Haryana Real Estate Regulatory Authority • Panchkula •

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**2198 of 2022**
Date of filing.:	**30.08.2022**
Date of first hearing.:	**19.10.2022**
Date of decision.:	**16.07.2026**

Rajwant Kaur D/o Late Karnail Singh
R/o 14A, T11, The Ozone Park Apartments
Sector-86, Faridabad-121002

....COMPLAINANT

VERSUS

M/s BPTP Limited
M-11, Middle Circus, Connaught Place
New Delhi-110001

....RESPONDENT

CORAM: **Parneet Singh Sachdev** **Chairman**

Nadim Akhtar **Member**

Dr. Geeta Rathee Singh **Member**

Present: - None for complainant.

Mr. Hemant Saini, Counsel for the respondent through VC.

ORDER (PARNEET S. SACHDEV-CHAIRMAN)

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.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of project, details of sale consideration, 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 of the project.	Parklands, Sector-78, Faridabad.
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Not Registered
4.	Details of unit.	PF-40, 250 sq. yds.
5.	Date of booking	19.06.2009
6.	Change in unit from G25-38 to PF-40	03.09.2013
7.	Nomination in favor of complainant	31.07.2015

8.	Date of builder buyer agreement with complainant	16.09.2015
9.	Due date of possession	Cannot be ascertained.
10.	Possession clause in BBA (Clause 3.1)	*Subject to force majeure circumstances, intervention of statutory authorities and purchaser having timely complied with all its obligations, formalities or documentation as prescribed/requested by Seller/Confirming party under this agreement and not being in default under any part of this agreement including but not limited to the timely payment of installments of the total sale consideration as per the payment plan opted, other charges and stamp duty and registration charges, the Seller/Confirming party shall offer the possession of the said plot to the purchaser as per payment plan opted by the purchaser (Commitment period).The Seller/Confirming party shall be additionally entitled to a grace period of 6 months (grace period) after the expiry of the said commitment period for making offer of possession of the said plot.*
11.	Total sale consideration	₹ 21,25,000/-
12.	Amount paid by complainant	₹ 36,37,988/-
13.	Offer of possession.	19.09.2020 with demand of

		₹4,87,176/-
14.	Date of undertaking for taking over physical possessions	10.10.2020
15.	Date of conveyance deed	15.07.2021

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. That the complainant is a registered owner of plot no. PF-40 in project named 'Parklands', Sector-78, Faridabad, Haryana. Complainant paid a total of Rs 30,59,634/- against the actual original price of Rs 25,82,250/-.

4. That after payment of the above charges and in addition the stamp duty, registration charges etc. the plot was registered on 15.07.2021 vide conveyance deed no. 683 dated 15.07.2021.

5. That the possession was offered vide offer of possession (Annexure P-6) dated 19.09.2020 , i.e. almost 11 years from the original allotment/booking. However, if the date on the new agreement is considered the delay in offering possession is almost 5 years. As per Section 18 of RERA Act,2016, the builder was obligated to compensate for the delay caused. Not a single paisa has been offered or adjusted by the respondent as interest for delay till date, even at the meager rate specified in the FBA.

6. That despite charging of Rs 7,79,071/- towards the following heads:-EDC-Rs 256000/-, IDC-Rs 111250 and club membership charges-Rs 75000/-, UCC-Rs 15000/-, Electrification and STP-Rs 223750/-, GST-Rs 56476/-, Maintenance services-Rs 17700/-, Sinking fund-Rs 7375/-, Maintenance security deposit-Rs 50000/-, Refundable contingency fund-Rs 15,000/-, the plots are still un-inhabitable and are lacking basic amenities. No STP has been built yet. No electric connection, pathetic condition of road etc.

7. That as per LC-IV agreement between DTCP,Haryana and respondent, respondent is required to provide such electrical infrastructure in accordance with the DHBVN policy titled 'Guidelines for providing electrical connection within plotted colonies/multi storied building developed by HUDA/HSIDC/COLONISERS/LICENSE/SEC'. Therefore, the demand for electrification charges is rote illegitimate.

8. That the respondent has fraudulently charges Rs 264025/- including GST. This is completely unjustified when the complainant has already paid for the EDC and IDC.

9. That the respondent has not built any club so far but has robbed Rs 88,500/- incld sales tax from the complainant.

10. That selling and delivering a plot without infrastructure and development is like selling and delivering a car without engine. The complainant cannot

build a residential apartment in the prevailing condition. The dreams have been shattered. Feeling aggrieved, present complaint has been filed.

C. RELIEF SOUGHT

11. That the complainant seeks following relief and directions to the respondent:-

    i. To pay Rs 26,58,080/- towards for delay @MCLR+2% PA from the original date of booking i.e. 19.06.2009 of from 01.07.2016 (promised date) in lumpsum and thereafter on month basis to the complainant till respondent obtain approval of zoning plan and development of infrastructure and STP, Electrification etc. to make the plot habitable.

    ii. Respondent should be directed to construct a club for which the payment has already been made by the complainant.

    iii. Respondent be directed to refund Rs 7,79,071/- (EDC-Rs 256000/-, IDC-Rs 111250 and club membership charges-Rs 75000/-, UCC-Rs 15000/-, Electrification and STP-Rs 223750/-, GST-Rs 56476/-, Maintenance services-Rs 17700/-, Sinking fund-Rs 7375/-, Maintenance security deposit-Rs 50000/-, Refundable contingency fund-Rs 15,000/-)

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 07.12.2023 pleading therein:

12. That the Original Allottees, Mr. Satish Chand, being interested in making an investment approached the Respondent in year 2006 and made a request for making a booking of a plot in the real estate Project known under the name and style of "Parklands". The unit was later endorsed by the original allottee to Ajay Mehra and Chandani Mehra. Thereafter, the unit was endorsed to Anil Dima and Anu Dima from Ajay Mehra and Chandani Mehra, who transferred the unit further to Adesh Agarwal and Raj Rani Garg. That subsequently in year 2015, the unit was transferred to Rajwant Kaur, the Complainant from Adesh Agarwal and Raj Rani Garg. That after the transfer of the booking to the Complainant, the Complainant and the erstwhile purchaser approached the Respondent and requested for nomination of the Complainant, which was duly accepted by the Respondent. In this regard, the Complainant and the erstwhile purchaser had executed indemnity cum undertaking and affidavits and the Respondent endorsed the Unit in favour of the Complainant. The indemnity cum undertaking, affidavits and endorsement form of erstwhile purchaser and Complainant are marked as Annexure R1(Colly).

13. That after the request, endorsement of the unit to the Complainant was accepted by the Respondent and consequently, a Plot Buyer's Agreement dated 16.09.2015 was executed for a plot bearing number PF-40, Block-PF admeasuring 250 sq. yds. A copy of Plot Buyer's Agreement dated 16.09.2015 is annexed as Annexure R2.

14. That the relationship between the parties was purely contractual and flowed from the explicitly agreed terms and conditions of the Agreement. It is not germane to mention that the fact of execution of the Agreement has been duly noted by the Complainant herself and the terms of the same are also agreed and not under challenge. Hence, the absolute applicability of the same needs to be noted in the present case.

15. That the Complainant being subsequent buyer, has no right to seek delay possession charges. That at the time of nomination of the Complainant, the development of the project was affected by reasons beyond the control of the Company. That having knowledge of the existing delay, due to circumstances beyond the control of the Respondent, the Complainant willingly and voluntarily entered into the agreement for sell and the transfer documents thereof leading to their nomination. That moreover, the Complainant had executed an Undertaking dated 22.07.2015 to this effect. Reliance is placed upon Judgment passed by Hon'ble Supreme Court in case of Laureate Buildwell Pvt Ltd vs Charanjeet Singh SCC Online SC479.

16. That without any demur of any sort, the complainant made payment of all the dues. The total sale price of Rs 31,60,418/- was paid by the complainant willingly, voluntarily and without any protest demur. Copies of the demands raised and the payments made are annexed as Annexure R-4 (colly).

17. That as per the Agreement, the possession was proposed to be handed over to the Complainant as per the payment plan opted by the Purchasers. However, the said date and period was subject the purchaser(s) having timely complied with all its obligations, formalities or documentations including the timely payment of installments as per the payment plan opted. The possession of the unit was also subject to a number of force majeure circumstances due to which the Respondent was gravely hindered, despite which, the construction was carried on, with no additional cost to the Complainant Despite all the force majeure circumstances, the Respondent had duly completed the development of the Unit and was processing the receipt of the approval of zoning. That despite having due and complete knowledge of the fact that the zoning confirmation had not been received by that time, the Complainant time and again insisted for the handover of the possession and registration of Conveyance Deed in her favor.

18. That in year 2019-2020, the Complainant was informed that the zoning has not been received, despite which, the Complainant persistently requested for the handover of the possession. The consequences of non-availability of zoning were also explained to the Complainant. That it was very well

clarified that while electing to take possession without zoning approval, the Complainant forgoes any right that he may have had in the alternative course of action. That the persistence of the Complainant to execute the Conveyance Deed was unending, which is when the Complainant requested to handover the possession without the required approvals and wrote a handwritten letter dated 17.08.2020 requesting to execute the conveyance deed and submitting his undertaking to execute the conveyance deed without the pre-requisite approvals, in writing. A copy of the Complainant's handwritten letter dated 17.08.2020 is annexed as Annexure R5. The Complainant has also executed an Undertaking dated 17.08.2020 noting his absolute knowledge and agreement in respect to non-availability of zoning and his waiver of any compensation. Copy of undertaking for non approval of zoning plan dated 17.08.2020 is annexed as Annexure R-6.

19. That consequently, in such a circumstance, the offer of possession was given to the Complainant on 19.09.2020 and the Respondent has also issued a credit invoice to the Complainants on 30.09.2020. A copy of the offer of possession dated 19.09.2020 is annexed as Annexure R7.

20. That after due inspection and being completely satisfied, the Complainant happily, willingly, and voluntarily took possession of the Unit and executed an indemnity cum undertaking for taking over physical vacant possession dated 10.10.2020 and subsequently, executed the conveyance deed dated 15.07.2021. A copy of the indemnity cum undertaking for taking over

physical possession dated 10.10.2020 is annexed as Annexure R8. A copy of the conveyance deed dated 15.07.2021 is annexed as Annexure R9.

21. That after the complainant having insisted on taking the physical possession of the unit without the pre-requisite approvals, physically verified the same to his own complete satisfaction and thereafter executed the conveyance deed, the contract between the parties stands concluded in July,2021 and no cause of action or issue arises at this stage.

22. The Complaint is barred under the *doctrine of election*: As noted above, the Complainant chose to take physical possession of the Unit despite being completely aware of the fact that the pre-requisite approvals were not received by then. It was being time and again communicated to the Complainant that the possession can be taken after receipt of necessary approvals. However, the Complainant still insisted on taking possession of the Unit, as also evident from the handwritten letter dated 17.08.2020 and the undertaking dated 17.08.2020, as noted above.

23. That the Complainant willingly, voluntarily, and on his own volition, without any protest whatsoever, made the outstanding payments and took possession of the Unit and has been enjoying the possession of the Unit for almost 2 years now. That by taking possession of the Unit, the Complainant elected to forego any right that he may have had in the alternative. The *doctrine of election or the doctrine of choice* is based on the principles of equity and it imposes an obligation on a party to choose or elect between two

alternative rights or claims. This doctrine is a branch of rule of estoppel wherein, a party having taken one alternative by his conduct or silence is estopped from asserting a right that would have flowed if the party had taken the other course.

24. The Compliant is barred under the doctrine of estoppel by Deed and estoppel by conduct: As noted above, not only did the Complainant made the payments without any protest but also took possession of the Unit, after having done his own enquiries and being completely satisfied in all respects, hence the present Complaint is barred by the doctrine of estoppel in the following manner:

25. The conduct of the Complainant of making the complete payments without any protest makes the Complaint barred by the doctrine of estoppel by conduct;

26. The fact of willful execution of the undertaking dated 17.08.2020. indemnity cum undertaking for taking over physical vacant possession dated 10.10.2020 and the conveyance deed dated 15.07.2021 noting the complete,full and final satisfaction of the complainant in all respects making the complaint barred by doctrine of estoppel by deed.

27. That the conveyance deed was executed between the parties on 15.07.2021 and which marks the end of the contractual relationship between the parties and the present complaint was registered on 18.08.2022 (date of Performa - B), i.e. aftr 399 days (1 year 1 month 3 days).

28. That the complainant has wrongly challenged the payment of dues with respect to EDC,IDC,Club membership charges, utility connection charges, electrification & STP charges, GST, Maintenance charges, Administrative charges, Sinking fund, Maintenance security deposit and contingency deposit. Payments in regard to the same were mutually and voluntarily agreed between the complainant.

29. That respondent has challenged the maintainability of complaint vide an application filed in registry on 05.07.2023 stating that:

30. That the Respondent submits that the present Complaint is not maintainable before the Ld. Authority and is liable to be dismissed as the Complainant had bitterly failed to disclose any cause of action against the Respondent. Admittedly, the Conveyance Deed was executed with the allottee on 15.07.2021 which marks the end of the contractual relationship between the parties. The present Complaint was registered in 2022 after which, the notice dated 31.08.2022 was issued by the Ld. Authority, i.e., after the execution of the Conveyance Deed however no cause of action persists after execution of Conveyance Deed. Copy of Conveyance Deed dated 15.07.2021, is annexed as Annexure-R/1.

31. That the Complainant, after having executed the Conveyance Deed, taking peaceful possession of the Unit, and having enjoyed such possession for a long period, should not be entitled to claim the interest on the delayed possession or seek any other relief. It is categorical to note that the physical

possession of the Unit was taken after a detailed inspection on all material aspects including but not limited to area of the Unit as is also evident from Clause 3 of the Conveyance Deed. On the basis of the complete satisfaction of the Complainant, he had also clarified that no claim in this regard shall be raised in the future. For the convenience of the Ld. Authority, Clause 3 of the Conveyance Deed is reiterated hereunder:

"The vacant and peaceful physical possession of the said Plot has already been handed over by the Vendors to the Vendee, and the Vendee has taken over the physical possession of same after a detailed inspection of the Plot including but not limited to its area, location, dimension etc. and the Vendee does not have any objection and is fully satisfied with the said Plot. Since the Vendee has completed due diligence of the said Plot to his complete satisfaction and therefore it undertakes not to raise any dispute/claim whatsoever either in present or in future against the Vendors. The Vendee confirms and agrees that the Vendee shall be fully responsible for the said Plot including maintaining possession of the said Plot."

32. That the complete satisfaction of the Complainant and undertaking in respect of not raising such a dispute has estopped the Complainant from approaching this Ld. Authority in respect of any alleged grievance and is deemed to have waived any right in that regard.

F. ARGUMENTS OF COUNSEL FOR COMPLAINANT AND RESPONDENT

33. Ld. counsel for respondent relied upon Section 11(4) (a) of RE (R&D) Act,2016 which is as follows:-

Section 11 Functions and duties of promoter.

> ....(4) *The promoter* ***shall(emphasis laid)***—
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be,* ***till the conveyance of all the apartments****, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:*
>
> *Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.*

34. He argued that word used in section is '*shall*' and till the '*conveyance of apartments*'. Proviso deals in negative specifying only for structural defect. Legislature has specifically used *'shall' till the conveyance* and thereafter role of proviso comes in. Herein, stage of execution of conveyance deed has been categorized. Builder is liable for all obligations and responsibilities only upto stage of conveyance deed. Legislature consciously used word 'shall' which establish that after conveyance deed what all survives. Proviso has been incorporated in to specify the obligations/duties which will survive after execution of conveyance deed. There is no ambiguity in language. After execution of conveyance deed, relation of promoter and allottee comes to an end qua the obligations of promoter/builder. As soon as execution of conveyance deed takes place, relations of parties as well as obligations of the parties comes to an end.

35. He referred to Section 14 (3) of RE (R&D) Act,2016 to submit that the time period of 5 years has been prescribed in Act for bringing into notice the structural defect.

Section 14-**Adherence to sanctioned plans and project specifications by the promoter.**

……..(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter ***within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge****, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.*

36. For relying upon the interpretation of word 'till', reference has been made to Cambridge dictionary, wherein it has been stated as **'till-up to (the time); until'.** Example like, before, by , till , until. He stated that by using word 'till' in Section 11 (4) (a), legislature was aware of the fact that time period has been specified.

37.Judgment (page 4 wherein issues have been framed) passed by the Authority in complaint no. 328/2021 titled as Alka Sibbal vs Countrywide Promoters Pvt Ltd passed on 17.08.2022 has been referred in support of plea that there is no contractual relationship between the parties after execution of conveyance deed. He stated that appeal has been filed by complainant's counsel which is pending before Hon'ble Real Estate Appellate Tribunal, Chandigarh.

38. He referred to Section 11 (g) of RE (R&D) Act,2016 to submit that Legislature was alive to situation/circumstances of Real Estate Sector and has wisely inserted the proviso where the obligations of builder was supposed to be continued even after execution of conveyance deed.

Section 11 (g)- pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project):

Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the ***promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges,*** *if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person;*

Duties and obligations of the builder have been specified throughout the scheme of the Act. Words and proviso has been used to specify the stage as to upto when those obligations will subsists.

39. Several judgments have been referred in support of plea that when words of stature are clear and unambiguous then there is no room for any further interpretation of it. Courts/Authorities are bound to give simple meaning to it.

I. All words employed therein must be given their full meaning unless the same results in absurdity

1. Illachi Devi (D) by LRs Vs. Jain Society Protection of Orphans Ltd. (Flag 1 Para 26)

2. Gurudevdatta VK SSS Maryadit Vs. State of Maharashtra, (Flag 8 Para 26)

> *Words must be understood in their natural, ordinary or popular sense unless leads to some absurdity.*

3. Sutters Vs. Briggs (Flag B Para 26)

> *No reason for limiting the natural and ordinary meaning of words used.*

4. Dental Clinic of India Vs. Hariprakash (Flag C Para 26)

> *Golden Rule: when words are not ambiguous, literal meaning has to be applied.*

5. Dayal Singh Vs. UOI (Flag 1, Illachi Devi Para 29)

> *The question is not what is supposed to have been intended but what has been said.*

6. Grasim Industries Vs. Collector of Customs (Flag F)

> *Where words are clear and there is no obscurity, intention is clearly conveyed and no scope for court to take upon itself the task of amending /altering statutory provisions.*

7. Illachi Devi (Flag 1 Para 32)

When legislature has employed a plain language, court is not concerned with consequences.

8. Referred /Argued in Lalu Prasad Yadav Vs. State of Bihar (Flag 3 Para 8 onwards, 18 to 21)

Robert Mitchell Vs. Soren (Para 17)

Words ought to be understood according to genuine and natural signification.

II. Courts not to adopt hypothetical construction

9. Union of India Vs. Hansoli (Flag 4)

When language is plain and unambiguous, Court must give effect to words used and not be open to adopt hypothetical construction. Para 9, 10)

10. Ajay Pradhan Vs. State of MP (Flag 5 Para 7)

If plain words, we are bound to construe them in ordinary sense.

King Emperor Vs. Benori Lal Sharma (Para 7)

"We must give effect to it whatever may be the consequences."

12. Swedish Match Vs. SEBI (Flag 6)

Where wordings are absolutely clear, recourse to different principles of interpretation may not be resorted to. (Para 51)

Harmonious construction, where expression is capable of more than one meaning (Para 85 to 87)

Literal Construction (Para 93 to 97, 102)

III. Literal Interpretation

13. Swedish Match Vs. SEBI (Flag 6 Para 93-97)

14. Nathi Devi Vs. Radha Devi Gupta (Flag 7 Para 13)

15. Nasiruddin Vs. Sita Ram (Flag N, Para 14)

Cannot re-write or recast legislation

16. High Court of Gujrat Vs. Gujrat Kishan Mazdoor (Flag 2 Para 16 of Nathi Devi)

17. Gurudevdatta Vs. State of Maharashtra (Flag 8 Para 28)

18. Union of India Vs. Popular Construction (Flag 15)

Express Exclusion: but "not thereafter"

19. Padmasundera Vs. State of Tamil Nadu (Flag 17)

*Court cannot read something in statute which is not there in it. (Para **12 to 16)***

IV. Superior Court/ Inferior Court

20. M.M.Thomas Vs. State of Kerala (Flag 10)

Nothing is within jurisdiction of Inferior Courts unless expressly shown (Para 15)

V. Interpretation must remain interpretation and not descend into interpolation.

21. Illachi Devi Vs. Jain Society (Flag 1 Para 28)

VI. Intention of legislature

22. Dayal Singh Vs. UOI (Illachi Flag1 Para29)

Intention must be found out from the language employed in Statute itself.

23. Padma Sundara Rao Vs. State of Tamil Nadu (Flag 17)

    Court cannot read anything into a statutory provision which is plain and unambiguous.

24. Harbhajan Singh Vs. Press Council of India (Flag E)

    Legislature does not waste its words.

    No other meaning can be assigned except by doing violence to the language employed.

25. Grasim Industries Vs. Collector (Flag F)

26. Illachi Devi (Flag 1 Para 32)

27. Nathi Devi Vs. Radha Devi Gupta (Flag 7)

    Irrespective of consequence (Para 11)

    If plain, no question of construction of Statute

    Function is to discover true legislative intent.

    Construction attributing redundancy will not be accepted. (Para 12)

28. Col. Prithi Pal Vs. UOI (Flag 18 Para 8)

    Court should adopt literal construction if it does not lead to an absurdity (Flag 18 Para 8)

VII. Casus Omissus

29. Dr. Baliram Waman Hiray Vs. Mr. Justice B.Lentin (Flag G)

30. Kanta Devi Vs. UOI (Flag H)

31. Shrimati Tarulata Shyam Vs. Commissioner of Income Tax (Flag I)

If there be casus Omissus, defect can be remedied only by legislation and not by judicial interpretation.

32. Major & St. Mellons Vs. Newport (Flag K Para 14 of Illachi)

Duty of Court is to interpret words legislature has used.

Travel outside on voyage of discovery- prohibited.

VIII. Legislation seeks to obviate some mischief

33. Union Bank Vs. Abhijit Tea Co. (Flag J)

34. RBI Vs. Peerless

No part of Statute and no word of Statute can be construed in isolation.

35. Gurudev data Vs. State of Maharashtra (Flag 8) Para 24)

IX. Purposive Construction

36. Illachi Devi (Flag 1 Para 40, 45/1)

37. Punjab Land Development Vs. Presiding Officer, Labour Court Chandigarh (Flag L)

38. Gopal Reddy Vs. State of Andhra (Flag M)

Purposive Approach for interpreting is necessary.

39. Swedish Match Vs. SEBI (Flag 6 Para 15 of Nathi Devi Vs. Radha)

X. Not permissible to add words:

40. Lalu Prasad Vs. State of Bihar (Para 21)

41. Quebec Railway Vs. Vandry

Not permissible to add words which are not there.

40. Learned counsel referred to Section 39 of RE(R&D) Act,2016 stating that power of review has been not given to the Hon'ble Authority. Whereas in Section 53 (e) of RE(R&D) Act,2016 dealing with powers of Tribunal has specifically provided power to *'reviewing its decisions'*. Proper structure has been laid down by the legislature. At one stage, Power of review is not given but at the other stage, it is expressly given. Powers cannot travel beyond statute. Distinction of stage/powers has been made by the legislature.

41. He relied upon Para 34 of judgment dated 24.08.2020 passed by Hon'ble Supreme Court in Civil Appeal no. 6239 of 2019 titled as Wg. Cdr. Arifure Rahman Khan and Ors vs DLF Southern Homes Pvt Ltd.

42. He argued that complainant herein enjoys ownership right of the unit and has not placed any evidence of protest to any payments/ execution of conveyance deed. Nothing bonafide has been placed on record to show that they were aggrieved at time of execution of conveyance deed.

43. In present case, all obligations qua Section 11 of Act stands fulfilled. Possession has been handed over to complainant in year 2020 itself. After getting conveyance deed in year 2021, complainant has filed present complaint after expiry of 399 days in year 2022. It is a time barred case. No entitlement is made out in favor of complainant to any of the reliefs sought.

44. During the course of hearing on 30.04.2026, authorized representative for Complainant had argued that relief of delay interest is duly provided to the allottee as per Section 18 of RERA Act,2016 and requested the Authority to decide the case on merits. Further he has withdrawn all other reliefs and pressed upon only for delay interest. His statement in this regard has been recorded in interim order dated 30.04.2026.

G. ISSUES FOR ADJUDICATION

45. Whether the complainant is entitled to the reliefs sought or not? If Yes, the quantum thereof.

H. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

46. At the outset, respondent has taken an objection that complainant had executed a conveyance deed dated 25.07.2017 and therefore, the transaction between the complainant and the respondent has been concluded and no right or liability can be asserted by respondent or the complainant against the other. Therefore, the complainant is estopped from claiming any interest in the facts and circumstances of the case. At this stage, it is important to look at the definition of the term, deed, itself in order to understand the extent of the relationship between an allottee and promoter. A deed is a written document or an instrument that is sealed, signed and delivered by all the parties to the contract (buyer and seller). It is a contractual document that includes legally valid terms and is enforceable in a court of law. It is mandatory that a deed

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should be in writing, and both the parties involved must sign the document. Thus, a conveyance deed is essentially one wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or movable. In this case, the asset under consideration is immovable property. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration (usually monetary). Therefore, a, conveyance deed, or 'sale deed' implies that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer.

47. From above, it can be said that taking over the possession and thereafter execution of the conveyance deed can best be termed as respondent having discharged its liabilities as per the buyer's agreement and upon taking possession, and/or executing conveyance deed, the complainant never gave up her statutory right to seek delayed possession charges.

48. It is noteworthy to mention here that in Appeal no. 272, 273, 274 of 2019 titled as Manju Arya vs M/s TDI Infrastructure Pvt Ltd, Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh vide order dated 19.01.2021 has observed that the cause of action which had already accrued to the allottee against the promoter due to non-fulfilment of the obligations as per the agreement for sale shall not stand extinguished with the execution of the conveyance deed. Whatever statutory rights had accrued to the allottee prior to the conveyance deed cannot be defeated with the subsequent execution and

registration of the conveyance deed. Relevant part of the order is reproduced below:

"18. As far as appeal no.273 of 2019 is concerned, no doubt, the conveyance-deed was already executed and registered on the date of filing the complaint no.718 of 2018. But, in our view the execution and registration of the conveyance-deed will not absolve of the promoter of the liability which had accrued before the execution and registration of the conveyance-deed. ***The moment the delay has occurred in the delivery of possession, the statutory right to claim the compensation had occurred to the appellant which cannot be subsequently extinguished with the execution and registration of the conveyance-deed.***
19.The learned Adjudicating Officer has referred to Section 11 sub section 4 (a) of the Act to dislodge the claim of the appellants which reads as under: -
"11. Functions and duties of promoter.
(4) The promoter shall- (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed
20. As per the aforesaid provision of law, the promoter shall be responsible for all the obligations, responsibilities and functions under the provisions of the Act or the rules and regulations made thereunder or to the allottees as per the, agreement for sale till the conveyance of all the apartments, plots or buildings, as the case may be. This provision does not say that the cause of action which had already accrued to the allottee against the promoter due to non-fulfilment of the obligations as per the agreement for sale shall stand extinguished with the execution of the conveyance-deed. Whatever statutory rights had accrued to the allottee prior to the conveyance-deed, cannot be defeated with the subsequent execution and registration of the conveyance-deed.
21. The Hon'ble Apex Court in case Wg. Cdr. Arifur Rahman Khan and Ors. Vs. DLF Southern Homes Pvt. Ltd. and Ors. 2020(3) RCR (Civil) 544 has laid down as under: - "The developer in the present case has undertaken to provide a service in the nature of developing residential flats with certain 15 had Complaint No.808/2020 amenities and remains amenable to the

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jurisdiction of the Consumer Fora. Consequently, we are unable to subscribe to the view of the NCDRC that flat purchasers who obtained possession or executed Deeds of Conveyance have lost their right to make a claim for compensation for the delayed handing over of the flats."
22. Thus, the Hon'ble Apex Court has categorically laid down that the purchasers will not lose their right to claim compensation for the delayed handing over of the unit on the ground that the possession has been delivered and deed of conveyance has been executed. This authority is squarely applicable to the controversy in hand.
23. Even though this judgment has been rendered by the Hon'ble Apex Court under the Consumer Protection Act, 1986 but the principle of law laid down by the Hon'ble Apex Court in the aforesaid judgment will also be applicable to the cases under the Act. Thus, we are of the considered opinion that mere execution of the conveyance-deed by the respondent/promoter qua plot no.663, Block no.L, TDI City at Kundli, Sonipat, Haryana (Complaint No.718/2018, Appeal No.273/2019) will not extinguish the right of the appellant/allottee to claim the compensation which had already accrued to her much before the execution of the conveyance-deed."

Also, the para 35 of judgment dated 24.08.2020 titled as Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt, Ltd, (now Known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no.6239 of 2019) is reproduced herein below:

"35. The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeking a Deed of Conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."

49. Authority observes that the complainant/allottee has invested her hard-earned money and there is no doubt that the promoter has been enjoying benefits of it. Next step thereafter is to get their title perfected by executing a conveyance deed which is the statutory right of the allottee. Also, the obligation of the developer promoter does not end with the execution of a conveyance deed. The essence and purpose of the Act was to curb the menace

created by the developer/promoter and safeguard the interests of the allottees by protecting them from being exploited by the dominant position of the developer which he thrusts on the innocent allottees. Therefore, in furtherance to the Hon'ble Apex Court judgment and the law laid down in the Wg. Cdr. Arifur Rahman (supra), this Authority holds that even after execution of the conveyance deed, the complainant cannot be precluded from her right to seek delay possession charges from the respondent-promoter. Keeping in view the aforesaid discussion, it is decided that the complaint is maintainable. However, the reliefs sought by the complainant has to be evaluated on basis of other principles like delay and laches, applicable of statutory provisions etc.. Same has been dealt below at length in further paragraphs.

50. Respondent has also taken an objection that complainant at the time of purchasing unit has conducted due diligence to her satisfaction and had agreed to waive of rights to receive/claim any penalty against any of the payments made to the respondent vide signing of undertaking dated 10.10.2020. To deal with this objection reference is made to **Civil Appeal no. 12238 of 2019 titled as Pioneer Urban Land & Infrastructure Ltd v/s Govindan Raghavan.** Operative part of the said judgment is being reproduced below:

> *Section 2 (r) of the Consumer Protection Act, 1986 defines 'unfair trade practices' in the following words : "'unfair trade practice' means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice ...", and includes*

any of the practices enumerated therein. The provision is illustrative, and not exhaustive.

In Central Inland Water Transport Corporation Limited and Ors. v. Brojo Nath Ganguly and Ors.,4 this Court held that :

"89. ... Our judges are bound by their oath to 'uphold the Constitution and the laws'. The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and equal protection of the laws. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them.

It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not 4 (1986) 3 SCC 156.

It applies where both parties are businessmen and the contract is a commercial transaction. ... ... These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances." (emphasis supplied)

A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the

Agreement dated 08.05.2012 are ex-facie one-sided, unfair, and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice *as per Section 2 (r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the Builder.*

7. In view of the above discussion, we have no hesitation in holding that the terms of the Apartment Buyer's Agreement dated 08.05.2012 were wholly one-sided and unfair to the Respondent – Flat Purchaser. The Appellant – Builder could not seek to bind the Respondent with such one-sided contractual terms.

51. In this case, respondent promoter and complainant was not having equal bargaining power and respondent promoter was in a dominant position. Complainant was bound to sign on dotted lines of undertaking to retain the allotment in their favor. Said application form and undertaking is ex-facie one-sided, unfair, and unreasonable. Therefore said undertaking cannot bind the complainant with such one-sided terms.

52. Respondent has also taken objection that complaint is grossly barred by limitation as it is filed after delay of 399 days. In this regard Authority places reliance upon the judgment of Apex court Civil Appeal no. 4367 of 2004 titled as **M.P Steel Corporation v/s Commissioner of Central Excise** where it has been held that Indian Limitation Act deals with applicability to courts and not tribunals. Further, RERA Act is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act, 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as

the Authority set up under that Act being quasi-judicial and not a Court. The promoter has till date failed to fulfill its obligations qua the payment of delay interest because of which the cause of action is re-occurring. Hence, the plea of respondent does not hold ay strength and stands rejected.

53. Factual matrix of the case is that a unit was purchased by the complainant being subsequent allotee in the project being developed by the respondent namely "Parklands" situated at Faridabad, Haryana in the year 2015. Builder buyer agreement for the unit/plot no. PF-40, 250 sq. yds was executed between the parties on 16.09.2015. In terms of clause 3.1, the possession of the unit was to be delivered as per payment plan. An amount of ₹ 36,37,988/- has been paid by the complainant against the basic sale consideration of ₹ 21,25,000/-. Out of said amount, last amount of ₹ 16,520/- has been paid by complainant on 09.04.2021. An offer of possession was made to complainant on 19.09.2020 along with demand of ₹ 4,87,176/- (demand of ₹ 1,17,000/- for stamp duty charges). To said offer, complainant made the payments in year 2021 and got conveyance deed executed in her favor on 15.07.2021. Thereafter, complainant had filed present complaint in year 2022 seeking delay interest.

54. As per clause 3.1 of the builder buyer agreement, possession of the unit was to be delivered as per opted payment plan along with grace period of 180 days. As such, payment plan in a way is development linked plan. Both the parties have not provided any documents/letters reflecting year-wise stage of

development of project. No deemed date of possession has been specified in the pleadings of parties.

55. In absence of specific clause of deemed date of possession in builder buyer agreement, it cannot rightly be ascertained as to when the possession of said unit was due to be given to the complainant. In Appeal No. 273/2019 titled as "TDI Infrastructure Ltd vs Manju Arya", Hon'ble Tribunal has referred to the observation of Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) and Anr. In which it has been observed that period of 3 years is a reasonable time of completion of construction work and delivery of possession. In present case, unit was allotted to complainant vide builder buyer agreement 16.09.2015, taking 3 years time period as a reasonable time for completing the project, the deemed date of possession works out to 16.09.2018.

56. Fact remains that an offer for possession was issued to complainant on 19.09.2020 along with demand of ₹ 4,87,176/- (demand of ₹ 1,17,000/- for stamp duty charges). In acceptance of said offer, an amount of ₹ 3,77,060/-was paid by the complainant on 30.03.2021, ₹ 90,075/- on 16.03.2021 and ₹ 16,520/- on 09.04.2021. Thereafter, complainant got conveyance deed executed in her favor on 15.07.2021. Now, present complaint has been filed on 30.08.2022 seeking delay interest from 19.06.2009 or 01.07.2016 till the approval of zoning plan. It is pertinent to mention here that complainant has neither placed any supporting document in respect of dates 19.06.2009 or

01.07.2016 nor has specified as to why the interest be awarded till approval of zoning plan. Hence, these dates/submissions cannot be relied upon.

57. The facts set out in the preceding paragraph demonstrate that, admittedly, the delivery of possession of the booked unit has been delayed beyond the stipulated period of time. As per para 55 of this order, respondent should have delivered possession of the unit by 16.09.2018. However, the respondent failed to construct/develop the project and deliver possession of the booked unit by the stipulated date. There is delay of about 3 years in delivery of possession. Complainant herein has already taken possession of unit in year 2020 but is pressing for her claim qua delay interest. In these circumstances, provisions of Section 18 of the RE (R&D) Act,2016 clearly come into play by virtue of which while exercising the option of taking possession of the plot, the complainant is also entitled to receive interest from the respondent on account of delay caused in delivery of possession.

58. Section 18 (1) of the Act, Section 18 (1) proviso reads as under:-

> *"18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-*
>
> ……………………………
>
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed".*

59. As per Section 18 of the RE (R&D) Act,2016, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

> *(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
>
> *Explanation.-For the purpose of this clause-*
>
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
>
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;*

60. 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 (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"*

61. Consequently, as per website of the State Bank of India, i.e., https://sbi.co.in, the highest marginal cost of lending rate (in short MCLR) as on date i.e.,

16.07.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.80%.

62. 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 deemed date of possession to date of conveyance deed, i.e. 16.09.2018 to 15.07.2021.

63. Authority has got calculated the interest on total paid amount as per detail given in the table below:

Sr. No.	Principal Amount (in ₹)	Date of due date of possession or whichever is later	Interest Accrued till 15.07.2021 (in ₹)
1.	24,92,300	19.09.2020	221234
2.	3,76,470	16.03.2021	13590
3.	90,075	16.03.2021	3252
4.	3,77,060	31.03.2021	11938
5.	16,520	09.04.2021	479
6.	1,95,000/-	09.04.2021	5654
Total:	35,47,425/-		2,56,147/-

64. In respect of paid amount, it is clarified that complainant has not annexed all receipts inspite of adequate opportunity. Hence, paid amount is considered on the basis of available record which is depicted below in table:-

Sr. No.	Documents	Paid Amount	Documents annexed as
1.	Receipt dated 22.07.2015 towards transfer fee	90,563/-	Page 43 of complaint.
2.	Offer of possession dated 19.09.2020	2492300/-	Page 42 of complaint.
3.	Receipt dated 16.03.2021	376470/-	Page 124 of reply.
4.	Receipt dated 16.03.2021	90075/-	Page 45 of complaint.
5.	Receipt dated 31.03.2021	377060/-	Page 44 of complaint.
6.	Receipt dated 09.04.2021	16520/-	Page 46 of complaint.
7.	Receipt dated 09.04.2021	195000/- towards stamp duty	Page 123 of reply.
	Total=₹ 36,37,988/- (It is pertinent to mention here that transfer fee of ₹ 90,563/- has been paid by complainant for nomination of unit in her favor, not towards sale consideration of unit. Hence, same is not taken into consideration for calculation of interest).		

H.DIRECTIONS OF THE AUTHORITY

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

i. Respondent is directed to pay delay interest of ₹ 2,56,147/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order.

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

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

....
NADIM AKHTAR
[MEMBER]

....
PARNEET S. SACHDEV
[CHAIRMAN]