HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**211 of 2021**
Date of filing.:	**25.02.2021**
Date of first hearing.:	**30.03.2021**
Date of decision.:	**16.07.2026**

1.Saurabh Berry S/o Sh. Pradeep Kumar
2.Chander Prabha Berry S/o Sh. Pradeep Kumar Berry
R/o House no. J-122, First floor, Vikaspuri, New Delhi-110018
Through his power of attorney Sh. Sarvajit Sood ....COMPLAINANT

VERSUS

1.M/s BPTP Limited
M-11, Middle Circus, Connaught Place
New Delhi-110001
2.M/s Countrywide Promoters Pvt Limited
M-11, Middle Circus, Connaught Place
New Delhi-110001 ....RESPONDENTS

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

Nadim Akhtar **Member**

Dr. Geeta Rathee Singh **Member**

Present: - Ms. Ramandeep Kaur, Counsel for complainant through VC

Mr. Hemant Saini, Counsel for the respondent.

<u>ORDER</u> (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.	Park Elite Floor, Faridabad.
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Not Registered
4.	Details of unit.	P-3-23-GF, 876 sq. ft.
5.	Date of booking	25.05.2009 by paying Rs 2 lacs.

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6.	Allotment Letter	24.12.2009
7.	Date of builder buyer agreement alogwith Addendum	27.08.2010 Addendum dated 31.08.2010
8.	Due date of possession	27.02.2013 (As stated by complainant in its pleadings and reliefs sought)
9.	Possession clause in BBA (Clause 4.1- 24 months)	Subject to Clause 13 herein or any other circumstances not anticipated and beyond the control of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of total Sale Consideration and Stamp Duty and other charges and having complied with all provisions, formalities, documentation etc., as prescribed by the Seller/Confirming Party, whether under this Agreement or otherwise, from time to time, the Seller/Confirming Party proposes to hand over the possession of the Floor to the Purchaser(s) within a period of 24 months from the date of execution of floor buyer agreement or on completion of

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		payment of 35% of the basic sale price along with 20% of EDC &IDC by the purchaser whichever is later. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days, after the expiry of 24 months, for applying and obtaining the occupation certificate from the concerned authority. The Seller/Confirming Party shall give Notice of Possession to the Purchaser(s) with regard to the handing over of possession, and in the event the Purchaser(s) fails to accept and take the possession of the said Floor within 30 days thereof, the Purchaser(s) shall be deemed to be custodian of the said Floor from the date indicated in the notice of possession and the said Floor shall remain at the risk and cost of the Purchaser(s).
10.	Total sale consideration	₹ 16,08,004/-
11.	Amount paid by complainant	₹ 22,70,756/- (as per conveyance deed)
12.	Offer of possession.	24.02.2017 with demand of ₹4,30,890/-
13.	Date of conveyance deed	25.08.2017

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. That the present complaint is being filed by Mr Saurabh Berry and Mrs Chander Prabha Berry through their Power of Attorney Sh. Sarvajit Sood (hereinafter referred to as the "Complainants") on account of deficiency in services and unfair trade practices, causing tremendous financial and mental distress to the complainants, against M/s BPTP Ltd, a Company incorporated under the Companies Act 1956, having its registered office at M-11, middle and against respondent no.2 (hereinafter collectively referred to as the Respondents). Special Power of Attorney is annexed herewith as Annexure C-1.

4. That the complainants are law abiding citizens of India and always dreamt of owning a flat for residential purpose in Faridabad, Haryana and accordingly, they contacted the respondents, for the purpose of purchasing a residential flat. The respondents made rosy and grandiose representations with promises to the present respondents namely regard project of the Elite "Park Floor", Faridabad, Haryana in order to allure the complainants to book a unit/apartment in the said project.

5. That the complainants booked a flat bearing No. P3-23-GF, on Ground Floor, of Block P with tentative super area of of 876 sq.ft. (81.416 sq. mtrs.)

in the project namely Park Elite Floor' being developed by the respondents after making a payment of Rs. Two lacs on are annexed as 25/05/2009.A true copy of the booking form dated 25/05/2009 Annexure C-2.

6. That the complainants entered into buyer's agreement with respondent no.1 a to purchase a flat in the aforementioned project of the respondents, vide an agreement named "Floor Buyer Agreement" dated 27.8.2010 (hereinafter referred to as the "Agreement") and addendum to Flat Buyer Agreement was also executed on 31.08.2010. The basic sales price of the said flat was 16,08,004 less discount of Rs. 71,000/- against which he paid 19,03,178. A the Floor Buyer Agreement, true copy Agreement dated Buyer floor ,addendum to floor buyer agreement dated 27.8.2010, 31.08.2010 and conveyance deed are annexed herewith as Annexure C-3, C-4 and C-5 respectively.

7. That as per the Agreement, the payment for the flat was to be made as per the schedule of payment plan for basic and allied charges and this schedule is annexed to the Agreement (Annexure C-3). The complainants have paid all the amount/instalment as and when required by the respondents. A true copy of all the receipts of all the payment receipts are annexed herewith as Annexure C-6 (colly).

8. That according to clause 4.1 of the Agreement the development and handing over of the of the possession aforementioned flat was to be completed within

a period of 24 months from the date of sanction of building plan, with a grace period of 180 days, after expiry of 24 months, for applying and obtaining the occupation certificate from the concerned authority. However, clause 2 of the addendum of the Floor Buyer's Agreement stated that the covenant that respondent proposes to handover the possession of the flat to the complainant within 24 months from the date of sanction of building plan is amended and modified and the same shall be read as respondent proposes to handover the possession of the flat to the complainant within a period of 24 months from the date of execution of the Floor Buyer's Agreement or on completion of payment of 35% of the Basic Sale Price along with 20% of EDC and IDC by the complainants, whichever is later. Hence, the due date of completion and handing over of possession of the said flat was 27.02.2013.

9. That the letter of offer of possession of the said flat was given on 24.02.2017 subject to payment of Rs 4,30,890, along with interest as such there had been about 4 years delay in completing the construction and development and handing over said flat. No possession penalty and occupation certificate for the said flat have been given to the complainants. The complainants tremendous mental agony and harassment at the hands of the respondent. They were promised possession in 27.02.2013. Thus the complainants are entitled for interest for every month of delay till the handing over of

possession .It a true copy of the letter of offer of possession dated 24.02.2017 are annexed as Annexure C-7.

10. That at the time of booking of the said flat the tentative super area was 876 sq.ft (81.416 sq.mtrs). However, the respondent increased the super built up area to 1027 sq.ft (95.411 sq.mtr) which represents an increase of 151 sq.ft amounting to an increase of 17.2%. It is further submitted that clause 1 of the addendum to the Floor Buyer's Agreement defines super built up area as "The super built up area of the said floor shall be the sum of the covered area of the said floor including non exclusive cases/common pro-rata in share balconies, areas, ground floor under balconies on the stair verandahs on first floor, mumties, shafts, elevation features, overhead water tanks, boundary wall, service area on the terrace, affluent treatment plan with respect to the floors, all projections and under ground water tanks, harvesting, structures for rainwater.if any provided". It is also pertinent to mention here that the measurements of the said flat given in the final layout plan attached to the conveyance deed is no different from the measurements given in the tentative layout plan which is attached with the flay buyer's agreement.

11. That according to clause 1.5 (a) of the Agreement External development Charges ("EDC")/Infrastructure Development Charges ("IDC") was to be charged Rs.115/- per sq.ft. of the super built up area. It is submitted that at the time of booking the tentative super built area was 876 sq.ft (81.38

sq.meters) however, the respondents has wrongly increased the super built up area to 1027 sq.ft (95.41) sq.meters) and thus has wrongly charged the EDC/IDC for the increased area.

12. That the Government amnesty of scheme Haryana has notified an vide No.19/ST1/H.A.6/2003/S59A/2016 Notification dated 12 September, 2016 ("VAT Amnesty Scheme"), to deposit a lump sum @1% of the entire sale consideration. Further a surcharge at the rate of 5% shall also be payable on the aforesaid amount, which together totals to 1.05% of the total sale consideration. The VAT Amnesty Scheme is available for the period up to 31 March, 2014. It is further submitted that the respondents demanded VAT under this scheme from the complainants vide letter a dated 10.11.2016. Thus, the respondents demanded from the complainants Rs.20,199/-to towards deposit a sum the aforesaid of VAT liability. It is further submitted that this scheme came into force in the year of 2016, therefore it is a fresh scheme. The possession of the flat was supposed to be delivered by the said scheme which 27.02.2013, therefore, has come into existence after the deemed date of delivery should not be levied. The delivery of the flat has been delayed by 4 years. Had it been delivered by the due date this incidence of VAT would not have fallen on the A buyer's, true copy of the letter dated 10.11.2016 is annexed in Annexure C-8.

13. That as per the annexure 'f' attached to the offer of possession letter dated 24.02.2017, in light of lack of clarity on the issue of exact VAT liability for the collections post 31 March, 2014 the respondents requested the complainants to submit a bank fixed receipt (FDR) of three year duration, equivalent to the amount 18,930. The fixed deposit would be in the name of the complainants, in the bank of complainants lien on the same would need to be marked in favour of the respondent no. 1 and the same has been deposited no.1 on by the complainant 7.4.2017. The said fixed deposit was supposed to be matured amount of on 07.04.2020 with the matured Rs23,588/-. It is pertinent to mention here that till date the amount of said fixed deposit has not been given to complainants. A true to the of the deposit receipt dated 07.04.2017 is annexed in Annexure C-6.

14. That the respondents has charged 53,699.40/- as Electrification and STP charges vide statement of accounts cum invoice attached to the offer of possession dated 24.02.2017, without giving any details of the base on which they have arrived at the aforementioned amount.

15. That respondents have charged Rs.50,000/- as the Club Membership Charges (CMC), clause 1.5 in Flat buyer's Agreement specifying Rs.50,000/-(e) payable by the which is complainants for CMC in addition to the total sale consideration is unjustified as they are forcing the complainants to become the member of the Club. Thus leaving no other option for the complainants

but to become the member of the Club. Thus making obligatory for the complainants to become the member of the club whereas they to want don't to. It is also that here mention the pertinent aforementioned Club is just a flat with some equipment's placed in it and there is no services available as that of a Club. A true copy of photos of club are annexed as Annexure C-9.

16. Feeling aggrieved, present complaint has been filed.

C. RELIEF SOUGHT

17. That the complainants seeks following relief and directions to the respondent:-

   i. To pay delayed possession interest for every month of delay till the handing over of the possession prescribed at such rate as be may as per section 18 (1) of the Real Estate (regulation and Development) Act, 2016 read with Rule 15 of the Real Estate (regulation and Development) Rule, 2017. That is from the time from the day on which the possession of the said flat was to be given i.e 27.02.2013 to the day on which letter of offer of possession was given i.e 24.02.2017.

   ii. To grant occupation certificate of the said flat to the complainants.

   iii. To refund the amount illegally charged for the wrongly increased super built up area.

iv. To refund the amount illegally charged as EDC/IDC, VAT, Electrification and STP charges, CMC.

v. To release fixed deposit taken on account of VAT.

vi. To Pay compensation to the complainants to the tune of for the Rs 1,00,000/-tremendous financial and mental distress and agony caused by the respondents to the complainants.

vii. To litigation pay amounting cost to Rs.70,000/-.

viii. Any other relief which this authority deems appropriate.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondents filed detailed reply on 21.12.2021 pleading therein:

18. That the present complaint is not maintainable in as much as the conveyance deed for the unit in question has been duly executed between the parties on 25.08.2017. It is pertinent to mention that the conveyance deed was executed between the parties after handing over of the unit on 18.04.2017. It is important to point out that after enjoying the possession for around 4 months the conveyance deed was executed between the parties without any protest.

19. That the complaint could be adjudicated by this Hon'ble Authority after handing over of the possession and execution of the conveyance deed solely on the ground that structural defects. But in the matter at hand, the Complainants have not alleged anything about that.

20. That present complaint is barred by limitation as Article 137 of the first schedule of Limitation Act, 1963 provides for a limitation period for any application for which no period of limitation is provided in any of the Articles in the Schedule to the Limitation Act. It is submitted that as per the said article a period of limitation of 3 years from the date when the right to apply accrues have been provided. It is submitted that the Complainants' cause of action arose on 24.02.2017 when the Respondent issued Offer of Possession for unit P3-23-GF. It is submitted that the Complainants paid the outstanding dues and execute the Conveyance Deed dated 25.08.2017 without any protest and demur. It is pertinent to point 3 years have lapsed since then and hence, the present Complaint is liable to be dismissed.

21. That the complaint no. 3189 of 2019 titled as 'Ms. Renu Garg & Ors. Vs. M/s Pioneer Urban Land & Infrastructure Ltd. listed before the Hon'ble Real estate regulatory Authority, Gurugram, vide final order dated 12.03.2020, it has been stated that "Since the conveyance deed has already been executed and there is no contention left inter-se both the parties except the provisions of Section 14(3) and 18(2) of the Act. As such the parties cannot come in dispute at a belated stage w.r.t Delayed Possession charges" and hence, the said complaint stands disposed of. Accordingly, on execution of conveyance deed in favour of the Complainants, vide present complaint the Complainants have indulged in upraising allegations/contentions against the

Respondents beyond the provisions of Section 14(3) and Section 18(2) of the Real Estate (Regulation and Development) Act, 2016.

22. The Complainants have failed to disclose the material facts from this Hon'ble Authority that vide Clause-J and Clause-3 of the Conveyance Deed, the Complainants have completely satisfied themselves in regard to allotted unit from all possible perspectives and, having specifically undertaken not to raise any issue/s or dispute/s towards possession of the allotted unit unconditionally.

23. That the Complainants have misrepresentation from this Hon'ble Authority that the Respondents have deliberately increased the price of EDC and IDC, it is further submitted that the Complainants duly agreed to the Cost escalation charges and EDC and IDC charges under clause 2.6 of the FBA. It is further submitted that the Complainants duly agreed to make all the charges mentioned under clause 1.5 of the FBA is reproduced herein below:

"The Purchaser has been duly informed that the EDC/IDC has been paid by the Seller/Confirming Party the interim rates demanded by the DTCP based on rates as notified in the year 2005 who has reserved its right to recover the EDC at the finalized rates as and when determined by the Haryana Government The Purchaser undertakes to pay the enhanced charges of EDC/IDC, proportionate to the Super Area the said Floor as and when the same is the Purchaser by the demanded from Seller/Confirming Party".

24. That the Complainants have misrepresented that Respondents have illegally charged the Complainants. It is further submitted that complainants vide clause 2.7 of the FBA duly agreed to make the payment of cost escalations Complainants vide under clause 9.1 of FBA, complainants duly agreed to make payments of all the statutory dues and all the payments incidental thereto.

25. That the Complainants have misrepresented that Respondents has charged for the electrification charges without even providing about the details or base by which they have arrived. It is submitted that the Respondent in the offer of possession dated 24.02.2017 under annexure F clause 2 have duly updated the Complainants about the policy.

26. That the Complainants have misrepresented that Respondents has charged club membership charges which is unjustified or forcing the complainants to be the member. It is further denied club is just a flat or club is just the flat with some equipment. It is submitted that the complainants under clause 1.5 of the FBA duly agreed to the payment of the Club Membership charges at the time of the FBA. It is further submitted that the complainants during the demand of "completion of brickwork" "completion of flooring" and "offer of possession".

27. Admittedly, the unit in question was offered for possession vide letter dated 24.02.2017. Complainants duly accepted the physical possession on

18.04.2017 as well as the conveyance deed has already been executed on 25.08.2017.

28. Even otherwise, it is submitted that the Respondents have accepted the booking of the unit in question based on the Self-Certification policy issued by DTCP, Haryana (the statutory body for approval of real estate projects). The Respondents in accordance with the policy and other prevailing laws submitted detailed drawings and designs plans for relevant buildings along with requisite charges and fees.

29. In terms of the said Policy, any person could construct building in licensed colony by applying for approval of building plans to the Director or officers of the department delegated with the powers for approval of building plans and in case of non-receipt of any objection within the stipulated time, the construction could be started. The Respondents applied for approval of building plans and initiated development/ construction work. The building plans were withheld by the DTCP, Haryana despite the fact that these building plans were well within the ambit of building norms and policies. Copy of Self Certification Scheme is annexed herewith as ANNEXURE-R/16. Although, no objection was received from the Department, however, to ensure that there are no problems later, the respondents time and again applied for approval of building plans under another regular scheme for sanctioning too.

30.In the meanwhile, the Respondents carried on the construction of the Independent Floor and informed the allottees including the Complainants of same by issuing regular construction linked payment demands along with uploading photographs for construction progress on the website of the Respondents.

31.That the Department vide its order dated 08.07.2015 finally clarified that self-certification policy shall also apply to cases of approval of building plans submitted by colonizer/developer but did not formally released all the plan submitted by the Respondents time to time in various building plan approval schemes. The copy of order dated 08.07.2015 is enclosed herewith as ANNEXURE-R/18.

32.That the delay in offering possession of the allotted unit to the Complainants have been occasioned due to inaction of the Government or its agencies, hence, it should be inferred that any delay was unfortunately caused due to force majeure circumstances beyond reasonable control of the Respondents. It is also submitted that, meanwhile, Respondents carried on the construction of the Independent Floor and informed the complainants/ allottees of same by issuing regular construction linked payment demands along with uploading photographs for construction progress on the website of Respondent No 1.

E. ADDITIONAL DOCUMENTS FILED BY THE PARTIES

33. Document filed by the complainant in registry on 31.05.2024- Complainant has filed copy of NOC dated 27.06.2017 in compliance of order dated 17.10.2023.

F. ARGUMENTS OF COUNSEL FOR COMPLAINANT AND RESPONDENT

34. 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.

35. 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.

36. 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.*

37. 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.

[signature]

38.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.

39. 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.

40. 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.

41. 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.

42.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.

43.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.

44. In present case, all obligations qua Section 11 of Act stands fulfilled. Possession has been handed over to complainant in year 2017 itself. After getting conveyance deed in year 2017, complainant has filed present complaint after expiry of around 4 years. It is a time barred case. No entitlement is made out in favor of complainant to any of the reliefs sought.

45. Ld. counsel for complainant has argued that provision of delay interest was part of the builder buyer agreement. Respondent has failed to abide by clause 4.3 of agreement which provides that *'If the Seller/Confirming party fails to offer possession of said floor within a period of 30 months from date of sanction of building plan, it shall be liable to pay to the purchaser compensation calculated at rate of Rs 5/- per sq. ft on the total super built up area of the said floor for every month of delay . The adjustment of such compensation shall be done only at the time of execution of conveyance deed'*. She stated that respondent did not pay the

reuqiste compensation/interest for the delay at the time of execution of conveyance deed in year 2017. For the same, complaint has been filed in year 2021.

46. She argued that respondent itself is admitting that their obligations remains till execution of conveyance deed. Herein, the adjustment of delay interest was to be made at time of conveyance deed. But has not been done so. Moreover, the complainant has pressed for delay interest after receipt of possession letter by way of email dated 02.03.2017. In said email, it has been written to respondent that '*As discussed could you please adjust the delayed penalty amount in the outstanding amount and revert back*'. Copy of email has been filed in registry on 31.05.2024. Further, she pressed for relief of refund of charges taken for increase in area, EDC/IDC, VAT as prayed in relief sought.

G. ISSUES FOR ADJUDICATION

47. Whether the complainants are entitled to the reliefs sought or not? If Yes, the quantum thereof.

H. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

48. At the outset, respondents have taken an objection that complainants had executed a conveyance deed dated 25.07.2017 and therefore, the transaction between the complainants and the respondents have been concluded and no right or liability can be asserted by respondents or the complainants against the

other. Therefore, the complainants are 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 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.

49. 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 complainants never gave up their statutory right to seek delayed possession charges.

50. 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 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."

51. Authority observes that the complainants/allottee have invested their 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 complainants cannot be precluded from their right to seek delay possession charges from the respondents-promoter. Keeping in view the aforesaid discussion, it is decided that the complaint is maintainable. However, the reliefs sought by the complainants have 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.

52. Respondents have also taken objection that complaint is grossly barred by limitation. 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 fulfil its obligations qua the payment of delay interest because of which the cause of action is re-occurring. Moreover, the complainants who were offered possession on 24.02.2017 are raising their plea of delay interest after receipt of said offer. An email dated 02.03.2017 was sent by complainants seeking delay interest from respondents. Hence, the plea of respondent does not hold ay strength and stands rejected.

53. Factual matrix of the case is that a unit was booked by the complainants in the project being developed by the respondent namely "Parklands-Park Elite Floors" situated at Faridabad, Haryana in the year 2009 by paying an amount of ₹ 2 lacs. Allotment of unit no. P-3-23-GF, 876 sq. ft was made in favor of complainants vide letter dated 24.12.2009. Builder buyer agreement for the unit in question was executed between the parties on 27.08.2010. In terms of clause 4.1, the possession of the unit was to be delivered upto 27.02.2013. An amount of ₹ 22,70,756/- has been paid by the complainants against the basic sale

consideration of ₹ 16,08,004/-. Out of said amount, last amount of ₹ 1,59,000/- has been paid by complainants on 25.05.2017. An offer of possession was made to complainants on 24.02.2017 along with demand of ₹ 4,30,890/-. To said offer, complainants had asked the respondents to adjust delay interest by way of mail dated 02.03.2017. But respondents did not act upon his request. Therefore, present complaint seeking delay interest along with other reliefs has been filed by complainants.

54. As per clause 4.1 of the builder buyer agreement, possession of the unit was to be delivered within 24 months from date of execution of floor buyer agreement alongwith grace period of 180 days. Complainants themselves in their pleadings as well as in reliefs sought admits deemed date of possession as 27.02.2013. In light of these facts, the deemed date of possession is being taken as 27.02.2013.

55. Fact remains that an offer for possession was issued to complainants on 24.02.2017 along with demand of ₹ 4,30,890/-. In acceptance of said offer, an amount of ₹ 2,54,218/-was paid by the complainants on 10.03.2017 and amount of ₹ 1,59,000/- was paid on account of stamp duty charges on 25.05.2017. Thereafter, complainants got conveyance deed executed in their favor on 25.08.2017. Now, present complaint has been filed on 25.02.2021 seeking delay interest from deemed date of possession, i.e. 27.02.2013 till the day on which letter of offer of possession was given i.e. 24.02.2017.

56. 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 54 of this order, respondents should have delivered possession of the unit by 27.02.2013. However, the respondent no. 1 failed to construct the project and deliver possession of the booked unit by the stipulated date. There is delay of about 4 years in delivery of possession. Complainants herein have already taken possession of unit in year 2017 but are pressing for their claim qua delay interest. In these circumstances, provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the booked floor, the complainants are also entitled to receive interest from the respondent on account of delay caused in delivery of possession.

57. 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".*

58.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;

59.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"*

60.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%.

61.Hence, Authority directs respondents to pay delay interest to the complainants for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.80% (8.80% + 2.00%) from the deemed date of possession to letter of offer of possession (as claimed by the complainants in their relief sought), i.e. 27.02.2013 to 24.02.2017.

62. 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 nomination or date of payment whichever is later	Interest Accrued till 24.02.2017 (in ₹)
1.	21,33,957.55	27.02.2013	921238
2.	20,199	11.11.2016	634
3.	2,38,158.15	27.12.2016	4228
Total:	23,92,314.7/-		926100/-

63. For the purpose of calculation, the amounts paid by the complainant till 24.02.2017 (as per receipts) are taken into consideration.

64. In respect of relief clause (ii), it is observed that the complainants are seeking relief of *'to grant occupation certificate of the said flats to the complainants'*. Said relief does not fall within ambit of RE (R&D) Act,2016 as power to grant occupation certificate lies with Department of Town and Country Planning only. Hence, no direction is passed in respect of this relief.

65. In respect of relief clause (iii), (iv) and (v), it is observed that the complainants are seeking relief of *'refund of illegal charged amount and to release fixed deposit on account of VAT'*. Complainants have neither pleaded any communication/transaction nor any document revealing the illegality of charges has been placed on record. Relevant documents in support of the alleged claims have also not been attached by complainants for reference. Moreover, the complainants never objected to make payment of these charges to the respondent. After execution of conveyance deed, the transactions qua illegality of charges cannot be re-opened. No relief per se to these charges is awarded to complainants for want of proper proof/documents.

66. In respect of relief clause (vi) and (vii), it is observed that the complainants are also seeking relief of compensation for mental distress and agony and litigation cost. For this the complainant- allottee is entitled to claim compensation under Sections 18(3) of the RERA Act. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as *"M/s Newtech Promoters and Developers PvT Ltd. V/s State of U.P. & ors."* (supra.), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72.

Therefore, the complainant is free to approach the Adjudicating Officer for seeking the aforementioned reliefs.

DIRECTIONS OF THE AUTHORITY

67. 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. Respondents are directed to pay delay interest of ₹ 9,26,100/- to the complainants towards delay already caused in handing over the possession within 90 days from the date of this order.

68. **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]