HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**1217 of 2023**
Date of filing.:	**26.05.2023**
First date of hearing.:	**01.08.2023**
Date of decision.:	**10.03.2026**

Snehal Mishra ....COMPLAINANT

R/o: A1/1202, Casa Greens1, GH-04A,

Sector-16, Greater Noida, Uttar Pradesh - 201308

VERSUS

M/s Omaxe Ltd ....RESPONDENT

Regd. office.-19B, First Floor

Omaxe Celebration Mall, Sohna Road

Gurugram 122001

Also at: Omaxe House, 7, LSC,

Kalkaji, New Delhi- 110019.

Complaint no.:	**1218 of 2023**
Date of filing.:	**26.05.2023**
First date of hearing.:	**01.08.2023**
Date of decision.:	**10.03.2026**

Sneha Suman ....COMPLAINANT

R/o: 248, Pipal Apartment, DDa Flats,

Sector 17E, Dwarka, New Delhi- 110078

VERSUS

M/s Omaxe Ltd ....RESPONDENT

Regd. office.-19B, First Floor

Omaxe Celebration Mall, Sohna Road

Gurugram 122001

Also at: Omaxe House, 7, LSC,

Kalkaji, New Delhi- 110019.

Present: Adv Saurabh Gaba, Learned Counsel for complainant through VC(in both complaints)

Adv. Vishal Chawla, Learned counsel for the Judgement Debtor through VC

ORDER (DR. GEETA RATHEE SINGH-MEMBER)

1. 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.
2. Both the captioned complaints are being taken up together as they pertain to the same project of the respondent and facts and grievances involved are similar and being decided taking Complaint No. 1217 of 2023 as the lead case.

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project.	"Omaxe Shubhangan", Sector 4-A, Kassar Road, Bahadurgarh
2.	Nature of the project.	Group housing project

3.	**DTCP License no.**	**109 of 2008 dated 27.05.2008**
	Licensed area	12.54 Acre
4.	**RERA Registered/not registered**	Registration vide registration no. 202 of 2017 dated 31.12.2021
5.	**Details of unit.**	801, RHBH/Tower-12-A, admeasuring 1280 sq. fts
6.	**Date of Builder buyer agreement**	None
7.	**Due date of possession**	None
8.	**Total sale consideration**	₹ 44,70,000/-
9.	**Amount paid by complainants**	₹ 4,00,000/-
10.	**Offer of possession.**	None

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT OF THE LEAD CASE

4. Complainant in this case had booked a unit in the project of the respondent namely Shubhangan, situated at Bahadurgarh in the year 2019 by paying a booking amount of ₹ 4,00,000/-. At the time of booking the complainant was assured that the possession of the booked unit shall be handed over within a period of 3 months. Believing into the assurances of the respondent, the complainant signed the application form qua the booking of the unit in question containing arbitrary conditions.

5. That thereafter, the respondent forced the complainant to execute a builder buyer agreement, however in said agreement the respondent builder failed to disclose the due date for delivery of possession. It is further submitted that the complainant further discovered that the respondent has failed to timely deliver the possession of its units to the other allottees in the same project and has duped hard earned money of the homebuyers. The complainant also learnt that the respondent was to provide possession of the unit in August 2018 however the respondent miserably failed to complete the project and handover the possession to its other allottees.
6. That since the complainant discovered the fact that the project of the respondent is being delayed due to reasons well known to the respondent and there is failure on the part of the respondent to offer timely possession, the complainant approached the office of the respondent to seek refund of the amount deposited by him.
7. It is submitted that the respondent kept on avoiding the complainant on one pretext or the other and did not pay any heeds to the request of the complainant to refund the amount. Copy of the letter/Email dated 20.05.2019 and 28.10.2020 alongwith the screenshots of the payments made is annexed as Annexure P-2.
8. That instead of returning the amount collected on account of booking amount, the respondent apprised the complainant that the unit booked by the

complainant has been resold to other customer and the amount deposited by the complainant has been forfeited.

9. The respondent has illegally and arbitrarily forfeited the amount of ₹ 4 Lakhs deposited by the complainant without intimating or serving cancellation letter. The respondent had no right to forfeit the amount deposited without there being any builder buyer agreement or without any intimation to the complainant about reselling of the flat or cancellation of the flat. Admittedly since no builder buyer agreement has been executed between the parties, the respondent has no right to forfeit the amount(without any cancellation letter or intimation) deposited by the complainant.

10. That the Delhi RERA in a Complaint bearing No. 29 of 2021 titled **Vipul Ahuja vs Godrej Vestamark LLP** while dealing with the identical issue has held that:

> "Since, in the present case, no 'Agreement for Sale' (builder buyer agreement) has been executed between the parties, the respondents cannot forfeit earnest money or booking amount….."

11. The complainant booked the unit upon the assurances, representations, and warranties of the representative of respondent and its broker that the possession of the apartment would be provided within 3 months from the date of booking of the unit. However, the complainant was duped and

trapped by the respondent since there has been inordinate delay in the delivery of the possession.

12. The respondent kept delaying the requests of the complainant time and again, thus, taking away the right of timely recovery from the complainant. The complainant further wrote a letter to the respondent for the refund however the respondent did not pay any heeds to the same. Copy of the letter dated 12.02.2022 is being annexed as Annexure P-3.

13. Feeling aggrieved the complainant has filed the present complaint seeking refund of the paid amount along with interest.

C. RELIEF SOUGHT

14. The complainants in present complaint seeks following relief:

i. Direct the respondent to refund the amount of ₹.4,00,000/- deposited by the complainant along with prescribed rate of interest.

ii. Direct the respondent to pay the litigation cost of Rs.55,000/-.

iii. Direct the respondent to not transfer, alienating, or creating any other such interest in the unit.

iv. Direct the respondent to not transfer, alienating, or creating any other such interest in the unit.

v. Direct the respondent to not create any further demands on the complainant on account of interest, penalties, etc. by whatever name be called.

vi. May pass any other order as this Hon'ble Authority may deem fit.

15. During the course of arguments, learned counsel for the complainant submitted that no builder buyer agreement was executed between the parties and in the absence of a builder buyer agreement, the respondent cannot deduct earnest money. The said position has been uphold by the Hon'ble NCDRC in FA bearing no. 66 of 2018 titled as **"Kailash Kumari Vs Omaxe limited and anr".** Further the same viewpoint has been resonated by Hon'ble Maharashtra Real Estate Appellate Tribunal in Appeal titled as "Dinesh R Humane Vs Piramal Estate Pvt Ltd." Further in the application form there was no legal clarity on the completion or handover of the unit, thus there was no delay on the part of the complainant. Therefore, without any stipulated timeline for delivery of possession the respondent could not have forced the complainant into executing a builder buyer agreement and thus could not have forfeited the booking amount in view of letter requesting refund.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 30.01.2024 pleading therein:

16. That the complainant in the captioned complaint is seeking refund of ₹.4,00,000/- allegedly paid towards booking of residential unit no.: "RHBH/TOWER-12-A/EIGHT/801" having area admeasuring 2215 sq.ft. in the residential project "SHUBHANGAN (3-4 BHK)" situated in sector 4-A, Kassar Road, Bahadurgarh.

17. It is submitted that the complainant had booked the unit in question on 30.04.2019 by paying a booking amount of ₹ 4,00,000/-. As per the application form, the total price of the unit was ₹ 44,70,000/-. Further as per clause 8(ii) of the terms and conditions of the said application form, the complainant had authorised the respondent to cancel the allotment in case the complainant failed to make payments for a period beyond 2 consecutive months after notice from the respondent. A copy of the application form is annexed hereto as Annexure R/1.

18. That at the time of booking the complainant had opted for flexi payment plan and as per said the complainant was required to deposit 10% of basic sale price at the time of booking of unit in question itself, and further 40% of basic sale price within 60 days of booking.

19. That thereafter in June 2019, the complainant was provided with the copy of Agreement for Sale for signing, in respect of the unit in question, however, the complainant did not return the same back to the respondent.

20. Accordingly, the respondent vide letter dated 28th June 2019 again requested the complainant to visit its office and execute and register the Agreement for Sale and also informed the complainant that any delay in execution and registration of the agreement would render the complainant liable for further action. Irrespective of the same, the complainant did not execute the agreement for reasons best known to her.

21. That vide reminder dated 05.06.2019, the respondent raised demand for payment of due installment but the complainant did not pay the same. Accordingly, reminders dated 03.08.2019, 28.08.2019, 06.09.2019, 09.10.2019, 24.10.2019, 11.11.2019 & 04.12.2019 were sent to the complainant to pay the due installment but, since the complainant did not pay any heed to the same, the respondent had no choice but to cancel the allotment vide cancellation letter dated 23.12.2019. Copies of reminders are annexed hereto as Annexure R/3, Annexure R/4, Annexure R/5, Annexure R/6, Annexure R/7, Annexure R/8, Annexure R/9, Annexure R/10 & Annexure R/11.

22. That perusal of above documents makes it clear that it is complainant who defaulted in executing the Agreement for Sale and in paying the due installment, thereby leaving respondent with no choice but to cancel the

allotment in terms of the application form. Further, perusal of the complete factual matrix leaves no doubt that the Complainant has approached the Hon'ble Authority with unclean hands and has tried to mislead this Hon'ble Authority by making false projections and stating untrue and/or incomplete facts.

23. That the respondent in order to complete the project has spent hundreds of crores of rupees in mobilizing resources, generating and creating infrastructure, manpower, building material, installation of electrical equipment, sewerage systems, water pipelines and other most of services and amenities to make living of the allottees in the project as state of pride and comfortable. Further, due to the pandemic of Covid-19 the construction activity in the project in question had come to a standstill and it was only after lots of efforts that things have gotten back to track. Still further, even the Government of India as well as the present Authority realizing the difficulties being faced by the Real Estate Sector due to the pandemic had invoked a force majeure clause, thereby granting some relief to the Real Estate Industry.

24. That the captioned complaint is abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed.

25. During the course of arguments, learned counsel for the respondent submitted that the complainant in its complaint has herself admitted that the respondent had sent a copy of builder buyer agreement to the complainant,

which the complainant failed to respond. Mere verbal submission of the complainant that the respondent builder did not provide a timeline for delivery of possession cannot be accepted. The builder buyer agreement issued by the respondent builder was a complete set which the complainant failed to execute for reasons best known to her. The respondent builder had shown its due diligence by relentlessly pursuing the complainant vide various reminder letters as annexed along with proof of delivery. Thus, the present complaint is liable to be dismissed.

E. ISSUES FOR ADJUDICATION

26. Whether the complainant is entitled to receive refund of the paid amount along with interest in terms of Section 18 of Act of 2016?

F. OBSERVATIONS OF THE AUTHORITY

27. The Authority has gone through the rival contentions and oral arguments made by both parties. In light of the background of the matter as captured in this order, it is observed that there is no dispute regarding the fact that the complainant had applied for booking of a unit bearing no. 801, RHBH/Tower-12-A, admeasuring 1280 sq. fts. in the project of the respondent namely "Omaxe Shubhangan", situated at Sector 4-A, Kassar Road, Bahadurgarh vide application form dated 30.04.2019 by paying a

booking amount of ₹ 4,00,000/-. As per the application form, the total price of the unit was fixed as ₹ 44,70,000/-.

28. As per the booking form complainant was to make further payment within 60 days of the booking and the respondent was to issue a builder buyer agreement qua the unit in question. As per record vide letter dated 28.06.2019 respondent had called upon the complainant to execute and register agreement for sale and to make further payment. In said letter it had been explicitly mentioned that failure to execute the builder buyer agreement would constitute as breach of conditions on the part of the complainant. The complainant in its complaint has acknowledged the letter for execution of builder buyer agreement, however, it has been submitted that in said agreement respondent builder failed to disclose the due date for delivery of possession due to which the complainant chose not to execute the same. It is noteworthy to observe that the complainant has not attached a copy of the said builder buyer agreement in support of her contentions. The respondent in its reply has annexed several reminder letter/ notices asking the complainant to come forward and make the payment. Due to continuous failure on the part of the complainant's to execute a builder buyer agreement qua the booked unit and to make further payment, the booking of the complainant qua the unit in question ultimately got cancelled on 23.12.2019 after forfeiture of booking amount. The complainant in its complaint has challenged this cancellation on grounds

that the respondent could not have cancelled the unit without prior intimation and have further could not forfeited the booking amount since the builder buyer agreement had not been executed.

29. Upon scrutiny of documents on file it is observed that, the complainant had stopped making payment of due amount after making payment of ₹ 4,00,000/- booking amount alleging that the respondent builder did not disclose the due date of possession. As per record, the respondent had been relentlessly pursuing the complainant to come forward and execute the builder buyer agreement which would have further fortified the terms and conditions between the parties but the complainant for reason best known to her did not pursue the same. The complainant also did not initiate any communication with the respondent in respect of the delivery of the unit. The alleged letter dated 23.11.2019 and 12.02.2022 seeking refund of booking amount are mere letters on a piece of paper without any proof of service/delivery report and hence the same cannot be accepted. Whereas, the respondent has shown its bonafide by chasing the complainant throughout for execution of builder buyer agreement and making payment of outstanding amounts. However, the complainant deliberately chose not to respond to the demand/ reminder letters issued by the respondent. In case the complainant had any grievance the same should have been raised to the respondent rather than choosing to stay silent and evade responsibilities. The complainant in its complaint file has alleged that in the builder buyer

agreement issued by the respondent, the due date of possession has not been mentioned. In this regard it is observed that the complainant has made mere oral submissions before the Authority with regard to the builder buyer agreement, however a copy of the alleged agreement has not been placed on record. The onus is upon the complainant to prove that the respondent had forced the complainant to sign a faulty builder buyer agreement, which the complainant has failed to prove. The application form executed between the parties qua the unit in question gave ample clarity to the complainant with regard to the payment plan and the terms of booking. Complainant should have acted accordingly, however it is the complainant who failed to follow the terms of booking. Thus, on account of non payment of dues the booking of the complainant was cancelled as per the terms agreed between the parties qua the application form and the booking amount forfeited.

30. Execution of a real estate project is an arduous task. Numerous approvals from myriad authorities of State Government and Central Government have to be obtained for completion of the project. In actuality, it happens that the proposed timeline for delivery of possession gets shifted due to unprecedented delays, however, that does not automatically mean that the allottee abandons the project and stops making further payment as that will lead to a cash crunch causing further difficulties for a developer. When an allottee decides to become part of an under construction project, he

understands such risk factors (cost of such risks is factored in the agreement). Needless to mention that allottees are entitled to delay interest for the entire period of delay caused in handing over possession.

31. The Authority has to evaluate facts and circumstances of each case. The most important evaluation and determination has to be in regard to whether promoters have intention and capabilities to complete the project or not. In this instance, the respondent is striving to complete the project. Though delay has been caused, the respondent had every intention of completing the project and delivering possession. Had the complainant continued making payments as per agreed payment plans their interests were already secure in terms of delayed possession charges. Fact of the matter is that the complainant had preemptively stopped making payments of due amounts without giving any valid reason for the same. Respondent had performed its due obligation by issuing various reminder/ opportunity letters to the complainant. Nonetheless, in the event of non payment of dues on the part of the complainant, respondent had rightly cancelled the booking of the complainant vide cancellation letter dated 23.12.2019.

32. Upon cancellation respondent had forfeited the entire amount on account of earnest money along with delayed interest. Complainant has filed this present complaint seeking refund of the amount paid to the respondent in lieu of the booked unit since a builder buyer agreement had not been executed between the parties.

Now the main issue to be adjudicated by the Authority is whether the complaint is entitled to receive any refund as per provisions of RERA ACT, 2016 as on date, with this complaint being filed after 4 years from the date of cause of action, i.e the cancellation of the booking of the complainant vide letter dated 23.12.2019. As observed in proceedings paragraphs, the complainant had severely defaulted in coming forward to execute an agreement and make payment in lieu of the booked unit. Despite being issued several reminder notices, complainant chose not to respond to the requests of the respondent which ultimately led to the cancellation of the booking of the unit in question along with forfeiture of money as per the terms of clause 8(ii) agreed between the parties through application form dated 30.04.2019. The principal argument of the complainant is that the respondent could not have forfeited the booking amount since a builder buyer agreement had not been executed between the parties placing reliance on a slew of judgments. In this regard it is observed that in the present case the absence of a builder buyer agreement is totally because of default/lack on the part of the complainant in approaching their booking in the project in question. As is apparent from record, the respondent had been relentlessly pursuing the complainant to come forward and execute a builder buyer agreement but the complainant chose not to. The respondent on its part had acted as per due diligence. It was the complainant who failed to act in violation of the terms agreed between the parties.

33. As per facts complainant did not take any steps nor raised any objection regarding the alleged cancellation till the filing of the present complaint. Complainant had cause of action against the respondent and could have approached the appropriate forum as on 23.12.2019 itself, however, complainant chose to remain silent for almost 4 years from the date of cancellation till the filing of the present complaint in the year 2023. This long delay raises questions about the complainant's diligence in pursuing her claim. The delay could be viewed as a failure on the part of the complainant to act within a reasonable time, as expected in such legal matters. This long gap between the cause of action and the complaint filing can lead to dismissal based on the doctrine of laches, which prevents individuals from asserting claims after unreasonably delaying action without just cause. Authority concludes that the lack of timely action by the complainant before any appropriate forum as per prevalent law shows a failure to protect their own interests, and this prolonged delay significantly undermines the credibility and viability of their claim. In support, reliance is placed upon judgement dated 18.04.2024 passed by **Hon'ble Apex Court in Civil Appeal nos. 5027 of 2024 (@ Special leave Petition (civil) no. 30152 of 2018) Mrinmoy Maity versus Chhanda Koley and others**. Relevant part of the judgement is reproduced below for reference:-

"9. Having heard rival contentions raised and on perusal of the facts obtained in the present case, we are of the considered view that writ

petitioner ought to have been non-suited or in other words writ petition ought to have been dismissed on the ground of delay and laches itself. An applicant who approaches the court belatedly or in other words sleeps over his rights for a considerable period of time, wakes up from his deep slumber ought not to be granted the extraordinary relief by the writ courts. This Court time and again has held that delay defeats equity. Delay or laches is one of the factors which should be borne in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. In a given case, the High Court may refuse to invoke its extraordinary powers if laxity on the part of the applicant to assert his right has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action.

10. The discretion to be exercised would be with care and caution. If the delay which has occasioned in approaching the writ court is explained which would appeal to the conscience of the court, in such circumstances it cannot be gainsaid by the contesting party that for all times to come the delay is not to be condoned. There may be myriad circumstances which gives rise to the invoking of the extraordinary jurisdiction and it all depends on facts and circumstances of each case, same cannot be described in a straight jacket formula with mathematical precision. The ultimate discretion to be exercised by the writ court depends upon the facts that it has to travel or the terrain in which the facts have travelled.

11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of

delay and laches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and laches, the High Court ought to dismiss the petition on that sole ground itself, in as much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and laches on the part of the applicant in approaching a writ court. This Court in the case of Tridip Kumar Dingal and others v. State of W.B and others., (2009) 1 SCC 768 has held to the following effect:

> *"56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.*
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> *57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime (vide State of M.P. v. Bhailal Bhai [AIR 1964 SC 1006 : (1964) 6 SCR 261] , Moon Mills Ltd. v. Industrial Court [AIR 1967 SC 1450] and Bhoop Singh v. Union of India [(1992) 3 SCC*

136 : (1992) 21 ATC 675 : (1992) 2 SCR 969]). This principle applies even in case of an infringement of fundamental right (vide Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110] , Durga Prashad v. Chief Controller of Imports & Exports [(1969) 1 SCC 185] and Rabindranath Bose v. Union of India [(1970) 1 SCC 84]).

58. There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose."

12. It is apposite to take note of the dicta laid down by this Court in Karnataka Power Corportion Ltd. and another v. K. Thangappan and another, (2006) 4 SCC 322 whereunder it has been held that the High Court may refuse to exercise extraordinary jurisdiction if there is negligence or omissions on the part of the applicant to assert his right. It has been further held thereunder:

"6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prashad v. Chief Controller of Imports and Exports [(1969) 1 SCC 185 : AIR 1970 SC 769] . Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd [(1874) 5 PC 221 : 22 WR 492] (PC at p. 239) was approved by this Court in Moon Mills Ltd. v. M.R. Meher [AIR 1967 SC 1450] and Maharashtra SRTC v. Shri Balwant Regular Motor Service [(1969) 1 SCR 808 : AIR 1969 SC 329] . Sir Barnes had stated: "Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy."

8. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in Rabindranath Bose v. Union of India [(1970) 1 SCC 84 : AIR 1970 SC 470] that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution-makers that this Court

should disregard all principles and grant relief in petitions filed after inordinate delay.

9. It was stated in State of M.P. v. Nandlal Jaiswal [(1986) 4 SCC 566 : AIR 1987 SC 251] that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."

13. Reiterating the aspect of delay and laches would disentitle the discretionary relief being granted, this Court in the case of Chennai Metropolitan Water Supply & Sewerage Board and others v. T.T. Murali Babu, (2014) 4 SCC 108 has held:

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without

adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis."

34. In view of the aforementioned facts and circumstances, the Authority is constrained to conclude that the present complaint is nothing but an ill-advised luxurious litigation and a classic example of litigation to enrich oneself at the cost of another and to waste the precious time of this Authority. The Real Estate (Regulation and Development) Act 2016 is a beneficial/ social legislation enacted by the Parliament to put a check on the malpractices prevailing in the real estate sectors and to address the grievances of the allottees who have suffered due to the dominant position of the promoter (s).However, it is a moral obligation on the part of complainant to invoke the provisions of the Act with a clear and bonafide intent and not as a tool/instrument for enrichment.

35. The Authority is of view that this tendency needs to be curbed and as such, concludes that both the aforementioned complaints filed by the complainants are hereby dismissed for the reasons elaborated in preceeding paragraphs.

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

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DR. GEETA RATHEE SINGH
[MEMBER]