely stating that they would revert shortly, followed by another email

dated 27.08.2020, seeking two months' time. Even after reminder dated 30.09.2020, no clarification was provided. Thus, despite lapse of substantial time, the respondent failed to explain the illegal demands. Copies of emails dated 24.08.2020, 27.08.2020 and 30.09.2020 are annexed as Annexures C-12 to C-14.

25. That thereafter, between 19.10.2020 to 23.11.2020, multiple emails were exchanged, wherein the complainant repeatedly sought breakup of accounts and statutory documents. However, the respondent only issued stereotyped replies stating that the matter would be resolved shortly, without offering possession or fixing any date. Copies of emails are annexed as Annexure C-15.

26. That even till mid-January 2021, the respondent neither furnished the demanded documents nor waived the illegal demands nor provided any completion certificate. Consequently, the complainant sent a final reminder dated 19.01.2021, granting 15 days' time to comply, failing which legal action was contemplated. Copy of email dated 19.01.2021 is annexed as Annexure C-16.

27. That the complainant further came to know that even basic facilities such as sewerage, electricity connections and internal roads were not applied for or completed when possession reminders were issued. Thus, letters dated 06.05.2017, 07.02.2018, 03.05.2018, 07.08.2019 and 06.08.2020 were

nothing but paper possession, issued merely to levy maintenance charges without completion of development works.

28. That instead of resolving grievances, the respondent issued another letter dated 12.04.2021, threatening to levy ₹50/- per sq. yard per month as administrative charges if stamp duty and registration charges were not deposited by 31.05.2021, and further sought to shift statutory liabilities upon the complainant. The respondent falsely claimed that possession had already been offered, whereas no valid possession offer with completion certificate was ever made. Copy of letter dated 12.04.2021 is annexed as Annexure C-17.

29. That the complainant vide email dated 26.09.2021, followed by reminders dated 12.10.2021 and 13.10.2021, reiterated her readiness to pay statutory charges but sought individual breakup of payments for all three plots. However, the respondent again gave mechanical replies without resolution. Copies are annexed as Annexures C-18 to C-20.

30. That constrained by the conduct of the respondent, the complainant issued a legal notice dated 21.11.2021, calling upon them to hand over possession, pay interest @18% per annum on deposited amount of ₹19,73,571.42/- from 31.05.2008 till possession, and litigation costs of ₹1,00,000/-. Copy of legal notice dated 21.11.2021is annexed as Annexure C-21.

31. That instead of responding to the legal notice, the respondent issued another demand letter dated 20.12.2021, demanding ₹7,14,133.61/-, including arbitrarily enhanced delayed interest of ₹3,71,685.84/-. The complainant replied on 22.12.2021, forwarding the legal notice again annexed as Annexures C-22 & C-23 respectively.

32. That more than 15 years have elapsed since execution of the agreement dated 21.02.2006, and the cost of construction has escalated manifold. Had possession been delivered timely, the complainant could have constructed the house at a fraction of current costs. Thus, the respondent are liable to compensate ₹50,00,000/- towards escalation of construction costs.

33. That the respondent has harassed the complainant for more than sixteen years, raising illegal demands without obtaining completion certificate, in clear violation of Sections 11(4)(b) and 13 of the RERA Act, 2016, thereby making them liable to pay interest @18% per annum on deposited amounts till actual possession.

34. That the respondent failed to provide breakup of interest demands, which escalated from ₹2,50,463/- in 2017 to ₹7,14,133.61 in 2021, without legal basis, warranting withdrawal of all impugned demand letters.

35. That the cause of action first arose on 21.02.2006, when the initial agreement for allotment of 1400 sq. yards of land was executed. It again arose on 28.05.2008 upon issuance of the provisional allotment letter, on 31.05.2008 upon allotment of the plot in question, and thereafter from time

to time when the late husband of the complainant repeatedly visited the office of the respondent seeking status of development works. The cause of action further arose on 17.01.2014 when the new agreement was forcibly executed and thereafter on 06.05.2017, 07.02.2018, 03.05.2018, 07.08.2019 and 06.08.2020, when illegal and arbitrary demands were raised. Most recently, it arose on 22.12.2021, when the complainant again requested the respondent to hand over possession and pay interest for delay. Since till date neither possession has been handed over nor compensation paid, the cause of action is continuous, and therefore the present complaint is well within the period of limitation. Hence, present complaint is filed.

36. The complainant has filed replication dated 13.02.2023 denying the submissions made by respondent in his reply. Subsequently, the complainant also filed written arguments on 15.02.2024. The Authority has duly taken both these documents on record and considered the same for the proper and just adjudication of the matter.

C. RELIEF SOUGHT

37. Complainant has sought following reliefs in complaint nos. 120 and 121 of 2022:

i. To direct the respondent to hand over the physical possession of allotted Plot No. OCJB/11 and OCJB/72 after completing all the development works incidental and attached to the allotment of the plot as mentioned in the Agreement.

ii. To direct the respondent to provide the completion certificate issued by the competent authority, certifying the completion of development works in the area of the allotted plot.

iii. To direct the respondent to pay interest compensation @18% per annum on the amount deposited from the date of its respective deposits made in pursuance to agreement dated 21.02.2006 till the date of physical possession of the plot is actually handed over to the complainant.

iv. To direct the respondent to withdraw the demands as raised by them vide letters dated 06.05.2017, 07.02.2018, 03.05.2018, 07.08.2019, 06.08.2020, 12.04.2021 and 20.12.2021 (Annexure C-5 to C-7, C-9, C-10, C- 17 & C-22).

v. To direct the respondent to provide the agreement executed on 21.02.2006 and subsequently in the month of May, 2008.

vi. To direct the respondent to provide the breakup of the outstanding amount as shown in letters dated 06.05.2017, 07.02.2018, 03.05.2018, 07.08.2019, 06.08.2020, 12.04.2021 and 20.12.2021 including the basis of claiming interest therein.

vii. To restrain the respondent from resuming the plot in question during the pendency of the complaint.

viii. To direct the respondent to make the payment of ₹50,00,000/- to the complainant on account of escalation in cost of construction.

ix. To pay compensation of ₹10,00,000/- on account of mental agony and harassment suffered by the complainant.

x. To impose punitive damages of ₹5,00,000/- upon the respondents for violations of the provisions of Real Estate Regulatory Authority Act, 2016.

xi. To pay the litigation expenses of ₹1,00,000/-.

Relief sought in complaint no. 122 of 2022

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vii. To impose punitive damages of ₹5,00,000/- upon the respondents for violations of the provisions of Real Estate Regulatory Authority Act, 2016.

viii. To pay the litigation expenses of ₹1,00,000/-.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 11.10.2022 pleading therein:

38. Respondent has challenged the maintainability of the complaint on following grounds:

a. Complainant has falsely alleged that agreements were executed between the parties on 21.02.2006 and thereafter in May 2008, and further claimed that possession was due in May 2010. However, despite making such assertions, the complainant has failed to annex any such alleged agreements, under the pretext that copies were not provided to her. Contrary thereto, in the legal notice dated 21.11.2021 issued by the complainant herself (Annexure C-21), there

is no reference whatsoever to any agreement of 2006 or 2008. Rather, the complainant has categorically acknowledged execution of only one agreement dated 17.01.2014, which is the correct and admitted position. In the said legal notice, the complainant herself has stated that the agreement was executed after a delay of six years and has also mentioned the agreed possession date strictly in terms of the agreement dated 17.01.2014. Thus, the pleadings in the complaint are self-contradictory and mutually destructive vis-à-vis the complainant's own legal notice. It is settled law that a litigant who approaches a judicial or quasi-judicial forum with false pleadings and suppression of material facts is not entitled to any relief. On this ground alone, the complaint deserves to be dismissed.

b. That the complainant has further mis-stated facts by alleging that only a few demand letters/reminders were issued to her. It is submitted that, in addition to the demand letters annexed by the complainant, numerous reminders were issued from time to time, calling upon her to clear outstanding dues. Copies of reminders dated 22.05.2018, 04.07.2018, 06.09.2018, 12.12.2018, 07.02.2019, 07.03.2019, 04.04.2019, 05.06.2019, 05.09.2019 and 12.11.2020, along with dispatch proofs, are collectively annexed herewith as Annexures R-1 to R-10. The deliberate concealment of these

documents further establishes the mala fide intent of the complainant. Hence, on this ground as well, the complaint deserves dismissal.

c. That no cause of action has arisen in favour of the complainant to file the present complaint. The complainant is seeking possession which has already been duly offered vide possession letter dated 07.02.2018 (Annexure C-6). Not only was possession offered, but the complainant was also called upon to execute the sale deed/registry, followed by multiple reminders. However, as a substantial amount remains outstanding, the complainant, with mala fide intent to avoid payment of lawful dues, has failed to come forward to take possession and execute the sale deed.

d. That the alleged dispute is liable to be referred to arbitration under Section 8 of the Arbitration & Conciliation Act, 1996, in terms of clause 46 of the Agreement dated 17.01.2014. Amended Section 8 mandates referral to arbitration notwithstanding any judicial pronouncement, especially where the dispute involves complex questions of fact and detailed evidence. Accordingly, this Hon'ble Authority lacks jurisdiction to adjudicate the present complaint.

e. That this Hon'ble Authority lacks territorial jurisdiction to entertain the present complaint. As per Clause 46 of the Agreement dated 17.01.2014, it was mutually agreed that Courts at Bahadurgarh and Delhi alone shall have jurisdiction in respect of disputes arising

out of the said agreement. In view thereof, this Hon'ble Authority lacks territorial jurisdiction to entertain and adjudicate the present complaint and the same deserves to be dismissed on this ground alone.

f. That the complainant herself is a chronic defaulter, having failed to clear substantial outstanding dues despite repeated reminders. A party in default cannot seek equitable relief. Therefore, the complainant being at fault is not entitled to any relief, and the complaint deserves dismissal.

g. That the complaint is hopelessly barred by limitation. Even as per the complainant's own case (though denied), possession was allegedly due in May 2010, whereas the present complaint has been filed only in 2022, after an unexplained delay of more than a decade. Hence, the complaint is barred by limitation and liable to be dismissed on this ground alone.

39. That the respondents informed the complainant that three plots of different sizes totaling 1400 sq. yards would be allotted, are wrong and denied. This allegation is also falsified from the complainant's own legal notice (Annexure C-21), wherein no such assertion has been made. The complainant is put to strict proof of this averment. However, the contents of this paragraph to the extent that three plots measuring 1292.78 sq. yards

were allotted vide letter dated 31.05.2008, and that certain payments were made by the complainant.

40. It has been specifically denied that the respondents ever assured that possession would be handed over within two years from the provisional allotment. At the relevant time, no agreement had been executed, and therefore, the question of committing to any possession timeline does not arise. The falsity of the complainant's averments is further evident from the fact that in the complaint, possession is alleged to be due by May 2010, whereas in the legal notice (Annexure C-21), the complainant herself has stated that possession was to be delivered within 30 months (24 months + 6 months grace period) from the execution of the agreement dated 17.01.2014. Such contradictory stands clearly demonstrate that the complaint is a bundle of falsehoods.

41. The complainant has merely made bald allegations without placing any document on record to substantiate the same. It is reiterated that no agreement was executed either in 2006 or in May 2008, and even the complainant's own legal notice establishes that the agreement was executed only on 17.01.2014. Further, if the complainant's version that possession was due by May 2010 were to be believed (though denied), it is inexplicable as to why neither the complainant nor her husband raised any dispute or initiated any legal proceedings at that time.

42. It is denied that any official of the respondents compelled the complainant to execute a "new" agreement in January 2014. Once no earlier agreement existed, the question of executing a new agreement does not arise. The averments made in this paragraph are falsified by letter dated 12.12.2013 (Annexure R-11), whereby two copies of the agreement were duly handed over to the complainant for execution. The said letter was acknowledged by the complainant herself on 19.12.2013. Thereafter, the duly executed agreement dated 17.01.2014 was supplied to the complainant vide letter dated 18.01.2014, annexed herewith as Annexure R-12. Even otherwise, the complainant's own legal notice (Annexure C-21) does not contain any allegation of coercion or threat, thereby falsifying the averments made in the present complaint. No threats of any nature were ever given, and the allegations made herein are false and frivolous.

43. That the complainant has deliberately concealed material facts from this Hon'ble Authority, inasmuch as vide letter dated 05.10.2018, followed by several reminders, the complainant was specifically requested to come forward for execution of the registry/sale deed of the plot in question. Copies of the reminders have already been annexed as Annexures R-1 to R-10, and copy of letter dated 05.10.2018 is annexed herewith as Annexure R-13.

44. That possession was duly offered after receipt of the Part Completion Certificate dated 04.05.2017, copy whereof is annexed herewith as Annexure R-14. Accordingly, the averments made in this paragraph are false, frivolous

and have been raised solely for the purpose of the present complaint. Since the complainant failed to clear the outstanding amount, the demand letter dated 07.08.2019 was rightly issued in accordance with the terms of the agreement. Once possession has been offered and there is huge amount due against complainant, she is under an obligation, in terms of the agreement, to come forward and clear the outstanding dues, so as to handover physical possession to her and to execute registry of the unit in question in her favour.

45. It has been prayed that since the complainant is not entitled for any relief, therefore, the complaint may kindly be dismissed in the interest of justice.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT

46. During oral arguments learned counsel for the complainant and respondent reiterated arguments as mentioned in their written submissions.

F. ISSUES FOR ADJUDICATION

47. Whether the complainant is entitled for physical possession of unit along with delay interest on account of delay of physical possession of the unit in question?

G. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT

G.1 Objection regarding territorial jurisdiction

One of the preliminary objection of respondent is that Authority does not have territorial jurisdiction to entertain and try the present complaint in as much as the parties have agreed to exclude the jurisdiction of all other courts except the courts at Bahadurgarh and Delhi. In this regard it is observed that as per notification no. 1/92/2017ITCP 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. In the present case the project in question is situated within the planning area Bahadurgarh, therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

G.2 Objection raised by the respondent stating that dispute ought to be referred to Arbitration under Section 8 of the Arbitration & Conciliation Act, 1996 (as amended in 2015)

Respondent raised another objection that dispute ought to be referred to Arbitration under Section 8 of the Arbitration &Conciliation Act, 1996 (as amended in 2015). With regard to the this objection, 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, 2016 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, 2016 provides 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.

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

Furthermore, Delhi High Court in 2022 in **Priyanka Taksh Sood u. 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,2016 there is no bar under the RERA Act, 2016 from application of concurrent remedy under the Arbitration & Conciliation Act, and thus, there is no clash between the provisions of the RERA Act and the Arbitration & Conciliation Act, as the remedies available under the former are in addition to, and not in supersession of, the remedies available under the Arbitration & Conciliation Act." Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer

Protection Act, 1986, RERA as well as the triggering of the Code. Therefore, in view of the above judgments and considering the provisions of the Act, the Authority is of the view that 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 abovementioned reasons, the Authority is of the view that the objection of the respondent stands rejected.

G.3 Objection raised by respondent that the present complaint is barred by limitation

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

> *"19. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963."*

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

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

48. 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 admittedly, in this case complainant and her husband had purchased the allotment rights qua the plot in question in the project of the respondent. The complainant's husband expired on 02.02.2018 and the respondent transferred his share in favour of the complainant vide letter dated 06.04.2019, annexed as Annexure C-8, whereby complainant became the sole allottee of the plot in question.

49. The complainant has alleged that she and her husband applied for allotment of land admeasuring 1400 sq. yards in respondent's project namely 'Omaxe City', Bahadurgarh and an agreement dated 21.02.2006 was executed between the parties, however, vide provisional allotment letters dated 28.05.2008 and 31.05.2008, complainant was allotted three plots

bearing nos. 11, 72 and 277 measuring 600 sq. yards, 500 sq. yards and 192.78 sq. yards. respectively, totalling to 1292.78 sq. yards only. It has been further alleged that at the time of provisional allotment respondent assured that physical possession would be handed over within two years, however despite taking huge sum of ₹19,73,571/- in the year 2008 towards plot no. OCJB/11 respondent never offered the possession within time. Furthermore, the respondent coerced the complainant to execute fresh agreement dated 17.01.2014 threatening cancellation of allotment and forfeiture of deposited amount and vide this agreement, respondent enhanced the rate of the plot from ₹1325-/ to 1964.29 per sq. yard which increased total sale consideration of plot no. OCJB/11 ₹23,87,428.14/-, introduced new charges amounting to ₹3,38,857/-. In this regard it is observed that the complainant has neither placed on record any document to prove that she had booked plot measuring 1400 sq. yards nor agreement dated 21.02.2006 has been annexed with the complaint. The only agreement paced on record is dated 17.01.2014 which is duly signed by both parties. There is nothing on record to prove that said agreement was executed under coercion. Even if the averment of the complainant is presumed to be true, said agreement was never challenged by the complainant till filing of this complaint nor any dispute was ever raised by complainant in this regard from 2014. Even in the legal notice dated 21.11.2021, no mention of agreement dated 21.02.2006 has been made by the complainant.

However, perusal of letter dated 28.05.2008 reveals that provisional allotment of the plot was made to the complainant in tune with the terms of agreement dated 21.02.2006 @₹1325/- per sq yard, but since the complainant executed plot buyer agreement dated 17.01.2014 which amounts to novation of contract, all the earlier agreements (if executed) and terms agreed between the parties stands extinguished and the parties would now be governed by the latest agreement executed between them and they are bound by the terms of said latest agreement. Therefore, all the rights and liabilities of both parties, would now be adjudicated as per terms of agreement dated 17.01.2014. Accordingly, complainant would be liable to pay rate of plot, total sale consideration and other charges as per the plot buyer agreement dated 17.01.2014.

50. The complainant had paid a sum of ₹19,73,571.42/- for plot no. OCJB/11 against the total sale consideration of ₹23,87,428.14/-. As per clause 28(a) of the plot buyer agreement dated 17.01.2014, respondent was under an obligation to handover the possession of the plot within 24 months with grace period of 6 months i.e by 17.07.2016. However, respondent failed to complete construction of the project and deliver possession within stipulated time. An offer of possession was issued to the complainant on 07.02.2018 for pre-development survey. Said offer was not acceptable to the complainant since along with said offer of possession respondents had raised illegal demands and also the said offer had been issued without receipt of

completion certificate as the development works were incomplete. Hence, the complainant alleged that offer of possession was merely a paper possession. On the other hand, respondent has submitted that the demands raised vide offer of possession were in consonance with the terms of agreement executed between the parties and hence payable by the complainant. Further the respondent had received part completion certificate qua the unit in question on 04.05.2017. It is the contention of the respondents that the complainant had deliberately failed to make payment of requisite amount despite issuing several reminder letters dated 22.05.2018, 04.07.2018, 06.09.2018, 12.12.2018, 07.02.2019, 07.03.2019, 04.04.2019, 05.06.2019, 05.09.2019 and 12.11.2020.

In this regard it is observed that respondent has received part completion certificate for the project on 04.05.2017 and offer of possession was made on 07.02.2018 i.e. after receiving part completion certificate along with details statement of payable and receivables amounts, thus discharging his obligation to offer a legally valid possession. However, the complainant failed to take possession of the allotted plots.

51. The facts set out in the preceding paragraphs demonstrate that in the captioned complaint delivery of possession of the booked unit has been delayed beyond the time period stipulated in the builder buyer agreement. Possession of the unit was to be delivered to the complainant on 17.07.2016, however, a valid offer of possession was issued to the complainant on

07.02.2018, i.e after a gap of more than 1.5 years. Admittedly there has been delay in delivery of possession but the complainant wishes to continue with the project and take possession. In these circumstances, provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the booked plot, the complainant is also entitled to receive interest from the respondent on account of delay caused in delivery of possession for the entire period of delay till a valid offer of possession is issued. In the present complaint, the complainant intends to continue with the project and is seeking delayed possession charges. So, the Authority hereby concludes that complainant is entitled to receive "delay interest" for the delay caused in delivery of possession from the due date of possession i.e 17.07.2016 till the date of valid offer of possession i.e 07.02.2018 as provided under the proviso to Section 18 (1) of the Act, which 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".*

52. 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."

53. Hence, Authority directs respondent to pay delay interest to the complainant for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.80% (8.80% + 2.00%) from the due date of possession i.e. 17.07.2016 till the date of a valid offer of possession i.e. 07.02.2018.

54. Authority has got calculated the interest on total paid amount from due date of possession or from date of payments whichever is later till the date of offer of possession in the captioned complaints as mentioned in the table below:

Complaint no. 120 of 2022 and 121 of 2022

Sr. No.	Complaint No.	Principal Amount	Due date of possession or date of payment whichever is later	Interest Accrued till 07.02.2018
1.	120/2022	₹19,73,571.42/-	17.07.2016	**₹3,33,442/-**
2.	121/2022	₹16,44,642.85/-	17.07.2016	**₹2,77,868/-**

It is pertinent to mention that in complaint no. 122 of 2022 the possession has not been offered till date. It has been more than nine years from due date of possession i.e. 17.07.2016 but respondent has failed to offer the possession of plot in question. In these circumstances, the Authority hereby concludes that complainant is entitled to receive delay interest for the delay caused in delivery of possession from the due date of possession i.e 03.12.2018 up to the date on which a valid offer is sent to him.

Authority has got calculated the interest on total paid amount from due date of possession i.e. 17.07.2016 till the date of this order i.e. 20.01.2026 which works out to ₹6,52,003/- and further monthly of ₹5,816/- as per detail given in the table below:

Ratnesa

Sr. No.	Principal Amount	Due date of possession or date of payment whichever is later	Interest Accrued till 20.01.2026 (date of the order)
1.	₹6,34,108.50/-	17.07.2016	**₹6,52,003/-**
2.	**Monthly interest**		**₹5,816/-**

55. Further, by way of present complaint, written submissions and oral arguments, complainant has alleged that respondent is illegally charging a sum of ₹3,42,447/- as additional charges and unexplained interest on the same. In this regard it is observed that in the statement of accounts issued by the respondent along with the offer of possession, the respondent has charged electrical equipment cost, utility cost, Interest Free Maintenance Security, Preferential Location Charges and External and Internal Development Charges. The Authority has gone through the averments of the parties and documents available on record and observes as under:

i) **Interest Free maintenance Security:** The Authority vide order dated 01.04.2021 in **Complaint No. 464 of 2019 titled Kanwar Singh vs Mudra Finance Ltd.** has laid down certain principles in regard to IFMS, according to which IFMS is a non-refundable interest free security contributed by the allottees for carrying out capital works in future. Thus, extra money collected on account of IFMS has to be handed over by promoter to Association of allottees. IFMS is over and above the basic sale consideration and it cannot be utilized by the promoter.

Thus, IFMS money is payable by the complainants. However, the respondent shall deposit it in a separate interest earning account. Further till taking over of the project by RWA, the builder-respondents shall render periodic account of income and expenditure made out of this account to the general body of residents of the colony. Therefore, the amount charged from complainants on account of "Interest Free Maintenance Security" is upheld subject to aforesaid condition.

ii) **External and internal development charges:** Further, with regard to disagreement of the complainant qua the external and internal development charges, it is observed that the said charges were subject to the policies of the Government of Haryana and any changes, were communicated by the respondent to the complainant diligently. Any increase in said charges cannot be a ground for the complainant to not accept possession of the plot.

iii) **Preferential Location Charges and Utility Cost:** In this regard it is observed that complainant is liable to pay all the charges as per the agreement executed between them. PLC and utility cost were part of the plot buyer agreement, hence are payable by the complainant.

iv) **Electrical Equipment cost:** The respondent is charging a sum of ₹1,80,297/- as electrical equipment cost. However, the equipment for which said charges are being levied by the respondent has not been mentioned. So, respondent can charge actual cost of the equipment provided the equipment is installed in the particular plot of the complainant and not otherwise.

56. Complainant is also seeking compensation, damages and litigation expenses of ₹66,00,000/-. In this regard it is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as **"M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & Ors."** 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 complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses and compensation.

I. DIRECTIONS OF THE AUTHORITY

57. 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 shall make a legally valid offer possession of the plot to complainant in complaint no. 122 of 2022 within 30

days from today. Complainant shall accept the same within next 30 days.

(ii) Respondent is directed to pay upfront delay interest of ₹3,33,442/- in complaint no. 120 of 2022; ₹2,77,868/- in complaint no. 121 of 2022 and ₹6,52,003/- along with monthly interest of ₹5,816/- in complaint no. 122 of 2022 to the complainants towards delay already caused in handing over the possession.

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

(iii) Complainants in complaint no. 120 of 2022 and 121 of 2022 are directed to accept the offer of possession and take physical possession of the plot within 30 days.

(iv) Complainants will remain liable to pay balance consideration amount as per observations made in Para no. 55 of this order. Complainants will also be liable to pay interest at the prescribed rate for delay, if any.

(v) The respondent shall not charge anything from the complainants which is not part of the agreement for sale.

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

.....
DR. GEETA RATHEE SINGH
[MEMBER]