



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	3198 of 2022
Date of filing.:	22.12.2022
Date of first hearing.:	02.05.2023
Date of decision.:	06.08.2026

Tribhuwan Walia S/o Sh. Lalit Mohan
Preeti W/o Sh. Tribhuwan Walia
Both R/o Plot no. B 23/08, Ground floor, B block
BP'P Park Elite Floor, Sector-88,
Faridabad, Haryana-121003

....COMPLAINANTS

VERSUS

1.M/s BP'P Limited
M-11, Middle Circle, Connaught Circus
New Delhi-110001
2.M/s Business Park Maintenance Services Pvt Ltd
M-11, Middle Circle, Connaught Circus
New Delhi-110001

....RESPONDENTS

Complaint no.:	1006 of 2023
Date of filing.:	27.04.2023
Date of first hearing.:	04.07.2023
Date of decision.:	06.08.2026

Veena Rani S/o Sh. Mehender Singh
R/o B -21-36-FF, B block
BP'P Park Elite Floor, Sector-88,
Faridabad, Haryana-121003

....COMPLAINANT

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VERSUS

1.M/s BPTP Limited
 M-11, Middle Circle, Connaught Circus
 New Delhi-110001
 2.M/s Business Park Maintenance Services Pvt Ltd
 M-11, Middle Circle, Connaught Circus
 New Delhi-110001

....RESPONDENTS

Complaint no.:	1010 of 2023
Date of filing.:	27.04.2023
Date of first hearing.:	04.07.2023
Date of decision.:	06.08.2026

Naresh Kumar Bansal S/o Late Sh. RN Bansal
 Pallavi W/o Sh. Naresh Kumar Bansal
 Both R/o B -24-02-SF, B block
 BPTP Park Elite Floor, Sector-88,
 Faridabad, Haryana-121003

....COMPLAINANTS

VERSUS

1.M/s BPTP Limited
 M-11, Middle Circle, Connaught Circus
 New Delhi-110001
 2.M/s Business Park Maintenance Services Pvt Ltd
 M-11, Middle Circle, Connaught Circus
 New Delhi-110001

....RESPONDENTS

Complaint no.:	1028 of 2023
Date of filing.:	27.04.2023
Date of first hearing.:	04.07.2023
Date of decision.:	06.08.2026

Manoj Kumar S/o Sh. Phool Singh



Reeta W/o Sh. Manoj Kumar
Both R/o B -21-12, Ground Floor, B block
BPTP Park Elite Floor, Sector-88,
Faridabad, Haryana-121003

....COMPLAINANTS

VERSUS

1.M/s BPTP Limited
M-11, Middle Circle, Connaught Circus
New Delhi-110001
2.M/s Business Park Maintenance Services Pvt Ltd
M-11, Middle Circle, Connaught Circus
New Delhi-110001

....RESPONDENTS

Complaint no.:	3184 of 2022
Date of filing.:	19.12.2022
Date of first hearing.:	28.02.2023
Date of decision.:	06.08.2026

Archana Sharma W/o Sh. Rajesh Kumar Sharma
Rajesh Kumar Sharma S/o Sh. Janardan Kumar Sharma
Both R/o B -22-02, Second Floor, B block
BPTP Park Elite Floor, Sector-88,
Faridabad, Haryana-121003

....COMPLAINANTS

VERSUS

1.M/s BPTP Limited
M-11, Middle Circle, Connaught Circus
New Delhi-110001
2.M/s Business Park Maintenance Services Pvt Ltd
M-11, Middle Circle, Connaught Circus
New Delhi-110001

....RESPONDENTS

CORAM: Parneet Singh Sachdev**Chairman****Dr. Geeta Rathee Singh****Member****Chander Shekhar****Member**


Present: - Mr. Dhruv Gautam, Counsel for complainant through VC
Mr. Hemant Saini, Counsel for the respondent through VC.

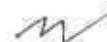
ORDER (PARNEET S. SACHDEV-CHAIRMAN)

1. Captioned complaints are taken up together for hearing as they involve similar issues and are same project-‘Park Elite Floors’ of respondent. This final order is passed taking complaint no. 3198/2022 titled as ‘Tribhuwan Walia & Preeti vs BPTP Ltd & Anr.’ as a lead case.
2. Present complaint has been filed by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

3. The particulars of 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 Floors, Faridabad.
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Not Registered
4.	Details of unit.	B-23-08-GF Block B, 1203 sq. ft.
5.	Date of builder buyer agreement with original allottee	29.07.2010
6.	Date of Endorsement in favor of complainant	Not provided/mentioned.
7.	Due date of possession	29.07.2012/29.01.2013
8.	Possession clause in BBA (Clause 4.1)	<i>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</i>



		<i>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 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 Purchaser(s), which ever 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).</i>
9.	Total sale consideration	₹ 22,37,003/-
10.	Amount paid by complainants	₹ 29,86,012.74/- as per offer of possession.
11.	Offer of possession.	11.09.2015
12.	Possession taken on	18.12.2015



	(para 20 of complaint)	
13.	Date of Maintenance Agreement	02.12.2015
14.	Date of conveyance deed	08.01.2016
15.	Occupation Certificate	18.09.2020

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

4. That the Complainant had purchased an independent floor No. B-23-08, Ground Floor, Block-B, BPTP Park Elite Floors, Sector- 88, Faridabad from Mr. Debojyoti Roy. True Copy of the Floor Buyer's Agreement dated 29/07/2010 executed between the Original Allottees and Respondent No. 1 is annexed as Annexure C-1.
5. That the Letter of Offer of Possession dated 11.09.2015 was received by the Complainants from the Respondent No. 1, which demanded the following illegal and arbitrary charges from the Complainants:

Enhanced IDC- INR 97,829/-

Cost Escalation- INR 73,779.99/-

Club Membership Charges- INR 50,000/-

Electrification & STP Charges- INR 74,582/-

Electricity Connection Charges- INR 34,100/-

Excess Amount paid as IDC/IDC Charges -INR 77,705/-



Copy of the Letter of Offer of Possession is annexed and marked as Annexure C-2.

6. That the Respondent No. 1 did not have the Occupation Certificate from the competent authority on the said date and yet the possession was being offered to the Complainants. As per the policy letter dated 27 March 2009, issued by the Government of Haryana to all the Collectors/ DC and Tehsildars, no conveyance deed can be executed till the OC for the said building is issued by the competent authority. Copy of the Policy Letter dated 27 March 2009 issued by the Government of Haryana is annexed as Annexure C-3.
7. Soon after the issuance of the Letter of Offer of Possession, the Respondent No. 2 executed the Maintenance Services Agreement with the Complainants on 02 December 2015. The Maintenance Services Agreement states that the maintenance charges are to be paid by the Complainants at the rate of INR 150/- per square foot and the area has been calculated at 1388square feet, which is also mentioned in the Conveyance Deed. Further, the Complainants were made to deposit an advance maintenance for a period of 1 year from the 91 day of issuance of letter of offer of possession i.e. from 12 December 2015. True Copy of the Maintenance Agreement executed between Respondent No. 2 and the Complainant is annexed and marked as Annexure C-4.



8. That the Conveyance Deed was executed by Respondent No. 1 in favour of the Complainants on 08 January 2016 and the area for which the Conveyance Deed has been executed is 1,388 square feet or 128.948 square meters. The total sale consideration has also been calculated on the assumption that the area mentioned in the conveyance deed is the actual area which has been sold and handed over to the Complainants. True copy of the Conveyance Deed dated 08 January 2016 executed by Respondent No. 1 in favour of the Complainants is annexed as Annexure C-5.
9. That in the January 2020, the Complainants found out from other residents of B Block, that the Occupation Certificate had been issued for some floors by the office of the DTP and that there is discrepancy in the area sold by Respondent No. 1 in the conveyance deed and the area sanctioned by the Government in the OC. The Complainant No. 1 went to the office of OP No. 1 at Sector-76 and obtained a copy of the OC and it turned out that the area sanctioned by Respondent No. 1 is much less than the area that has been sold by Respondent No. 1 to the Complainant. As per the OC, the total area of the Complainants' floor is 100.73 square meters, which is 28.912 square meters less than the area sold by Respondent No. 1 in the Conveyance Deed. It is important to highlight at this stage that Respondent No. 1 did not get any amended layout plan sanctioned from the competent authority, which means that the actual area of the floor never changed. True copy of the Occupation



Certificate issued by the office of STP Faridabad for Complainant's Floor is annexed and marked as Annexure C-6.

10. That by way of the present consumer complaint, the Complainants seek return of the monies, which the Respondent No. 1 has illegally collected from the Complainants by indulging in acts of unfair trade practices. It is also evident that the state authorities, namely the tehsildar and the officials of the DC office are hand in glove with the Respondents and are dancing to their tunes. The Policy Letter dated 27 March 2009 makes it abundantly clear that the no conveyance deed shall be registered unless the Occupation Certificate is issued by the competent authority. The Respondent No. 1 has been getting conveyance deeds executed with impunity and in violation of the Policy Letter dated 27 March 2009 and it goes without saying that the Respondent No. 1 exercises considerable influence in the concerned government offices.

11. That the actual reason for execution of conveyance deed prior to issuance of the OC is that the Respondent have defrauded by the floor buyer's like the Complainants by representing that the floor is of a particular area size and have calculated basic sale price, stamp duty, maintenance charges etc. on the basis of the area of the floor. While advertising and selling the floors, the Respondent No. 1 had published and distributed Brochure to its agents and property dealers, which were shown to the general public in order to



convince them about the features of the projects. As per brochure the "tentative super area" of the floor in a 250 Sq yard floor was mentioned to be 1203 Sq feet. The Respondent No. 1 would have mentioned this particular figure only on the basis of drawings that it had prepared and filed with the office of DTP Faridabad for approval. The copy of the brochure of the Part Elite Floors is Annexed and marked as Annexure C-7.

12. That the OC issued by the office of DTP Faridabad clearly shows that no amendment whatsoever has been made in the sanctioned plan and the plan shown in the brochure. The Respondent No. 1 could not have sold the floor area which does not actually exist on the ground or has not been approved by the competent authority. Therefore, the Complainants are seeking refund of sum of INR 7,35,569.50/-, which has been calculated on the basis of excess area multiplied (1388 1084.26sq. ft. 303.74 square feet) by the cost per square foot paid by the Complainants as per Annexure-C to the Agreement (INR 2425/-per Sq. Ft.) to their names from the previous owners. The Complainants claim 12% interest from the date of payment made by them to Respondent No. 1 to the date of actual payment to the Complainants.

13. That the Opposite Parties have further indulged in unfair trade practices by charging a sum of INR 50,000/- in the name of Club Membership Charges, whereas no club exists in the walled premises of the Complainant's Block. The Complainant No. 1 demanded a sum of INR 50,000/- from the officials

of OP No. 1 back as the Complainant was not being given any club facility. The OP No. 1 refused to return the money and showed an indemnity bond, which had been signed by the Complainant at the time of hand-over of possession of the Floor. OP No. 1 informed the Complainant No. 1 that he is free to do whatever he wants to and the OP No. 1 has fully secured itself from any legal action.

14. That the OP No. 1 has collected a sum of INR 1,38,800/- as transfer charges from the Complainants and the same is nowhere mentioned in any statute and/or government policy. The OP No. 1 has been charging "transfer charges" as per its whim and fancies. It is important to point out that if a person purchases the Floor from an owner who has already got the conveyance deed executed in his favour, the OP No. 1 merely charges a sum of INR 11,000/- (Approximately) as charges of recording "mutation" and there are no separate transfer charges payable by the floor buyer. However, in case the floor buyer purchased the floor from a floor buyer prior to execution of conveyance deed by OP No. 1, the OP No. 1 charges an exorbitant sum of INR 138.00 fixed and changes from case to case.

15. That the OP No. 1 has collected a sum of INR 74.582 in the name of Electrification and STP charges. One of the residents of B-Block filed an RTI Application with the offices of the HUDA, and in response, the Electricity Division as well as the HUDA have responded back by stating

that the Electrification Charges (Electric Sub-station) charges as well as cost of construction of STP are covered in the EDC charges. This clearly shows that the OP No. 1 has defrauded the Complainants by collecting the STP & Electrification charges in addition to the EDC Charges from them. Therefore, the Complainants urge this Hon'ble Commission that the monies collected in the name of STP & Electrification charges ought to be returned back to the Complainants.

16. That the Respondent No. 2 has indulged in unfair trade practice by collecting advance maintenance charges for 1 full year from the 91 day of letter of offer of possession and has since that day been raising regular bills for maintenance services. The Complainants case before this Hon'ble Commission is that OP No. 3 could not have levied any maintenance charges on the Complainants till the OC is obtained. Since the date of issuance of OC is 18 September 2020, this should be the cut-off date from which the Complainants should be liable to pay the maintenance charges. All the maintenance bills / invoices raised by OP No. 2 for the time period prior to September 2021 are illegal and non-payable by the Complainants.

17. That the Complainants seek refund of excess amount charged as EDC/IDC by Respondent No. 1. At the time when the booking was done, the EDC/IDC charges were calculated at the rate of 115.55 per square foot. Since the plot area of the Complainants' Plot is 250 square yards / 2250 square feet and

therefore, the EDC/IDC Charges leviable on the 25 square yards (2250 square feet) plot would have to equally divided int three floor owners. To simply the calculation, the formula is $115.5 \text{ (rate per square foot)} \times 2250 \text{ (size of plot)} / 3 \text{ (number of floors)} = \text{INR } 86,662.50/-$. The Respondent No. 1 has charged a sum of INR 1,60,382.07/- from the Complainants i.e. INR 73,720/- in excess of the permitted amount. The Complainants therefore seek a refund of INR 73,720/- on account of excess amount charged under the head of EDC/IDC.

18. That the Complainants seek refund of the Enhanced EDC (EEDC) of a sum of INR 97,829/-, which has been charged by Respondent No. 1 as the Respondent No. 1 has even suffered a judgment from the Division Bench of the Hon'ble High Court for the States of Punjab & Haryana in CWP No. 10659 of 2015, wherein the Respondent No. 1 has been directed to refund the enhanced EDC charged from the consumers. This has become a habitual practice of the builders like the Respondent No. 1 to extract money from flat buyers and floor buyers under various heads as per its whims and fancies.

19. That the Complainants also seek compensation for delay in hand over of the floor to the Complainants from Respondent No. 1. As per the original Floor Buyer Agreement, the possession of the Flat had to be delivered within a period of 30 months from 29 July 2010 and the said period ended on 29 January 2013. The Respondent No. 1 charged a transfer fee of INR



1,38,800/- from the Complainants for transferring the booking of the Flat from the original allottee to the Complainants. If the Complainants paid a hefty transfer fee it clearly means that the Complainants should have been endorsed as the owners in the original floor buyer's Agreement and ought to have stepped into the shoes of the original allottee and ought to have inherited the rights and responsibilities as the original allottee.

20. Therefore the Complainants are seeking compensation for delay in hand over of possession from the promised date of possession i.e. 29.01.2013 till 18.12.2015. There has been a delay of 34 months in hand-over of possession.

21. Feeling aggrieved, present complaint has been filed.

C. RELIEF SOUGHT

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

- i. Direct the Respondent No. 1 to refund a sum of INR 50,000/- collected in the name of "Club Membership Charges" along interest of 12% per annum from the date of receipt till the date of actual payment to the Complainants, as the OP No. 1 has not provided any club facility to the Complainants;



- ii. Direct the Respondent No. 2 to levy maintenance charges from 18/09/2020 i.e. the date of issuance of the OC and to accordingly adjust the maintenance charges already paid by the Complainants towards the maintenance charges, which would accrue from the date of issuance of the OC;
- iii. Direct the Respondent No. 1 to pay a sum of INR 784,582 /- collected from the Complainants in the name of "Electrification & STP" Charges as the same is already covered under the EDC charges collected by the Government from Respondent No. 1;
- iv. Direct the Respondent No. 1 to pay a sum of INR 97,829.42/- on account of excess money collected under the head of enhanced EDC charges;
- v. Direct the Respondent No. 1 to refund a sum of INR 34,100/- on account of illegal "Electricity Connection Charges";
- vi. Direct the Respondent No. 1 to pay a sum of INR 73,720/- to the Complainant on account of excess money being wrongfully charged under the head of EDC/IDC;
- vii. Direct the Respondent No. 1 to pay a sum of INR 7,35,569.50/- to the Complainant on account of excess

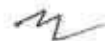
money being wrongfully charged for increase in super area from 1388 to 1084.26 square feet;

- viii. Direct the Respondent No. 1 to pay compensation for delay in handling over of possession to the Complainants from the date promised as per the first Floor Buyer Agreement till the date of actual Possession.
- ix. Direct the Respondent No. 1 to pay a sum of INR 50,000/- as compensation for mental agony and a sum of INR 25,000/- as litigation cost;
- x. Pass any other order as this Hon'ble Authority may fit and appropriate in the facts of the present case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondents filed detailed reply on 02.08.2023 pleading therein:

23. That the Respondent No.1 submits that the present Complaint is not maintainable before the I.d. Authority and is liable to be dismissed as the Complainants had bitterly failed to disclose any cause of action against the Respondent No.1. Admittedly, the conveyance deed was executed with the allottee on 08.01.2016 which marks the end of the contractual relationship between the parties and the present complaint was registered on 29.11.2022



(date of Performa-B), i.e. after 2511 days (6 years 10 months 21 days) and hence:

No cause of action persists after execution of conveyance deed;

As the conveyance deed was executed more than 6 years ago, the Complaint is barred by limitation;

RERA is not retrospective but retroactive. It is applicable only in ongoing contracts and not the contracts that are discharged, i.e. where the obligations of both the parties have been satisfied;

24. Copy of the Conveyance Deed dated 08.01.2016, has been annexed herewith as Annexure-R/I.

25. That as noted above, the Conveyance Deed was executed between the parties on 08.01.2016 and which marks the end of the contractual relationship between the parties and the present complaint was registered on 29.11.2022 (date of Performa-B), i.e. after 2511 days (6 years 10 months 21 days).

26. That the complainant, after having executed the Conveyance deed for more than 6 years, taking peaceful possession of the Unit, and having enjoyed such possession for such 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 I.d. Authority, Clause 3 of the Conveyance Deed is reiterated hereunder:

“3. The vacant and peaceful physical possession of the said Unit has already been handed over by the Vendor to the Vendee, and the Vendee acknowledges to have taken over the possession of the same after a detailed inspection of the Unit, on all material aspects including but not limited to area of the Unit, quality of construction, workmanship, materials used in construction, finishing /fittings, fixtures, specifications, etc., and the Vendee does not have any objection and is fully satisfied, with all aspects of the Unit. The Vendee further confirms that he has checked and verified the title of Confirming Parties in the said Land and is completely satisfied with respect to the same. Since the Vendee has completed due diligence of the Unit and the land underneath to his complete satisfaction, the Vendee undertakes not to raise a dispute on any of the above-mentioned aspects.”

27. That complete satisfaction of the Complainants and undertaking in respect of not raising such a dispute has estopped the Complainants from approaching this I.d. Authority in respect of any alleged grievance and is deemed to have waived any right in that regard. While adjudicating a Complaint where the Conveyance Deed was executed after similar inspection and satisfaction having been done, the I.d. Authority, Gurugram in *Renu Garg v Pioneer Urban Land & Infrastructure Ltd.* Complaint No. 3189 of 2019, dated

12.03.2020, on the basis of a similar clause in the conveyance deed, relied on the doctrine of waiver and dismissed the complaint.

28. That although there is no existing right after the execution of the Conveyance deed, however, regardless of the same, an estoppel may be resulted as is seen to have been done in the present case where, after due inspection, complete satisfaction, and continued enjoyment of the Unit, the Complainant is estopped from approaching this Ld. Authority at the present instance.

29. That after having raised no objection in any respect and enjoying the Unit for more than 6 years, the present complaint is devoid of any cause of action and is nothing but an abuse process of Law. It is submitted that a contract is deemed to be concluded after execution of the Conveyance Deed and hence the present Complaint is liable to be dismissed with heavy costs. That after having slept on his rights for a number of years, the Complainant cannot be rightly allowed to have the present claims. The transaction between the Complainants and the Respondent No.1 stands concluded and no right or liability can be asserted by the Respondent No.1 or the Complainants against each other.

30. That the complaint is barred by limitation. That Schedule I, Part II, No. 137 of the Limitation Act specifies that: "Any other application for which no period of limitation is provided else in this division: three years". In case, where no specific limitation period is mentioned in the Act, the limitation of

3 years applies. The Haryana RERA has taken cognizance of the same and has categorically noted that absence of a provision of limitation does not allow the Authority to take cognizance of the barred claims.

31. The Uttar Pradesh RERA (AO), Lucknow in

G. Narayan Swami v. Shauryapuram STPL Complaint No. ADJ/ NCR145/ 07/76878/2021 and

Anil Kumar v. Shauryapuram STPL Complaint No. ADJ/ NCR145/ 02/90626/2022:

has dismissed the cases where reliefs were sought after years of execution of the Conveyance Deed. The Authority noted that the content of the conveyance deed itself notes that the property was taken in full satisfaction of the allottee. It was further noted that at the time of execution of Conveyance Deed, the allottee took the possession of the unit. If the same was incomplete, the allottee should not have taken the same. Noting the aforesaid, the UP RERA dismissed the Complaints filed after execution of Conveyance Deed.

32. That the RERA Act, 2016 is not applicable to a contract concluded before the implementation of the Act- The Act is not retrospective but retroactive. That the contractual relationship between the parties came to an end on 23.12.2015, with the execution of the conveyance deed. That, it is a settled principle of law that the Real Estate (Regulation and Development) Act, 2016 is a retroactive legislation and not a retrospective legislation. The

Retroactive nature of any act creates a new obligation on the transactions but does not affect the previous ones. This was observed by the Hon'ble Apex Court in "Newtech Promoters and Developers Pvt Ltd Vs. State of U.P. and Ors. MANU/SC/1056/2021" where in the Hon'ble Apex Court answered the question of "Whether the Act 2016 (RERA) is retrospective in its operation and what will be its legal consequence if tested on the anvil of the constitution of India?".

33. That respondent no. 2 had filed reply in registry on 02.08.2023 stating that therein:-

- i. That the present Complainant has been filed in respect of unit no. B23-08-GF in the real estate project of Respondent No.1 known under the name and style of Park Elite Floors at Parklands, Faridabad. The Respondent No. 2 is a maintenance agency maintaining the upkeep of the Project in question.
- ii. That the answering Respondent being a Maintenance Agency, does not come within the ambit of the Real Estate (Regulation and Development) Act, 2016 (the "Act"). That the entire Act deals with the regulation of the conduct and affairs of three stake holders, as explained in the Act, which are: the allottee, the promoter and the agent.



- iii. That under no circumstance whatsoever, can the present case be entertained against the Maintenance agency, for which, this I.d. Authority has no jurisdiction.
- iv. That the Act being a special statute, cannot be extended to incorporate the scope of a maintenance agency within its ambit when the legislature, in fact, never intended to do so. The literal rule of interpretation has to be followed in such a circumstance which directs that a judge has to see what the statute says 'literally', i.e. plain simple meaning without any ambiguity. In the literal rule of interpretation, the law has to be considered as it is and the judges cannot go beyond 'litera legis'.
- v. That the entire Complainant does not specify any violation of the provisions of the Act by the answering Respondent and places no reliance whatsoever, on the sections of the Act, rules or regulations thereunder.
- vi. That the present complaint has been filed under section 31 of the Act, which, does not allow the present filing against the answering Respondent. The relevant part of section 31 is re-iterated hereunder:
“Section 31(1): Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and



regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be”.

- vii. The above-stated provisions enunciate the filing of a Complaint by any aggrieved person against grievances limited to only allottee, developer and agents.

E. ARGUMENTS OF COUNSEL FOR COMPLAINANT AND RESPONDENT

34. I.d. counsel for respondent, Sh. Hemant Saini, relied upon Section 11(4)

(a) of RIE (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 that 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.

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 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 has been specified throughout the scheme of 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.

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

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

2. Gurudevdatto 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)

W

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 1)

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 Lal 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. Gurudevdatto 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 1)

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.L.entin (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 I.)

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. He 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 (c) 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.

3

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 stand fulfilled. Development works are complete at site. After getting conveyance deed in year 2016, complainant has filed present complaint after expiry of around 6 years 10 months . It is a hopelessly time barred case. No entitlement is made out in favor of complainant to any of the reliefs sought. In support, he relied upon judgment dated 23.07.2026 passed in complaint no. 456/2024.

45. Ld. counsel for complainant, Sh. Dhruv Gautam has reiterated the submissions as made in his written pleadings. He further argued that respondent had handed over possession of unit without complete approvals/amenities. This fact is supported by the fact that occupation certificate was received on 18.09.2020, that is 4 years later to execution of conveyance deed. He pressed for awarding delay interest. In respect of issue of increase in area, he stated that possession of area less than the approved one has been provided to complainant. This fact had come into

knowledge only on receipt of occupation certificate dated 18.09.2020. Increase in area which is about 30% is not as per sanctioned plans. For the issue of area, limitation, if any be counted w.e.f. date of occupation certificate.

46. At this stage, complainant was asked to point out the objections if any made to respondent for the alleged claims/charges along with delay interest during 2016-2022?. No satisfactory response was given to it.

F. ISSUES FOR ADJUDICATION

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

G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

48. At the outset, respondent no. 1 has taken an objection that complainants had executed a conveyance deed dated 08.01.2016 and therefore, the transaction between the complainants and the respondent no. 1 has been concluded and no right or liability can be asserted by respondent no. 1 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 has signed 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 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 his 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 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. Factual matrix of the case is that a unit was booked by the original allottee in the project being developed by the respondent namely "Park Elite Floors" situated at Faridabad, Haryana in the year 2010. Builder buyer agreement for unit B-23-08-GF having area 1203 sq. ft. was executed between the original allottee (Debojyoti Roy) and respondent on 29.07.2010. In terms of clause 4.1, the possession of the unit was to be delivered within a period of 24 months from the date of agreement or on completion of 35% of BSP + 20% of EDC/IDC whichever is later. Complainant had purchased allotment rights from original allottee. However, date of endorsement has not been mentioned/ provided by the parties. An amount of ₹ 29,86,012.74/- has been paid by the complainants against the sale consideration of ₹ 22,37,003/-. It is pertinent to mention here that details/receipts of paid amount have not been annexed in

complaint file. Paid amount is taken from the offer of possession dated 11.09.2015.

53. 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 agreement or on completion of 35% of BSP + 20% OF EDC/IDC, whichever is later. As such, parties has not mentioned the date of completion of payment for 35% of BSP + 20% OF EDC/IDC. Drafting of this clause is vague and uncertain and heavily loaded in favour of the promoter. Incorporation of such clause in the buyer agreement by the promoter is just to evade the liability towards timely delivery of the unit and to deprive the allottee of his right accruing after delay in delivery possession. In light of these facts, the deemed date of possession is being calculated from the date of execution of floor buyer agreement, which comes out to 29.07.2012.

54. It is pertinent to highlight the 'Sequence of events' of the present case for better adjudication of claim of complainant. Same is incorporated in the table below:-

Sr. No.	Letters/correspondences/Payments	Issued/relied by	Contents of the documents
i.	Floor buyer agreement with original allottee(Debojyoti Roy)	Complainant's and respondent	Copy of agreement annexed in complaint as Annexure C-I.

		no. 1	
	Deemed date of possession works out to 29.07.2012 as per clause 4.1 of agreement. (Refer para 52 of this order)		
ii.	Complainants had purchased allotment rights of unit from original allottee. No documentary evidence providing date of endorsement has been annexed by any of the party.		
iii.	Offer of possession issued in name of complainants on 11.09.2015.	Complainant	Copy of offer of possession annexed at Annexure C-2 to complaint. Said offer was accompanied with demand of ₹ 6,22,493.87/- inclusive of ₹ 2,72,000/- for stamp duty charges.
iv.	Timeline for making the payment in acceptance of offer of possession was upto 12.10.2015. No detail of payment is provided in complaint file.		
v.	NOC for fit out was issued in favor of complainants on 18.11.2015	Complainant	Copy of NOC is annexed at page 60-62 of complaint file.
viii.	Maintenance and service agreement executed between BPMS Pvt Ltd and complainant on 02.12.2015.	Complainant	Copy of agreement is annexed at page 67 of complaint. Relevant clauses of agreement. <i>Clause F. Whereas the floor buyer/user has agreed to deposit and keep deposited with BPTP Ltd or its nominated maintenance agency as interest free maintenance security deposit at the rate of Rs 20/- per sq. ft. and to pay maintenance charges as may be decided by BPMS/Nominated maintenance agency in accordance</i>

			<i>with terms of this agreement.</i> <i>Clause 1.2 the billing cycle for the maintenance services shall start from 91st day of the expiry of period mentioned in offer of possession letter or execution of conveyance deed which is earlier (hereinafter commencement date. It is understood and acknowledged by the parties that for the purposes of this agreement in the event the unit buyer/user has failed to take possession of the said unit till the expiry of aforesaid period, the unit buyer/user shall be deemed to have taken possession as on the 90th day from expiry of period mentioned in the offer of possession letter and he shall become liable to pay maintenance charges w.e.f the commencement date.</i>
x.	Conveyance deed executed in favor of complainant on 08.01.2016.	Complainant and respondent.	Copy of conveyance deed annexed as Annexure C-5 to complaint and Annexure R-1 to reply. Relevant clauses <i>Clause 1 That for and in lieu of the total sale consideration of Rs 30,97,880/- which is already paid by the vendee to the vendor, the receipt whereof hereby acknowledged by the vendors, the vendors do hereby sell, convey, and transfer unto the vendee the aforesaid unit i.e. independent residential floor bearing no. B-23-08-GF, in Block-B having super built up area of 128.948 sq. mtrs. situated in Park Elite Floor, Sector-88, Faridabad.</i> <i>Clause 3-That the vacant and peaceful physical possession of said unit has been handed over by the</i>



			<i>vendors to the vendee and the vendee acknowledge to have taken over the possession of same after a detailed inspection of the unit on all material aspects including but not limited to its area of unit, quality of construction, workmanship, material used on construction, finishing/fittings, fixtures, specifications etc. and the vendee does not have any objection and is fully satisfied with all aspects of the unit. The vendee further confirms that he has checked and verified the title of confirming parties in the said land and is completely satisfied with respect to the same. Since the vendee has completed due diligence of the unit and the land underneath to his complete satisfaction, the vendee undertakes not to raise any dispute to any of the above mentioned aspects.</i>
xii.	No communication/letter/correspondence between the parties during the years ranging from 2016-2022. Present complaint filed on 22.12.2022.		

55. Vide order dated 04.12.2025, Authority had observed as follows:-

"Perusal of file reveals that complainant had got executed the conveyance deed on 08.01.2016. Present complaint has been filed on 22.12.2022, i.e. after lapse of time period of 6 years. Complainant is directed to place on record as to what steps/efforts have been taken by him to claim the delay interest from respondent during this period of 6 years. Further, complainant has claimed to have paid an amount as Rs 29,86,012/-, which is duly reflected in the offer of possession dated 17.09.2015. However, receipts are not attached in support."



56. Complainants have neither placed on record any communication/letters addressed to respondent during the period ranging from 2016-2022 nor has placed on record the receipts/proof of payments with dates in compliance of order dated 04.12.2025 till date.

57. Fact remains that complainants had duly accepted the offer of possession and had executed maintenance agreement with respondent no. 2 on 02.12.2015. Thereafter, complainants got conveyance deed executed in their favor on 08.01.2016. Now, present complaint has been filed on 22.12.2022 seeking delay interest from deemed date of possession till the date of actual possession. In para 21 of complaint pleadings, complainants admit that actual possession was handed over on 18.12.2015. No doubt that occupation certificate has been received by respondent no. 1 on 18.09.2020 but complainants had accepted the unit much prior to it in 2016 that too without any objection, i.e before RERA Act came into being. During the period ranging from year 2016-2022, no document revealing the correspondence/communication/efforts made by complainants to pursue their claim for delay interest is placed on record. Aforesaid table establish that no objection of any kind was made by the complainants towards the payments/delay interest/maintenance made to respondent.

58. Authority observes that the cause of action for the present complaint first arose in September,2015, when the possession was offered to complainants. Second, in December,2015 at the event of signing of maintenance agreement.



Thirdly, in year 2016 at time of execution of conveyance deed. However, at none of these instances, the complainants made any objection or file any complaint against the respondent. No written correspondence has been placed on record to establish that complainants after making whole of payment in year 2016 has forwarded any objection/request to have delay interest and refund of disputed charges. As such, complainants remained silent for good number of 6 years 10 months. Such inordinate delay indicates that the complainants failed to exercise due diligence and have raised the present claim long after the relevant cause of action arose. Further, the Authority notes that the complainants have failed to annex any documentary evidence showing that they ever communicated with the respondent for the purpose of seeking delay interest. The delay, coupled with the absence of any documented interaction between the parties regarding the issues of actual offer and delay interest, weighs heavily against the maintainability of the present relief.

59. It is a well-settled principle of equity that a litigant who sleeps over his rights for an inordinate period cannot later invoke the discretionary jurisdiction of a judicial forum to revive a stale claim. The doctrine of delay and laches is founded upon the maxim *vigilantibus non dormientibus jura subveniunt* i.e the law assists those who are vigilant, not those who slumber over their rights. The Hon'ble Supreme Court has repeatedly held that courts may refuse relief where a party approaches the adjudicatory forum after unreasonable delay without satisfactory explanation. In *Union of India v. N. Murugesan* (2022) 2 SCC 25,



the Court reiterated that the doctrine of laches involves negligence or remissness in asserting a right and that equitable relief may be declined where a litigant approaches the court after inordinate delay.

60. Closely allied to the doctrine of laches is the principle of acquiescence, which arises where a person, with knowledge of his rights, stands by and allows another party to act to its prejudice, thereby implying assent to the existing state of affairs. The Supreme Court has explained that while delay may bar a remedy, acquiescence may extinguish the very right itself. In *Power Control Appliances v. Sumeet Machines (P) Ltd.* (1994) 2 SCC 448, the Court observed that acquiescence implies conduct inconsistent with the enforcement of a right and may therefore preclude a litigant from raising the claim belatedly.

61. The Supreme Court has also emphasized that claims brought after long and unexplained delay ought not to be entertained as they disturb settled rights and create prejudice to the opposite party. In *State of Uttaranchal v. Shiv Charan Singh Bhandari* (2013) 12 SCC 179, the Court held that inordinate delay would “invite disaster for the litigant who knocks at the doors of the court belatedly,” and that courts must guard against entertaining stale claims which upset settled positions created over time. In support, reliance is placed upon judgement dated 18.04.2024 passed by Hon’ble Apex Court in Civil Appeal nos. 5027 of 2024 ((a) Special leave Petition (civil) no. 30152 of 2018) *Mrinmoy Maity versus Chhanda Koley and others.*



62. For highlighting the time period of each case, details are incorporated in the table below:-

Sr. No.	Complaint No.s	Date of conveyance deed	Date of filing of complaint
1.	1006/2023	08.02.2016	27.04.2023
2.	1010/2023	18.04.2016	27.04.2023
3.	1028/2023 (no relief of delay interest sought; only claim towards disputed charges)	31.05.2017	27.04.2023
4.	3184/2022	21.10.2016	19.12.2022
5.	3198/2022	08.01.2016	22.12.2022

63. Applying the aforesaid principles to the present case, the complainant admittedly accepted possession of the unit in the year 2015/2016 and has been enjoying ownership of unit continuously from last 7 years approx.. During this entire period, no grievance regarding delay in delivery of possession was raised before any competent forum. Such prolonged silence, coupled with the acceptance and enjoyment of the property, unmistakably indicates acquiescence in the alleged delay. Entertaining a claim for delay compensation after seven years would not only revive a stale cause but would also defeat the equitable principles governing adjudicatory discretion. Therefore, Authority is of the considered opinion that the complainants, having acquiesced in the situation by accepting and enjoying possession, cannot now be permitted to agitate a claim for delay interest. The said claim is therefore rejected.

64. In respect of relief clause (i),(iii), (iv), (v) and (vi), it is observed that the complainants are seeking relief of *'refund of illegal charged amount on account of club, Electrification and STP, EEDC, Electricity connection, and EDC/IDC.* Complainants have neither pleaded any communication/transaction nor any document revealing the illegality of charges have been placed on record nor the receipts/proof of payments of said amounts is available 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.

65. In respect of relief clause (ii), it is observed that complainants willingly executed maintenance agreement with respondent no. 2 on 02.12.2015. Now, the terms and conditions agreed upon in said agreement will prevail. Hence, no directions are passed against this relief.

66. In respect of relief clause (vii) pertaining to refund of Rs 7,35,569/- on account of increase in area from 1084.26 sq. ft to 1388 sq. ft, it is observed that complainants executed floor buyer agreement with respondent no. 2 on 29.07.2010 for unit no. B-23-08-GI' having area of 1203 sq. ft. Thereafter, offer of possession for same unit having area of 1388 sq. ft was issued to complainants on 17.09.2015. Complainants accepted said offer and proceeded



further for accepting possession without any protest. NOC for possession was signed by complainants on 18.12.2015 for area 1388 sq. ft. Conveyance deed for the allotted unit with area 1388 sq. ft. was executed in favor of complainant on 08.01.2016. Occupation certificate for the unit was received on 18.09.2020. Further, as stated in the reply of the respondent, at the time of receiving the possession the complainant had checked every aspect of the unit thoroughly. This is evidenced by the declaration (clause 3 of conveyance deed) of the complainant as below:-

"3. The vacant and peaceful physical possession of the said Unit has already been handed over by the Vendor to the Vendee, and the Vendee acknowledges to have taken over the possession of the same after a detailed inspection of the Unit, on all material aspects including but not limited to area of the Unit, quality of construction, workmanship, materials used in construction, finishing /fittings, fixtures, specifications, etc., and the Vendee does not have any objection and is fully satisfied, with all aspects of the Unit. The Vendee further confirms that he has checked and verified the title of Confirming Parties in the said Land and is completely satisfied with respect to the same. Since the Vendee has completed due diligence of the Unit and the land underneath to his complete satisfaction, the Vendee undertakes not to raise a dispute on any of the above-mentioned aspects."

Now, it is the stand of complainant that issue of area has come into knowledge only after issuance of occupation certificate. Fact remains that till 2016, complainants never objected to demand/charges on account of increased area. As per the facts submitted by the complainants, they got to know of the OC and its contents in 2020. Even then they did not raise any query/claim. No document/mail addressing to respondent for the increase in area is placed on

record. For more than two years of getting to know about the alleged discrepancy in the OC, the complainants were silent. It is only after that they decided to file the complaint in RERA for a cause of action that originally arose in 2015.

67. The gravamen of the complaint is that the area conveyed to the complainants under the registered Conveyance Deed dated 08.01.2016, namely 1,388 sq. ft. (128.948 sq. metres), exceeds the area allegedly sanctioned in the Occupation Certificate. The transaction, however, was not left executory. Possession had already been offered on 11.09.2015 and, thereafter, a registered instrument of conveyance was consciously executed and accepted by the complainants on 08.01.2016, expressly recording the identity as well as the area of the property conveyed. The present proceedings were instituted only on 22.12.2022, after 2541 days, i.e. nearly six years and eleven months after execution of the conveyance deed. A statutory adjudicatory forum cannot be converted into a forum for reopening transactions which have attained finality merely because the governing enactment does not prescribe an express period of limitation. The principle underlying statutes of limitation is one of repose and public policy: rights are required to be asserted with reasonable diligence and stale claims ought not ordinarily to be judicially revived. In *State of Madhya Pradesh v. Bhailal Bhai*, AIR 1964 SC 1006, and subsequently in *R.S. Makashi v. I.M. Menon*, (1982) 1 SCC 379, the Hon'ble Supreme Court recognised that, even where the Limitation Act does not in terms govern the proceeding, the

periods prescribed by the law of limitation furnish a useful standard for determining whether a claim has become stale. The Constitution Bench in *Tilokchand Motichand v. H.B. Munshi*, 1970 AIR 898, similarly emphasised that judicial remedies are not intended to resurrect antiquated claims after unreasonable inaction.

68. The plea that the discrepancy came to the complainants' knowledge only in January 2020 does not, in the facts pleaded, furnish a satisfactory answer to such prolonged inaction. What is material is not merely the date on which a party asserts that it actually acquired knowledge, but whether the alleged discrepancy could, by exercise of reasonable diligence, have been discovered earlier. The complainants had accepted possession and thereafter executed a registered conveyance in respect of a specifically identified constructed floor whose area was expressly mentioned in the instrument. The Occupation Certificate, on which the present claim itself is founded, was a statutory document pertaining to the very building in which the premises were situated. There is no pleaded or established circumstance demonstrating that the said document had been fraudulently concealed from the complainants or that they were prevented from obtaining or examining it despite reasonable diligence. The Supreme Court, while considering the analogous principle contained in Section 17 of the Limitation Act, has held that a litigant seeking postponement of the commencement of limitation on the ground of later discovery must satisfy the requirement of reasonable diligence; the mere assertion of a subsequent date



of discovery is not determinative. Reliance is placed upon *Silla Jayarama Gupta v. State of Andhra Pradesh*, Civil Appeal No. 4416 of 2010, order dated 13.02.2020, and *M. Siddiq (D) Thr. LRs v. Mahant Suresh Das*, (2020) 1 SCC 1, wherein the Court reiterated that the benefit of postponed discovery cannot be claimed where the matter could have been discovered through reasonable diligence.

69. Nor can the complainants overcome the consequences of delay by describing the alleged deficiency in area as a continuing cause of action. The distinction between a continuing wrong and the continuing effect of a completed wrong is well settled. In *Union of India v. Tarsem Singh*, (2008) 8 SCC 648, following *Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan*, AIR 1959 SC 798, the Hon'ble Supreme Court explained that where the wrongful act is complete, the mere continuance of its consequences does not constitute a continuing wrong. In the present case, assuming the allegation to be correct for the limited purpose of considering maintainability, the alleged wrong stood crystallised at the latest when possession was accepted and the Conveyance Deed dated 08.01.2016 was executed for the stated area. The alleged lesser sanctioned area is a consequence flowing from that completed transaction; it does not constitute a fresh statutory breach occurring from day to day. Having accepted the conveyance and remained inactive for several years, without any satisfactory explanation for not verifying the sanctioned area within a reasonable period, the complainants



cannot now seek reopening of a concluded transaction through a stale claim. The complaint, insofar as it seeks relief founded upon the alleged discrepancy in area, is accordingly liable to be rejected on the ground of gross and unexplained delay, laches and acquiescence.

70. There is yet another, and independent, reason why the relief sought cannot be granted. The registered Conveyance Deed dated 08.01.2016 was the final juridical instrument by which title in the identified floor was transferred to and accepted by the complainants. The property conveyed, including its stated area of 1,388 sq. ft. (128.948 sq. metres), stood expressly incorporated in that instrument. The complainants accepted the conveyance, obtained title thereunder and permitted the transaction to remain unquestioned for several years. There is neither a contemporaneous protest nor any pleaded material demonstrating that the Conveyance Deed was executed under coercion, undue influence, fraud or under a reservation of rights regarding the area mentioned therein. While execution of a conveyance deed does not, by itself and in every circumstance, extinguish statutory rights of an allottee, the conduct surrounding such execution is unquestionably relevant while examining whether a subsequently asserted claim is defeated by acquiescence, waiver or estoppel.

71. The distinction assumes particular significance in view of the judgment of the Hon'ble Supreme Court in *Experion Developers Private Limited v. Himanshu Dewan and Sonali Dewan & Ors.*, Civil Appeal No. 1434 of 2023, decided on 18.08.2023, 2023 INSC 748. The controversy before the Hon'ble

Supreme Court itself concerned sale area, payments made in respect thereof, execution of conveyance deeds and a subsequent challenge by the allottees. The Court expressly noticed the plea that the purchasers had made payments without demur or protest and had thereafter accepted conveyance deeds, and observed that the issue of acquiescence and estoppel arising from such conduct required independent adjudication. Significantly, the Court distinguished *Wing Commander Arifur Rahman Khan v. DLF Southern Homes Pvt. Ltd.*, (2020) 16 SCC 512, where the purchasers had effectively been compelled to choose between preserving their claims and obtaining possession and conveyance. The Hon'ble Supreme Court held in *Experion Developers* that the protection afforded in *Arifur Rahman Khan* arose from those peculiar circumstances and that, absent material establishing coercion, pressure or compulsion, the effect of voluntary acceptance and subsequent conduct must be separately examined.

72. The factual distinction is decisive in the present matter. The complainants do not plead that Respondent No. 1 compelled them to execute the Conveyance Deed dated 08.01.2016. The complainants thus accepted the benefit of a completed conveyance and allowed the instrument to govern the rights of the parties for nearly seven years before invoking the jurisdiction of this Authority. A party cannot ordinarily approbate a completed transaction for years and thereafter seek to reprobate an essential recital of that very transaction when no fraud, coercion or other legally cognisable circumstance explaining such conduct is established.



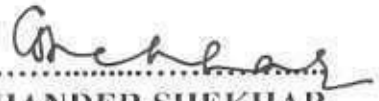
73. The Authority is conscious that a conveyance deed cannot operate as an instrument by which a promoter contracts out of mandatory obligations imposed by the Real Estate (Regulation and Development) Act, 2016. Nor can mere execution of a conveyance extinguish a statutory cause of action which had already accrued and which an allottee was compelled to surrender as the price of obtaining possession or title. *Wing Commander Arifur Rahman Khan* is clear authority for that proposition. The present case, however, stands on a materially different footing. The very foundation of the present complaint is a challenge, raised years later, to the area expressly embodied in and accepted under the conveyance itself.

74. Consequently, quite apart from the gross delay and laches already noticed, this Authority finds that the complainants' voluntary acceptance of the registered Conveyance Deed, retention of its benefits without contemporaneous objection, and prolonged silence thereafter constitute material acquiescence which disentitles them to the discretionary relief now claimed. The challenge to the area conveyed cannot, after such lapse of time and in the absence of circumstances vitiating consent, be permitted to unsettle a transaction which the parties themselves treated as concluded. Hence, no directions are passed against this relief.

75. In respect of relief clause (viii), it is observed that the complainants are also seeking relief of compensation for mental 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 complainants are free to approach the Adjudicating Officer for seeking the aforementioned reliefs.

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


CHANDER SHEKHAR
[MEMBER]


DR. GEETA RATHEE SINGH
[MEMBER]


PARNEET S. SACHDEV
[CHAIRMAN]