



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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| Complaint no.: | 1993 of 2023 |
| Date of filing: | 29.09.2023 |
| First date of hearing: | 02.11.2023 |
| Date of decision: | 30.03.2026 |

Shweta Sharma
W/o Sh. Rohit Khera
R/o Flat no. H-403,
SS Coral wood, Sector-84,
Village Sihi, Gurugram-122004

....COMPLAINANT

VERSUS

Ambition Colonisers Pvt. Ltd.
Office at Building No. 2007,
Sec-45, Gurugram-122003

.....RESPONDENT

Present: - None for the complainant.

None for the respondent.

ORDER:(NADIM AKHTAR –MEMBER)

1. Present complaint has been filed on 29.09.2023 by the 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 fulfill 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 complainant, 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. | "Springwoods City", situated in the revenue estate of Village Maheshwari, Sector-22, Tehsil Dharuhera, District Rewari, Haryana |
| 2. | RERA Registered/not registered | Registered vide no. HRERA-PKL-RWR-99-2019 |
| 3. | Details of allotted unit. | Plot no. 34, Area-129.51 sq. yds. |
| 4. | Buyer Agreement | 24.04.2019 |
| 5. | Deemed date of possession | 24.04.2022 |
| 6. | Basic sale price | ₹29,13,975/- |
| 7. | Amount paid by the complainant | ₹9,74,192/- |

A. FACTS OF THE COMPLAINT AS STATED BY THE COMPLAINANT

3. Case of the complainant is that Complainant was allotted Plot No. 34 vide Allotment No. BKSJ/00004/18-19 dated 13.03.2019 under the project titled "Spring Woods City", situated at Sector-22, Dharuhera, Haryana, registered with the Haryana Real Estate Regulatory Authority vide Registration No. HRERA-PKL-RWR-99-2019 dated 25.02.2019. The total area of the said plot is 129.51 square yards at the rate of ₹22,500/- per square yard. The Agreement to Sell was executed on 24.04.2019. Copy of Agreement to Sell dated 24.04.2019 is annexed herewith as Annexure P-1.
4. That the total sale consideration of the said plot is ₹29,13,975/-. The Complainant has paid a total sum of ₹9,74,192/- up to February 2020 as per Schedule-C (Part-1) of the Agreement to Sell. However, receipt of ₹3,30,980/- has not been provided by the Respondent. Copies of payment receipts are annexed herewith as Annexure P-2 to P-2/6.
5. That as per Clause 7.1 of the Agreement to Sell dated 24.04.2019, possession of the plot was to be delivered within 24 months from the date of allotment i.e., 31.03.2019, meaning thereby on or before 31.03.2021, with a grace period of 12 months, i.e., up to 31.03.2022.



6. That during the year 2020, the Respondent informed the Complainant that certain government agencies had initiated inquiries against the company, due to which its projects and bank accounts were allegedly attached. On this pretext, the Respondent stopped raising further installment demands and assured the Complainant that further information would be provided.
7. That from 2020 to April 2023, the Respondent did not raise any installment demand nor issued any progress letter in respect of the development of the said project.
8. That despite repeated follow-ups by the Complainant through personal visits, telephonic calls, emails, and other modes of communication, the Respondent failed to provide any clear status of the project. Copies of emails are annexed as Annexure P-4 to P-4/2.
9. That in April 2023, one Mr. Lalit Raghav, representing the Respondent Company, started sending WhatsApp messages demanding installments along with alleged interest for delayed payments and threatened forfeiture of the entire amount already paid by the Complainant. Copies of WhatsApp chats are annexed as Annexure P-3 to P-3/3. Copy of Section 65-B Certificate is annexed as Annexure P-5.
10. That since no installment demand was raised between 2020 and April 2023, the question of charging interest for delayed payment does not arise. The



Complainant cannot be penalized for non-payment when no lawful demand was raised by the Respondent.

11. That as per Schedule-C (Part-2) of the Agreement to Sell, payment was to be made in 8 construction-linked stages. The Complainant has duly paid installments corresponding to the initial stages, including booking amount, agreement registration amount, and part of the installment linked to commencement of leveling and road alignment works. Copy of Schedule-C (Part-2) is annexed as Annexure P-6.
12. That as per Clause 7 of the Agreement to Sell, possession was required to be offered by 31.03.2022 (including grace period). However, till date, no possession has been offered to the Complainant.
13. That the delay beyond the grace period is substantial and amounts to clear violation of the terms of the Agreement to Sell and provisions of the Real Estate (Regulation and Development) Act, 2016. The Respondent has unlawfully retained and utilized the amount of ₹9,74,192/- without delivering possession of the plot.
14. That the Complainant is ready and willing to take possession of the plot and pay the legitimate outstanding balance amount along with genuine IFMS charges, but shall not comply with any illegal or arbitrary demand.



15. That on 13.07.2023, the Complainant, through her counsel, served a legal notice upon the Respondents calling upon them to offer possession and desist from unfair trade practices. Copies of Legal Notice dated 13.07.2023 annexed as Annexure P-7 to P-7/2. Copies of Postal Receipts are annexed as Annexure P-8 to P-8/2.
16. That the subject matter of the present complaint falls within the jurisdiction of this Hon'ble Authority, as the project is duly registered with HRERA vide Registration No. HRERA-PKL-RWR-99-2019 dated 25.02.2019, and the cause of action has arisen within its territorial jurisdiction.
17. That the Respondent has failed to honour the contractual obligations under the Agreement to Sell dated 24.04.2019, thereby compelling the Complainant to approach this Hon'ble Authority seeking appropriate relief.

B. RELIEFS SOUGHT

18. Complainant has sought following reliefs:
 - a. Pass an order directing the handover of **peaceful possession** of Plot No. 034 allotted vide Allotment no. BKSJ/00004/1-19, measuring Area of 129.51 Sq. Yards @22,500/-under the Project "Spring Woods City" Situated at Sector-22, Dharuhera, Haryana in the M/s Ambition Colonisers Private Limited Regd. under Haryana Real Estate Regulatory Authority vide Registration no. HERERA-PKL-99-2019; and



- b. Pass an order directing the Respondent to **execute Title Documents** in favour of the Complainant pertaining to the Plot No. 034 vide, Allotment no. BKSJ/00004/1-19, measuring Area of 129.51 Sq. Yards @22,500/- under the Project "Spring Woods City" Situated at Sector-22, Dharuhera, Haryana in the M/s Ambition Colonisers Private Limited Regd. Under Haryana Real Estate Regulatory Authority vide Registration no. HERERA-PKL-99-2019; and
- c. Pass an order restraining the Respondent from **creating Third Party Rights** in Plot No. 034 vide, Allotment no. BKSJ/00004/1-19, measuring Area of 129.51 Sq. Yards @22,500/- under the Project "Spring Woods City" Situated at Sector-22, Dharuhera, Haryana in the M/s Ambition Colonisers Private Limited Regd. Under Haryana Real Estate Regulatory Authority vide Registration no. HERERA-PKL-99-2019; and
- d. Pass an order directing the Respondent to produce all the relevant licenses and approvals, including Completion Certificate and Occupancy Certified pertaining to project being "Spring Woods City" Situated at: Sector-22, Dharuhera, Haryana in the M/s Ambition Colonisers Private Limited Regd. Under Haryana Real Estate Regulatory Authority vide Registration no. HERERA-PKL-99-2019;



- e. Pass any other and further orders as this Hon'ble Authority may deem fit in the facts and circumstances of the instant case.

C. REPLY ON BEHALF OF RESPONDENT

Respondent has filed a detailed reply in the registry on 28.10.2024 pleading therein as under-

19. That the present reply is filed on behalf of the Respondent Company through its Authorized Representative Mr. Yogesh Singh, S/o Shri Randeep Singh, aged about 37 years, R/o House No. 872, Barwala, Panchkula, Haryana-134118, who is duly authorized by virtue of Board Resolution dated 07.01.2023, annexed as Annexure R-1.
20. The complaint discloses no valid cause of action against the answering Respondent. The alleged cause of action is false, illusory and self-created, arising solely due to the Complainant's failure to comply with contractual obligations.
21. That the Respondent Company is the duly licensed and registered promoter of the project "Springwoods City", Village Maheshwari, Sector-22, Dharuhera, District Rewari, Haryana. After grant of licence, the Respondent applied for registration of the said project under the HRERA Act, 2016, and this Hon'ble Authority was pleased to grant RERA Registration No. HRERA-PKL-RWR-99-2019 dated 25.02.2019, valid till 10.02.2026. The Respondent completed a



substantial portion of development and accordingly applied for Part Completion Certificate on 28.10.2020, annexed as Annexure R-2.

22. On 13.03.2019, the Complainant applied for allotment of a plot in the developed portion of the project, pursuant to which Plot No. 34 was allotted vide Allotment Letter dated 18.03.2019 under the Development linked Plan, annexed as Annexure R-3. Thereafter, a Plot Buyer's Agreement dated 24.05.2019 was executed and duly registered. The agreement strictly conforms to the model agreement approved by HRERA and was executed with the Complainant's full consent, knowledge and acceptance. As per the Development linked Plan, the Complainant was required to pay as per the plan.
23. Accordingly, a demand letter dated 14.05.2019, 18.09.2019 and 03.02.2020 was issued for approx ₹5.89 lakhs, 5.89 lakhs and 14.73 lakhs respectively. However, the Complainant paid only ₹3,30,000/-, leaving a substantial outstanding amount unpaid. The Complainant has deliberately concealed the said demand letter and has falsely alleged that all demands were paid. Despite repeated opportunities, the Complainant failed to regularize payments. Consequently, again a demand letter dated 16.09.2020 was issued (Annexure R-5). Following this, another demand letter dated 15.12.2020 and full and final payment demand letter dated 16.01.2023 was issued to the complainant.



24. Due to continued non-payment, the Respondent issued Cancellation Notice-I dated 20.02.2023, followed by Final Cancellation Notice-II dated 17.06.2023, strictly in accordance with Clause 9.3 of the Agreement, annexed as Annexure R-8 and R-9 respectively. Thus, the allotment of Plot No. 34 stands validly cancelled, and the Complainant has no subsisting right, title or interest in the said plot. The Complainant, after paying merely ₹8.7 Lakhs, has sought to claim rights over a property whose value has substantially increased due to the Respondent's investment and development efforts. The Hon'ble NCDRC in *Prateek Realtors (P) Ltd. v. Vivek Kumar Gupta* (08.10.2018) has categorically held that cancellation due to payment default is legal and justified.
25. As per Clause 7.1 of the Agreement, possession was to be delivered within 24 months plus 12 months grace period. The complaint was filed on 29.09.2023, without accounting for force majeure periods, including COVID-19 pandemic disruptions, Construction bans imposed by NGT in Delhi NCR. Therefore, even otherwise, the complaint is premature and unsustainable.
26. Clause 33 of the Agreement mandates amicable resolution and arbitration, failing which the matter lies before the Adjudicating Officer appointed under the Act. Further, the Agreement confers exclusive jurisdiction upon courts/tribunals at Delhi, rendering the present proceedings not maintainable.



27. Allegations regarding threats, coercion, demand of extra money, revised layout, or denial of access are false, concocted and denied. Any communication regarding layout revision was in compliance with applicable law and regulatory requirements. The Respondent has applied for Completion Certificate vide application dated 26.06.2023, pending approval with DTCP.
28. The Complainant has concealed demand letters, suppressed cancellation notices, made false statements regarding payment compliance. It is a settled principle that a litigant who suppresses material facts is not entitled to any equitable relief. Without admitting any liability, the Respondent submits that if any amount is found refundable strictly as per the Agreement, the Respondent is willing to act in accordance with contractual terms.

D. ARGUMENTS OF LEARNED COUNSELS FOR COMPLAINANT AND RESPONDENT

29. Today, no one appeared on behalf of both the parties. Authority relies upon the submissions made by the parties in their respective complaint, reply and supporting documents. The issues arising therefrom have already been addressed and dealt with in the foregoing paragraphs of this order.



E. **ISSUE FOR ADJUDICATION**

30. Whether the complainant is entitled to the relief of possession of plot booked by her along with interest for delay in handing over the possession in terms of Section 18 of the RERA Act of 2016?

F. **OBSERVATIONS AND DECISION OF AUTHORITY**

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 the parties.

31. The complainant initially booked Plot No. 34, admeasuring 129.51 sq. yds., in the respondent's project titled "*Springwood City*", situated at Village Maheshwari, Sector-22, Tehsil Dharuhera, District Rewari, Haryana. An Agreement to Sell was entered into between the parties on 24.04.2019. As per the Agreement, the total sale consideration of the said plot is ₹29,13,975/- against which the complainant has paid a sum of ₹9,74,192/-. The complainant has approached this Authority alleging failure on the part of the respondent to offer possession of the plot within the stipulated time period and has sought relief in the nature of possession along with interest for the alleged delay, and execution of the conveyance deed.
32. Further, as per Clause 7.1 of the Agreement to sell, "*the Promoter shall hand over the possession of the unit as per the agreed terms and conditions within*



a period of 24 months, along with a grace period of 12 months, from the date of execution of the Agreement.” Since the Agreement to Sell has been executed on 24.04.2019, the contractual period for handing over possession, including the grace period, expires on 24.04.2022. Accordingly, the deemed date for offering possession of the unit is 24.04.2022.

33. Further, respondent has challenged the maintainability of the complaint on the following grounds:

- i. *There is no contravention of the provisions of the Real Estate (Regulation and Development) Act, 2016 and further no cause of action has been pleaded in the entire complaint.*

In this regard it is observed that the captioned complaint pertains to sale and purchase of an independent plot bearing no. 34 in the project being developed by the respondent namely “*Springswood City*”, situated at Village Maheshwari, Sector-22, Tehsil Dharuhera, District Rewari, Haryana. Agreement to sell was executed between the parties on 24.04.2019. Through this agreement the respondent builder had promised delivery of possession of the unit to the allottee/complainant in a stipulated time period. However, the respondent has failed to deliver possession of the booked unit and thus there is a deficiency in service, on account of which the complainant/allottee has filed the present complaint. This is a clear violation and contravention of the terms of agreement to sell dated 24.04.2019 as well as provisions under



Section 11(4) of the Real Estate (Regulation and Development) Act, 2016. As per Section 11(4) (a) of the RERA Act 2016, the promoter shall be responsible for all obligations, (responsibilities) and function under the provisions of this Act or the rules and regulations made thereunder or to the allottees, as per the agreement for sale. Since, the respondent has failed to fulfill its obligation, a cause of action arose against the respondent promoter and in favor of the complainant on account of deficiency in service, thus the complainant/ allottee becomes entitled to seek relief in terms of Section 18 of the RERA Act. Therefore, the objection of the respondent that the present complaint is not maintainable is rejected.

- ii. *That Clause 33 of the Agreement mandates amicable resolution and arbitration, failing which the matter lies before the Adjudicating Officer appointed under the Act.*

With regard to the above issue, the Authority is of the opinion that jurisdiction of the Authority cannot be fettered by the existence of an arbitration clause in the agreement as it may be noted that section-79 of the RERA Act bars the jurisdiction of civil courts about any matter which falls within the purview of this Authority, or the Real Estate appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the RERA Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in



force. Further, the Authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly on *National Seeds Corporation Ltd. v. M. Madhusudhan Reddy and Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the Authority would not be bound to refer parties to Arbitration even if the agreement between the parties had an arbitration clause. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017*, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainant and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

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

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

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellate Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra) the



matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act

.....

56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the 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."

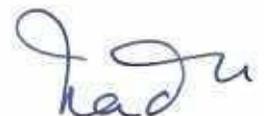
While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the application form, the Hon'ble Supreme Court in case titled as *M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629- 30/2018 in civil appeal 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 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 complainant is well within right to seek a special remedy available in a



beneficial Act such as the Consumer Protection Act and Real Estate (Regulation and Development) Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this Authority has the requisite jurisdiction to entertain the complaint and that the dispute does not required to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the Authority is of the view that the objection of the respondent stands rejected.

iii. That the Agreement confers exclusive jurisdiction upon courts/tribunals at Delhi, rendering the present proceedings not maintainable.

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 Rewari district. Therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

iv. Objections regarding force majeure conditions.

The respondent has raised objections contending that the delay in handing over possession of the unit is attributable to force majeure circumstances, including the outbreak of the COVID-19 pandemic, construction bans imposed by NGT. It has been pleaded that since the Agreement to Sell was



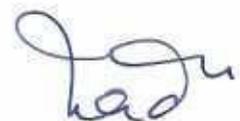
executed on 24.04.2019 and the due date for handing over possession was on 24.04.2022, the construction period substantially overlapped with the COVID-19 pandemic. On this basis, the respondent has sought grant of an additional grace period of nine months for delivery of possession. At the outset, it is noted that as per Clause 7.1 of the Agreement to Sell, the respondent was obligated to hand over possession within a period of 24 months along with a grace period of 12 months from the date of execution of the Agreement. Despite the said contractual stipulation, possession has not been offered to the complainant till date, and therefore, there is a clear delay on the part of the respondent.

Force majeure is a French expression which translates, literally, to "superior force". To appreciate its nuances, jurisprudence of the concept under the Indian Contract Act, 1872 need to be elucidated. In the context of law and business, the Merriam Webster dictionary states that force majeure usually refers to "those uncontrollable events (such as war, labor stoppages, or extreme weather) that are not the fault of any party and that make it difficult or impossible to carry out normal business. A company may insert a force majeure clause into a contract to absolve itself from liability in the event it cannot fulfill the terms of a contract (or if attempting to do so will result in loss or damage of goods) for reasons beyond its control". Black's Law



Dictionary defines Force Majeure as follows, "In the law of insurance, superior or irresistible force. Such clause is common in construction contracts to protect the parties in the event apart of the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care. Typically, such clauses specifically indicate problems beyond the reasonable control of the lessee that will excuse performance."

In India, it is often referred to as an "act of God". Various courts have, over time, held that the term force majeure covers not merely acts of God, but may include acts of humans as well. The term "Force Majeure" is based on the concept of the Doctrine of Frustration under the Indian Contract Act, 1872; particularly Sections 32 and 56. The law uses the term "impossible" while discussing the frustration of a contract, i.e., a contract which becomes impossible has been frustrated. In this context, "impossibility" refers to an unexpected subsequent event or change of circumstance which fundamentally strikes at the root of the contract. In the case of *Alopi Parshad and Sons Ltd vs Union of India*, AIR 1960 SC 588 and the landmark *Energy Watchdog and Ors. Vs. Central Electricity Regulatory Commission and Ors* (2017) 2017 3 AWC 2692 SC, the Supreme Court of India has categorically stated *that mere commercial onerousness, hardship, material loss, or inconvenience cannot*



constitute frustration of a contract. Furthermore, if it remains possible to fulfill the contract through alternate means, then a mere intervening difficulty will not constitute frustration. It is only in the absence of such alternate means that the contract may be considered frustrated.

Section 56 of the Indian Contracts Act (Agreement to do impossible act) states that "a contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful." It is the performance of contractual obligations that must become unlawful/impossible, not the ability to enjoy benefits under the contract. The Supreme Court in *Energy Watchdog and Ors. Vs. Central Electricity Regulatory Commission and Ors* (2017)-2017 3 AWC 2692 SC lent further insight into interpreting a Force Majeure situation i.e

- Events beyond the reasonable control of one party should not render that party liable under a contract for performance, if that event prevents the party's performance;
- The language of the agreement relating to duty to mitigate, best efforts, prudent man obligations to nevertheless perform etc., will all be taken into consideration in understanding the parties' intent;
- Force majeure events must be unforeseeable by both parties;



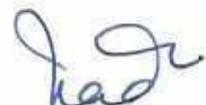
- The requirement to put the other party on notice must be met with if the contract provides for notice requirements; and
- **Burden of proof rests with the party relying on the defense of force majeure for its inability to perform the obligation.**

In the present case, due to the various decisions of the Government of India and the Government of Haryana Authority, force majeure may be accepted for the period of Covid, i.e., 9 months. Reference is made to Advisory issued by Authority in its 93d meeting held on 18.05.2020 wherein time period of 6 months, i.e., 25.03.2020 to 24.09.2020 was considered as force majeure being natural calamity affecting the whole world and extension of three months, i.e., 01.04.2021 to 30.06.2021 due to second wave of Covid-19 was considered as force majeure by the Authority in its meeting held on 02.08.2021. Covid was declared as a pandemic by the Government of India. If we visit the government of India websites, for example <https://covid19.india.gov.in/documentcategory/ministry-of-home-affairs/> it will be clear that Covid was a force majeure event and a number of national and local lockdowns took place during this period. Therefore, it is clear, that no construction work could have been carried out during this period. However, with respect to other events, the respondent has failed to even



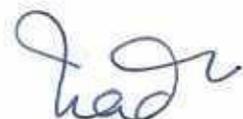
discharge his fundamental burden of proof as outlined by the Hon'ble Apex Court.

However, in the present case, the first wave period from 25.03.2020 to 24.09.2020 admittedly falls **after the execution of the Agreement to Sell**, which has been executed on 24.04.2019. Therefore, the said period cannot be taken into consideration for condoning delay in construction or delivery of possession under the Agreement, as it had no bearing on the respondent's contractual obligations. With regard to the second wave period from 01.04.2021 to 30.06.2021, although the same falls after execution of the Agreement, this Authority is of the considered view that no additional extension can be granted to the respondent on this count. This is for the reason that while calculating the deemed date of possession, the Authority has already taken into account the contractually agreed grace period of 12 months, as expressly provided under Clause 7.1 of the Agreement to Sell. Granting further extension over and above the agreed grace period would amount to rewriting the terms of the contract, which is impermissible in law. As regards the other force majeure events pleaded by the respondent, including construction bans imposed by NGT, the respondent has failed to place on record any cogent documentary evidence to establish that such events directly prevented construction activities at the project site or rendered performance of



contractual obligations impossible. The respondent has also failed to demonstrate compliance with notice requirements or due-diligence obligations, as mandated by law and judicial precedents. Accordingly, except to the limited extent already subsumed within the contractual grace period, the plea of force majeure raised by the respondent is found to be untenable and is hereby rejected. Therefore, a time period of 9 months is to be excluded from any delay interest calculation.

34. Upon cumulative consideration of the pleadings, documents on record, and submissions made by the parties, this Authority concludes that the complainant booked the subject unit on 24.04.2019, and in terms of Clause 7.1 of the Agreement to Sell, the respondent was contractually obligated to hand over possession of the unit on or before 24.04.2022, inclusive of the agreed grace period. However, it is an admitted and undisputed position that till date, no offer of possession has been made by the respondent to the complainant. It is further evident from the record that the complainant opted for a development -linked payment plan and duly complied with the same. A careful perusal of page no. 50 of the complaint reveals that the complainant has annexed the payment schedule as *Schedule-C (Part-I)*, wherein a detailed stage-wise payment plan is provided. In accordance with the said schedule, the complainant made payments at the time of booking as well as at the time



of execution/registration of the Agreement to Sell. It is also borne out from the record that the complainant made an additional payment on 04.05.2019, 07.02.2020 and 12.02.2020, i.e., after execution of the Agreement to Sell. Despite receipt of the aforesaid payments, the respondent has failed to place on record any credible material to establish that construction or development at the project site progressed commensurate with the payments received. On the contrary, the respondent has not produced any documentary evidence to demonstrate that development milestones, as contemplated under the payment plan, were ever achieved. It is also a matter of record that the respondent has not obtained the completion certificate for the project till date. The respondent has merely stated that respondent company had applied for full completion certificate on 26.06.2023; however, no completion certificate issued by the competent authority has been produced. Absence of a completion certificate clearly establishes that the project has not been completed even as on date, and therefore, the respondent was legally incapable of offering possession within the stipulated or extended time.

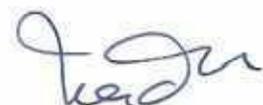
35. Lastly, the respondent has placed reliance on cancellation notices dated 20.02.2023 and 17.06.2023. However, this Authority finds that the respondent itself was in fundamental breach of the Agreement by failing to complete the project, obtain the completion certificate, and offer possession within the



stipulated time. A party in default cannot be permitted to take advantage of its own wrong. Since the delay in handing over possession is solely attributable to the respondent, the cancellation notices dated 20.02.2023 and 17.06.2023 are illegal, arbitrary, and unsustainable in the eyes of law, and are accordingly set aside.

36. Since complainant is not interested to withdraw from the project and wants to continue with the project, respondent is directed to pay the complainant upfront interest on the amount paid by her from deemed date of possession along the date of the order and also future interest for every month of delay occurring thereafter till the handing over of possession of the plot. Further respondent is prohibited from alienating the land of the project in question for any purposes except for completion of the project.
37. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

"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 (MCLR) 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".

38. The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
39. Consequently, as per website of the State Bank of India, i.e. <https://sbi.co.in>, the marginal cost of lending rate (in short MCLR) as on date i.e. 30.03.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.80%.
40. 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;

41. Authority has got calculated the interest on total paid amount from the deemed date of possession till the date of this order at the rate of 10.80% and said amount works out as per detail given in the table below:

| Sr. no. | Principal Amount (in ₹) | Deemed date of possession/ date of payment whichever is later | Interest Accrued till 30.03.2026 (in ₹) |
|-----------------------------|----------------------------|--|--|
| 1. | 9,74,192/- | 24.04.2022 | 4,14,221/- |
| Monthly interest = ₹8,936/- | | | |

H. DIRECTIONS OF THE AUTHORITY

42. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. Respondent is directed to offer possession of the unit within next 45 days alongwith Statement of Account issued in compliance of directions passed in this order incorporating therein delay interest of ₹4,14,221/- to the complainant towards delay already caused in handing over the possession and monthly interest of ₹8,936/-

- ii. Further respondent is directed to execute the Conveyance Deed within 90 days after handing over of the valid legal possession to the complainant.
- iii. Complainant will remain liable to pay balance consideration, if any, amount to the respondent at the time of actual possession offered to them in terms of this order of the Authority.
- iv. The rate of interest is chargeable from the complainant by the respondent, in case of default shall be charged at the prescribed rate i.e., 10.80% which is the same rate of interest which the respondent shall be liable to pay to the complainant.
- v. The respondent shall not charge anything more from the complainant except what is decided by the Authority in this order.

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


.....
NADIM AKHTAR
[MEMBER]