

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB  
SCO No. 95-98, Bank Square, P.F.C Building, Sector-17-B, Chandigarh

Subject: -

**APPEAL NO. 201 of 2022**

Ashok Kumar Chauhan S/o Sh. M.R. Chauhan aged about 58 years old R/o Durga Niwas below Himfed Building, B.C.S. New Shimla, Shimla

...Appellant

Versus

Shushma Buildtech Limited through its Managing Director(s)/ Partners(s)/ Authorized Representative(s)

**Office Address:** Unit No.B-170, Business Complex, Elante Mall, 1<sup>st</sup> Floor, Industrial Area, Phase 1, Chandigarh - 160002

....Respondent

Memo No. R.E.A.T./2023/ **367**

To,

REAL ESTATE REGULATORY AUTHORITY, PUNJAB 1<sup>ST</sup> FLOOR,  
BLOCK B, PLOT NO.3, MADHYA MARG, SECTOR-18,  
CHANDIGARH-160018.

Whereas appeal titled and numbered as above was filed before the Real Estate Appellate Tribunal, Punjab. As required by Section 44 (4) of the Real Estate (Regulation and Development) Act, 2016, a certified copy of the order passed in aforesaid appeal is being forwarded to you and the same may be uploaded on website.

Given under my hand and the seal of the Hon'ble Tribunal this **12th day of October 2023.**

*T. Chandan Singh*  
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

**BEFORE THE HON'BLE REAL ESTATE APPELLATE TRIBUNAL,****PUNJAB AT CHANDIGARH**

APPEAL NO. 201 OF 2022 IN  
COMPLAINT - GC NO. 0325 OF 2021

**MEMO OF PARTIES**

ASHOK KUMAR CHAUHAN S/O SH. M.R. CHAUHAN AGED ABOUT  
58 YEARS R/O DURGA NIWAS BELOW HIMFED BUILDING, B.C.S.  
NEW SHIMLA, SHIMLA

.....APPELLANT

VERSUS

SHUSHMA BUILDTECH LIMITED THROUGH ITS MANAGING  
DIRECTOR(S)/PARTNER(S)/AUTHORIZED REPRESENTATIVE(S)

**OFFICE ADDRESS:** UNIT NO. B-170, BUSINESS COMPLEX,  
ELANTE MALL, 1<sup>ST</sup> FLOOR, INDUSTRIAL AREA, PHASE 1,  
CHANDIGARH – 160002

.....RESPONDENT

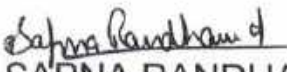
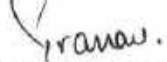



PLACE: CHANDIGARH

DATE: 05.09.2022

  
HIMANSHU RAJ,

  
ANSHU CHAUDHARY

  
SAPNA RANDHAWA,   
PRANAV GOYAL &   
KUNAL MEHTA

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**THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT  
CHANDIGARH**

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**APPEAL No.201 OF 2022**

Ashok Kumar Chauhan S/o Sh. M.R. Chauhan aged about 58 years old R/o Durga Niwas below Himfed Building, B.C.S. New Shimla, Shimla

...Appellant

Versus

Shushma Buildtech Limited through its Managing Director(s)/ Partners(s)/ Authorized Representative(s)

**Office Address:** Unit No.B-170, Business Complex, Elante Mall, 1<sup>st</sup> Floor, Industrial Area, Phase 1, Chandigarh - 160002

....Respondent

\*\*\*

**Present: -** Mr. Himanshu Raj, Advocate for the appellant.  
Mr. Sanjeev Sharma, Advocate for the respondent.

**CORAM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN  
SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.),  
MEMBER (JUDICIAL)  
ER. ASHOK KUMAR GARG, CHIEF ENGINEER (RETD.),  
MEMBER (ADMN./ TECH.)**



**JUDGMENT: (JUSTICE MAHESH GROVER (RETD.), CHAIRMAN)  
(Oral)**

1. The appellant is in appeal against the order dated 13.06.2022 passed by the Real Estate Regulatory Authority (hereinafter known as the Authority).
2. The appellant is an allottee who was allotted an apartment No.901 in Tower-I of residential project being developed by the respondent. The possession of the apartment as per the agreement dated 10.02.2014 was to be delivered within a period



of 36 months + 6 months grace period. The possession, however, was not given within the stipulated time even though according to the appellant he had paid a sum of Rs.56.67 lacs against the total sale price of Rs.53,54,600/-. Offer of possession was finally made in February 2021 but was not considered valid by the appellant in the absence of the Occupancy Certificate. With this grievance of a delayed possession in the backdrop of the facts noticed above, the complaint was filed with a prayer that directions be issued to the respondent to handover possession of the apartment and interest be awarded for the delayed period.

3. The respondent contested the complaint and asserted that possession was duly taken by the appellant on 23.04.2021, even before the complaint was filed but this fact was not disclosed to the Authority. Apart from this an agreement was executed by the appellant with the respondent on 07.04.2021 whereby both the parties had settled the matter amicably. Even this fact was concealed by the appellant and thus the entire complaint was an abuse of the process of law. Reliance was placed by the respondent on the decision rendered by the Hon'ble Supreme Court in "*Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Versus DLF Southern Homes Pvt Ltd.*" (now known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil Appeal No.6239 of 2019).

4. The appellant filed a rejoinder and contended that settlement referred to by the respondent was signed under coercion and duress and hence not binding. Since the offer of possession was without the Occupancy Certificate in February 2021 the



appellant was not obliged to take possession and neither was he under any compulsion to pay any further amount. The provision in the agreement for compensation etc. was one-sided and hit by the decision of the Hon'ble Supreme Court in "*Pioneer Urban Land & Infrastructure Ltd. Versus Govindan Raghavan*" (Civil Appeal No.12238 of 2018).

5. The Authority concluded that the challenge to the validity of the settlement on the plea of coercion and duress was unacceptable in the absence of any evidence to support such an allegation. It reasoned that settlement was arrived in a spirit of mutual understanding and the appellant could not resile from. It thus concluded the agreement dated 07.04.2021 to be a valid document and while relying on the decision of "*Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Versus DLF Southern Homes Pvt Ltd.*" (now known as *BEGUR OMR Homes Pvt. Ltd.*) and Ors. (Civil Appeal No.6239 of 2019) (supra) the complaint was dismissed.

6. While impugning the aforesaid findings of the Authority the learned counsel for the appellant contends that the agreement dated 07.04.2021 was a result of unfair practice indulged in by the developer to derive advantage from the exploitative situation in which the allottee was placed. Apart from that it is contended that the possession was to be given within 36 months which would imply possession of a completed unit by at least 31.01.2017 since the agreement was signed on 10.02.2014. Six months grace period cannot be automatically included unless it is shown to the Authority that there were reasons which





warranted the grant of such a concession. It was argued that no such evidence was brought on record by the respondent and thus the interest for delayed possession had to be construed from February 2017 till April 2021 when complete possession was given to the appellant.

7. On the other hand learned counsel for the respondent contends that once the agreement dated 07.04.2021 was signed as a pre-requisite to possession and in complete settlement of the issues inter se between the parties. No cause would survive to the appellant and the complaint merited dismissal, as the appellant could not raise any dispute by backtracking from such a settlement. Besides it was vehemently argued that these facts of settlement etc. were not specifically pleaded in the complaint which would imply concealment of facts with dismissal of complaint as a consequence.

8. We have heard the parties at some length.

9. The first and foremost contention of the respondent that there has been concealment of facts is belied by the averments made in the complaint where the appellant has specifically mentioned that "the offer of possession and the agreement entered into between the parties is annexed as Annexure C7 (Colly) and the complainant had no other choice except to enter into it as there was a considerable delay from the side of the OP in giving the possession and the complainant was facing huge financial loss due to this. That the OP had misrepresented the facts which is an unfair trade practice on the part of the OP as per Section 7(1)(c) of the RERA Act."



10. A perusal of the above is indicative of a positive assertion by the appellant stating the factum of settlement and questioning it on the ground of unfair trade practice and duress. The contention of the respondent is, therefore, negated in this regard.

11. So far as the issue of validity of such an agreement is concerned where the developer obtains an undertaking from the allottee that possession would be given subject to his signing a clear exoneration of the developer of all the wrongdoings, we have already held in appeal No.144 of 2022 titled "*Kiran Pal Gupta & Anr. versus Sushma Buildtech Limited*" that such an agreement is not sustainable in law.

*"19. The first and foremost issue that engages our attention is the affidavit submitted by the appellants while obtaining possession on 08.03.2019, wherein he had given up his right to raise any dispute or claim against the residential unit, the possession of which was offered to them on the condition of executing this affidavit.*

*20. To our minds the developer cannot insist on such conditions to be imposed upon an anxious allottee at the time of delivery of possession, as this would certainly imply an unfair trade practice, when the allottee being in no position to question the developer is subjected to execution of a document that can hardly be said to be free of duress.*

*21. The observations of the National Consumer Disputes Redressal Commission, New Delhi can be adopted to support our reasoning. Therefore the insistence of the respondent that no complaint or any issue could be raised qua the residential unit in view of this undertaking/ affidavit is outrightly discarded."*

12. By compelling a person to sign a document before offering possession the delay of 4 years could not be wished away to debar the appellant from availing his statutory remedies. The judgment of the Hon'ble Supreme Court in "*Wg. Cdr.'s case* is





totally on a different footing and not attracted to the facts of the case.

13. The judgment in Arifur Rahman's case is distinguishable on facts. There were different sets of people (allottees) which were dealt with and categorized accordingly in that case. Some had entered into written settlement deeds while a few others had executed the conveyance deeds either before filing the complaints or during the course of proceedings or even after the judgment before the Consumer Commission. The Hon'ble Supreme Court was dealing with the appeal arising of the proceedings under the Consumer Act.

14. The Hon'ble Supreme Court did not approve the view of the National Consumer Disputes Redressal Commission (NCDRC) and had observed that flat purchasers who had obtained possession or executed deeds of conveyance cannot be deprived of their right to make a claim for compensation for delayed possession by the developer. It is to be noticed that in one set of allottees the developer had executed settlement deeds with 11 allottees who had recorded satisfaction qua aspects development of the flats including maintenance etc. There was thus a very clear distinction made in the judgment between cases where certain agreements were signed and those where conveyance deeds had been executed. The Hon'ble Supreme Court deprecated one-sided agreements that had an impact of forcing an allottee to sign an agreement before handing over possession as they were suggestive of an exploitation of an allottee who was confronted with no choice after having parted with huge sums of money and the possession threatening to remain illusory until he signed on the dotted lines. Besides the case was under the Consumer Protection Act which does not have the rigors of the Real Estate Regulation Act. Hence this above judgment is not attracted to the case and the argument of the respondent deserves rejection.

15. This now brings us to the question of relief that the appellant would be entitled to since we have already observed that the





APPEAL No.201 OF 2022

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appellant could not be debarred from availing his statutory remedies and reliefs under the Act.

16. Section 18 contemplates that if a delay has been caused in handing over possession to the allottee as promised then he would be entitled to interest for the delayed possession. There is no doubt that 36 months period was envisaged which would bring the promised date of possession to February 2017 whereas the possession was actually handed over on 07.04.2021. Consequently the appellant would be entitled to statutory interest at the rate prescribed under the Act and the Rules framed thereunder for this period. The period of 6 months as grace period envisaged in the agreement is not an automatic addition to the period prescribed for handing over possession as it has to be established by the developer that 6 months period is warranted on account of reasons which have to be spelt out in detail. Without pleading and establishing such a fact any delay beyond the promised period cannot be granted automatically. Therefore, we hold that the appellant would be entitled to interest from February 2017 till April 2021. The appeal is allowed as above.



Sd/-  
**JUSTICE MAHESH GROVER (RETD.)**  
CHAIRMAN

Sd/-  
**S.K. GARG, D & S. JUDGE (RETD.)**  
MEMBER (JUDICIAL)

*x separate opinion*  
**ER. ASHOK KUMAR GARG, C.E. (RETD.),**  
MEMBER (ADMINISTRATIVE/TECHNICAL)

October 9<sup>th</sup>  
September \_\_\_\_\_, 2023

CND *lf*

Certified To Be True Copy

*Dhanraj Kumar*  
Registrar  
Real Estate Appellate Tribunal Punjab  
Chandigarh

12/10/2023 *B*

Appeal No. 201 of 2022

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BEFORE THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB  
AT CHANDIGARH

APPEAL NO. 201 OF 2022

**Ashok Kumar Chauhan** s/o Sh. M.R. Chauhan aged about 58 years r/o  
Durga Niwas Below Himfed Building, B.C.S. New Shimla, Shimla

.....Appellant

Versus

**Sushma Buildtech Limited** through its Managing Director(s)/  
Partner(s)/Authorized representative(s) **Office address:** Unit No. B-  
170, Business Complex, Ellante Mall, 1<sup>st</sup> Floor, Industrial Area, Phase  
1, Chandigarh-160002

.....Respondent

**Present:** Mr. Himanshu Raj, Advocate for the appellant.  
Mr. Sanjeev Sharma, Advocate for the respondent.

**QUORUM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN**  
**SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.),**  
**MEMBER (JUDICIAL)**  
**ER. ASHOK KUMAR GARG, CHIEF ENGINEER**  
**(RETD.), MEMBER (ADMN./TECH.)**



**JUDGMENT:** (ER. ASHOK KUMAR GARG, CHIEF ENGINEER  
(RETD.), MEMBER (ADMN./TECH.) – HIS VIEW)

1. By this order, I shall dispose of above mentioned appeal bearing Appeal No. 201 of 2022 (**Ashok Kumar Chauhan versus Sushma Buildtech Limited**) filed against order dated 13.06.2022 passed by the then Chairperson of the Real Estate Regulatory Authority, Punjab (*hereinafter referred to as the Authority*) in complaint bearing GC No. 03252021 instituted on 16.08.2021.



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2. Mr. Ashok Kumar Chauhan (*the appellant in the present appeal, hereinafter may also be referred to as the complainant, the allottee or the buyer*) filed his complaint against Sushma Buildtech Limited (*the respondent in the present appeal, hereinafter may also be referred to as the promoter or the builder or developer or the seller*) in Form 'M' before the Authority under Section 31 of the Real Estate Regulation and Development Act, 2016 (*hereinafter referred to as the Act*) and Rule 36(1) of the Punjab State Real Estate Regulation and Development Rules, 2017 (*hereinafter referred to as the Rules*), whereby the complainant has prayed the Authority to direct the respondents to (i) hand over the actual legal possession after having the completion certificate and occupation certificate; (ii) to pay interest in terms of Section 18 of the Act on the amount deposited from the date of deposit on account of delayed possession; and (iii) to penalize the respondent for violating the provisions of section 12 of the Act.

The complainant, in his aforesaid complaint filed on 16.08.2021, has inter alia alleged/claimed that (i) he booked a flat, in the respondent's project namely 'Sushma Crescent' located at village Gazipur, MC Zirakpur, District S.A.S. Nagar; (ii) that on 28.01.2014, he was allotted Apartment No. 901, having super area of 2,380 square feet, in Tower I; (iii) that on 10.02.2014, the respondent executed the Apartment Buyer Agreement dominated by the terms favourable to the respondent; (iv) that the appellant had no other choice except to enter into the said agreement as a considerable amount was paid by that time; (v) that as per clause 14(d) of the agreement, the possession of the apartment was supposed to be handed over within 36+6 months from the date of agreement i.e. by 10.08.2017, which never happened; (vi) that the



complainant had timely paid more than 90% of the total consideration by 2015; (vii) that as per the agreement, the respondent will be paying the meagre amount of Rs.5/- per square foot to the complainant for not giving the possession on time, which also the respondent defaulted in paying after few payments; (viii) that if the complainant defaults in making timely payments, then compound interest @ 24% will be charged from the complainant; (ix) that the respondent kept on sending the demand letters to the complainant without achieving the construction stages of the project; (x) that on 07.10.2016, the respondent sent a termination letter to the complainant for not paying a nominal amount whereas the respondent itself was defaulting in giving possession since 4 years; (xi) that after considerable delay, the respondent offered possession without having completion and occupation certificates from the competent authority; (xii) that the complainant had no other choice except to enter into an agreement (**Annexure C-7 Colly.**) as there was a considerable delay by the respondent in giving the possession and the complainant was facing huge financial loss due to this.



4. The respondent-builder, in its written statement/reply dated 01.02.2022 to the said complaint, have inter alia contended (i) that the complaint is not maintainable as the possession was duly offered by the respondent on 02.02.2021 to take over the same by 02.03.2021, followed by reminder on 14.04.2021 and has been taken by the complainant after settling all claims with the respondent by entering into a settlement agreement dated 07.04.2021 (**Annexure R-15**); (ii) that as per clauses 2 and 3 of the agreement dated 07.04.2021, the complainant undertakes and affirms not to raise any further demand for any compensation,



interest or refund in any manner whatsoever and not to file any sort of litigation in any court of law in terms of the agreement; and all concerns, claims and grievances stood redressed to entire satisfaction of the complainant; (iii) that compensation for delay in possession in terms of buyer agreement has already been paid to the complainant who has accepted and encashed the same as per the settlement agreement dated 07.04.2021; (iv) that Hon'ble Supreme Court, in its judgment dated 24.08.2020 in Civil Appeal No. 6239 of 2019 titled as **Wg Cdr Arifur Rehman versus DLF Southern Homes Pvt Ltd**, has held that persons who have already settled and agreed to accept delayed compensation are not entitled for any additional relief, which was granted to the other allottees in those appeals and were bound by their settlement/agreement; (v) that partial completion certificate dated 15.12.2017 has been obtained and the complainant has already taken physical possession of his flat; (viii) that the price of the apartment was Rs.60,91,725/- and Rs.1,13,822/- was payable towards delayed interest out of which a sum of Rs.80,000/- was waived by the respondent (*but aforesaid settlement agreement dated 07/23.04.2021 reveals that the delay payment interest of Rs.80,000/- has been adjusted, thus meaning that only Rs.33,822/- have in fact been agreed to be waived*) and holding charges of Rs.3,171/- have been adjusted and a sum of Rs.4,03,961/- (*out of Rs.4,87,132/- as mentioned in aforesaid settlement agreement dated 07/23.04.2021*) has been paid to the complainant towards delay in offer of possession as per agreement dated 07.04.2021; (ix) that the Authority has already dismissed the complaints like the one bearing GC No. 1826 of 2021 (**Manas Chhabra and**



**another versus Sushma Buildtech Limited**), wherein settlement agreement was executed.

5. The appellant, in his rejoinder dated 16.03.2022, has inter alia submitted that (i) the partial completion certificate, which is subject to the fulfilment of certain conditions, cannot be equated with the occupancy certificate; (ii) that Hon'ble State Consumer Dispute Redressal Commission, Punjab, under paragraph 26 of its decision dated 02.01.2019 in Complaint No. 230 of 2016 (**Capt. U.C. Arora versus M/s Barnala Builders and others**), has held that possession offered to the complainant (without obtaining completion/occupation certificate) was nothing more than a paper possession and therefore the possession dated 23.04.2021 is not legal one; (iii) that the settlement agreement was signed under duress and coercion coupled with other circumstances; (iv) that delay compensation @ 9% and 12% on the paid amount of Rs.56,67,604/- comes out to be Rs.23,65,952/- and Rs.31,54,603/- respectively for the period from 10.08.2017 i.e. the promised date of possession; whereas the respondent has paid only Rs.4,03,961/- as delayed possession compensation.



6. The complainant, vide his email dated 08.06.2022, has sent his written arguments to the Authority, wherein the complainant has additionally relied on sections 23 and 28 of the Indian Contract Act 1872 to demonstrate that the settlement agreement was not a valid agreement.

7. After considering the arguments raised by the counsel on 30.05.2022 but without taking into account the written arguments sent by the counsel for the complainant to the Authority vide aforesaid email dated 08.06.2022, the Authority passed order dated



13.06.2022, the concluding and operative part of which reads as under:-

"4. Arguments were heard on 30.5.2022 and the case was fixed for pronouncement of order on 13.6.2022. On 8.6.2022 however an email was received from the office of Shri Himanshu Raj, Counsel for the complainant with an attached document titled 'final written arguments'. It may be noted that written arguments were not asked for at any stage of the proceedings. Further, it is an essential feature of transparent proceedings before a quasi-judicial authority that both sides are given an opportunity to rebut the arguments of the other. This prerequisite was fulfilled in this case since arguments of both parties had already been heard on 30.5.2022 and the matter fixed for orders. One side cannot thereafter be allowed to make further submissions in the absence of the other. The written arguments do indeed contain some new issues e.g. the settlement being violative of Sections 23 & 28 of the Indian Contract Act, 1872. Therefore these written arguments are not taken into account and this order is based only on the arguments raised by Counsel in the hearing of 30.5.2022.

5. It may be noted that in Wg. Cdr. Arifur Rahman Khan and Aleva Sultana (supra) the Supreme Court had held that 'it would only appropriate and proper if the purchaser who had entered into a specific deed of settlement is held down to the terms of this bargain.' Shri Himanshu Raj contended that this ruling was not applicable to the present case. He pointed out that in the Supreme Court case there was a finding that there was no coercion and undue influence upon the allottees. However, in the present case the complainant had been forced to sign the settlement deed. The following issues have been raised in support of his contention:

- i. The complainant was entitled to payment of interest at the prescribed rate for the period of delay, and the fact that in the settlement deed he had agreed to accept a much smaller amount was a sign of the coercion brought upon him.
- ii. There was time gap of nearly three months between the offer of possession and the signing of the settlement deed.

6. On the other hand Shri Sanjeev Sharma, Counsel for the respondent highlighted the settlement deed between the parties and contended that the complainant was estopped from filing the present complaint. After this settlement the complainant had taken possession on 23.4.2021 and had also given an affidavit (Annexure R-11\* with the reply) about his satisfaction in this regard. He also drew attention to an email dated 6.4.2021



(page 26 of the complaint) submitted by the complainant in which it was clearly mentioned that as per the discussion between the parties he had completed his part of the bargain and the respondent should do the same. [\* probably should have been R-14]

7. The rival contentions have been carefully considered. It may be noted that the issue of validity of the settlement is the crucial question in this matter, and the other issues raised in the complaint and rejoinder (as noted in para 3 above) would be relevant only if this issue is decided against the respondent. As noted above, the main challenge to the settlement has been on the ground that it was procured by the respondent through use of coercion and duress. To my mind however there is no evidence to support this allegation. It is a fact of life that settlements are arrived at in a spirit of mutual understanding and that of give and take. All parties to a settlement forgo some part of their perceived entitlement in order to put an end to the dispute. Hence, the mere fact that the complainant accepted a smaller amount under the settlement than he might have been entitled to under Section 18 of the Act is not enough to prove the allegation of coercion. Further the fact that there was a time lag between the signing of the settlement and the taking over of possession does not cast any doubt over the transaction. Thus, the agreement dated 7.4.2021 is held to be valid and duly executed. Once that is so the ratio of Wg. Cdr. Arifur Rahman Khan and Aleya Sultana (supra) holds sway and it is clear that the complainant cannot go back on his words and seek any further relief.

8. This complaint is accordingly dismissed."

8. Aggrieved by the aforementioned order dated 13.06.2022 of the Authority, the appellant-complainant filed his appeal dated 05.09.2022/22.11.2022, wherein the appellant, in the grounds of his appeal, have inter alia contended as under:-

- (i) that though section 23 and 28 of the Indian Contract Act, 1872 were not pleaded in the main complaint, but the settled principle of law is that the legal arguments/law points ought not to be pleaded and can be introduced/raked up at any stage of proceedings;
- (ii) that the technicalities shall not come in the way of justice as emphasized by Hon'ble Justice Krishna Iyer in **State of**





**Punjab and another versus Shamlal Murari and another** [1976 AIR 1177, 1976 SCR (2) 82] and as observed by Hon'ble Supreme Court in **Collector Land Acquisition versus Katiji** [1987 (2) SCC 107];

(iii) that if the contents of the settlement agreement are to be read in light of the provisions of sections 23 and 28 of the Indian Contract Act, 1872, the conditions specified therein are contrary to the basic principles of law of contract on the grounds that (a) interest on delayed payments @ 24% on monthly compounded basis as per clause 7.4(b) of the buyer agreement is against the provisions of the RERA Act; (b) that actual amount to be paid on account of delayed possession, if calculated @ 9%, comes to a tune of Rs.21,19,994/- for the period between 10.02.2017 and 07.04.2021 whereas only Rs.4,03,961/- has been paid by the respondent to the appellant and no justification has ever been provided by the respondent as to why the complainant would waive off the balance huge amount of Rs.17,16,033/-, thus the said consideration of the settlement agreement is forbidden by section 23 of the Indian Contract Act, 1872 and the settlement deed, estopping the appellant from enforcing his statutory right, is void in terms of section 28 of the Indian Contract Act, 1872.

(iv) that the appellant signed the one sided settlement agreement, undertaking and satisfaction certificate (possession formalities) and took possession of the unit under coercion and undue influence, inter alia because (a) the complainant had no other choice as there was a



considerable delay from the respondent's side in giving possession and consequently the appellant was facing huge financial loss; (b) because offer of possession letter dated 02.02.2021 directed the appellant to complete the take-over of possession formalities by 02.03.2021 and the said letter stated that if the appellant fails to take possession by said date i.e. by 02.03.2021, the developer shall be entitled to levy withholding charges @ Rs.5/- per square foot per month for period of delay in taking over the possession; (c) because its hard to believe that the settlement agreement, signed by the appellant thereby giving up his valuable rights (interest/compensation amount to the tune of Rs.21,19,994/- calculated @ 9% from 10.02.2017 to 07.04.2021 on the amount of Rs.56,67,604/- paid by the appellant, just for payment of an amount of Rs.4,03,961/- as delayed compensation), was executed in a free atmosphere and does not give rise to any suspicion; (d) because other allottees of the same project (like Swaraj Bhushan Lalit in complaint bearing GC No. 0317 of 2021), who refused to sign such unfair, one-sided agreements/undertakings have still not been given possession of their units and are being charged for the same @ 24%; (e) because Hon'ble NCDRC, in its order dated 03.01.2020 in consumer case No. 351 of 2015 (**Capital Greens Flat Buyer Association and others versus DLF Universal Limited**), has held that "*the execution of indemnity-cum-undertaking would defeat the provisions of sections 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy,*





*besides being an unfair trade practice*"; (f) because findings of the Authority in paragraph 7 of the impugned order i.e. *"All parties to a settlement forgo some part of their perceived entitlement in order to put an end to the dispute"* is not applicable to the facts of present case as the appellant is entitled to statutory interest for delayed possession and nothing to take from the complainant.

- (v) that the appellant, vide email dated 20.02.2021, conveyed his disagreement with the unfair terms of the offer of possession letter as flat was not completed, there was some dispute in calculating charges on service tax as well as delaying interest part and he was not compensated as per the guidelines of Hon'ble Supreme Court by paying interest for the delay period, but due to his personal financial hardship clubbed with inordinate delay in delivering the possession of the unit, the appellant had to sign the pre-draft and one-sided settlement agreement/undertaking/satisfaction certificate pertaining to the incomplete unit.

that section 18 of the Act stipulates for the statutory right of the allottee against the obligation of the promoter to deliver the possession within the stipulated time frame and in case of failure to do so, to pay interest for delayed possession or refund the entire amount deposited by the allottee;

- (vii) Citing paragraphs 17(vi)(f) and 37 of the judgment of Hon'ble Supreme Court titled as **Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Others versus DLF Southern Homes Pvt Ltd (now Known as BEGUR**



OMR Homes Pvt. Ltd.) and others in Civil Appeal No. 6239 of 2019 and Civil Appeal No. 6303 of 2019 decided on 24.08.2020, the appellant has contended that the said judgment is not applicable to the facts and circumstances of the present case, as the decision taken by Hon'ble Supreme Court in those matters is based on the factum that the ground qua coercion was never conveyed to the court prior to the filing of reply shortly before the final hearing.

(viii) that in similar circumstances Hon'ble Apex Court, in Civil Appeal No. 535 of 1994 (**United India Insurance versus Ajmer Singh Cotton & General Mills**), has held that *"mere execution of the discharge voucher would not always deprive the consumer from preferring claim with respect to the deficiency in service or consequential benefits arising out of the amount paid in default of service rendered. Despite execution of the discharge voucher, the consumer may be in a position to satisfy the Tribunal or the Commission under the Act that such discharge voucher or receipt had been obtained from him under the circumstances which can be termed as 'fraudulent' or 'exercise of undue influence' or by 'mis-representation' or the like. If in a given case the consumer satisfies the authority under the Act that the discharge voucher was obtained by 'fraud', 'mis-representation', 'under influence' or the like, 'coercive bargaining' compelled by the circumstances, the authority before whom the complaint is made would be justified in granting appropriate relief". (Emphasis supplied).*





That a practice has developed whereunder the insured is asked to sign on a pre-prepared discharge voucher as a pre-condition for receiving payment, which has been commented upon in a number of judicial pronouncements that furnishing of such discharge vouchers does not come in the way of right to seek adjudication of unpaid/wrongfully denied claims through arbitration or by taking recourse to the jurisdiction of the consumer courts.

(ix) that the judgment of Hon'ble Apex Court in Wg. Cdr. Arfur Rehman (Supra) was a judgment given under the Consumer Protection Act, where there is no provision of statutory interest for delay in delivering the possession, whereas section 18 of the RERA Act has bestowed upon the allottees a statutory right to ask for interest at the rate prescribed under the Rules for such default on the part of the builder, and no settlement can prevent the allottee from seeking the same, especially in the light of the cardinal principle of law that there cannot be an estoppel against the statute.

(x) that the offer of possession dated 02.02.2021 was not a valid offer of possession since it was made without having the requisite occupancy/completion certificate for Tower I, in which the unit in question is situated, issued by the competent authority and was without materializing the basic amenities assured/promised at the time of booking;

(xi) that the completion/occupancy certificate dated 15.12.2017, issued subject to certain conditions for the Blocks A(2), B(2) and C(2) of phase-1 of the project,



nowhere specifies that the occupancy/completion has been granted in respect of Tower-I;

(xii) that letter dated 31.08.2020, relied upon by the respondent, nowhere clarifies/mentions anything about issuance of OC/CC for Tower-I way back in the year 2017.

9. During the arguments before this Tribunal on 14.09.2023, the counsel for the appellant has inter alia contended that in similar matters, judgment dated 27.09.2022 has been passed by this Tribunal in Appeal No. 44 of 2022 (**Kiran Pal Gupta and another versus Sushma Buildtech Limited and others**) and Appeal No. 45 of 2022 (**Manas Chhabra and another versus Sushma Buildtech Limited and others**) filed against two separate orders, both dated 22.10.2021 and passed by the Authority in complaints bearing GC No. 18252020 and GC No. 18262020, whereby it has been inter alia held that the appellants/allottees of those matters cannot be denied the relief under section 18 of the Act and has to be paid statutory interest by the developer for the delay in possession. It has also been contended by him thereby that the Developer could have taken grace period of six months, in terms of provisions made under clause 14(d) of the apartment buyer's agreement, only if the possession had been given within such grace period.



**MY FINDINGS:**

10. The appellant booked the apartment/flat in question by paying Rs.6,55,096/- vide cheque dated 24.11.2013 and also paid Rs.22,00,000/- vide cheque/DD dated 15.01.2014 before issuance of allotment letter dated 28.01.2014 and also before execution of apartment buyer's agreement dated 10.02.2014, as per clause 2 of



which the Basic Sale Price (BSP) of the apartment is Rs.53,54,600/-. Thus, the respondent violated the provisions of the Punjab Apartment and Property Regulation Act, 1995 (*hereinafter referred to as the PAPRA*) by accepting more than 25% amount before entering into an agreement.

11. The respondent, vide its allotment letter dated 28.01.2014 issued with reference to appellant's application dated 24.11.2013 (not placed on record), confirmed the booking of residential apartment/flat No. I-901 in Tower I, admeasuring 2,380 square feet (Super Area) in the project in question for basic sale price (BSP) of Rs.53,54,600/- plus other charges as specified therein, under the construction linked payment plan (1) opted by the appellant **and informed the appellant that he shall sign the Apartment Buyer Agreement as per the respondent's standard format**, as mentioned in the conditions of application. [Emphasis laid]
12. The appellant and the respondent (*hereinafter referred to as the parties*) entered into apartment buyer's agreement dated 10.02.2014, some of its clauses, that are relevant to the present controversy, are reproduced below:

"3.2 CONSTRUCTION LINKED PAYMENT PLAN-I

INSTALLMENT NO	TIME WHEN DUE	% OF BSP	AMOUNT PAYABLE (IN Rs.)
1	BOOKING AMOUNT	10% of BSP	5,35,460/-
2	WITH IN 45 DAYS OF BOOKING	25% of BSP + PLC	13,38,650/- + 3,00,000/-
3	ON START OF FOUNDATION	10% OF BSP + FPC + ADDITIONAL CHARGES (if applicable)	5,35,460/- + NIL
4	ON START OF GROUND FLOOR ROOF SLAB	10% OF BSP + POWER BACKUP	5,35,460/- + 40,000/-
5	ON START OF 2 <sup>nd</sup> FLOOR ROOF SLAB	10% OF BSP	5,35,460/-
6	ON START OF 5 <sup>th</sup> FLOOR+ ROOF SLAB	10% OF BSP + CLUB MEMBERSHIP	5,35,460/- + 40,000/-
7	ON START OF 8 <sup>th</sup> FLOOR ROOF SLAB	10% OF BSP	5,35,460/-



8	ON START OF BRICK WORK	5% OF BSP	2,67,730/-
9	ON START OF FLOORING	5% OF BSP	2,67,730/-
10	ON OFFER OF POSSESSION	5% OF BSP + IFMS	2,67,730/- + 71,400/-
11	ON OFFER OF POSSESSION	STAMP DUTY + ANY OTHER CHARGES	STAMP DUTY + ANY OTHER CHARGES

**“7.4 Other Charges and Miscellaneous terms: (a) ---  
-----XXXXXXXXXXXXXXXXXX-----.**

**(b) If there is delay or default in making payment of the installments by the Buyer, then the Buyer shall pay to the Developer interest which shall be charged @ 24% per annum from the due date of payment of installment on monthly compounded basis. -----XXXXXX-----**

**(c) -----XXXXXX-----.”**

**“14. Possession: (a) -----XXXXXXXX-----.**

**(b) -----XXXXXXXX-----.**

**(c) -----XXXXXXXX-----.**

**(d) The Developer shall endeavour to give possession of the said Unit to the Buyer within a period of Thirty Six(36) months from the date of the execution of this Agreement unless and until restrained by circumstances beyond its contemplation and control and subject to timely payment by the allottee. Besides, the Developer can take six months grace period for completing and handing over the said Unit to the Buyer. The Developer shall hand over the said Unit to the Buyer for his occupation and use and subject to the Buyer having complied with all the terms and conditions of this Agreement. In the event of his failure to take over and/ or occupy and use the said Unit provisionally and/ or finally allotted within thirty (30) days from the date of intimation in writing by the Developer for such occupancy, the same shall lie at his risk and cost and the Buyer on the sole discretion of the Developer,**





*shall be liable to pay compensation/holding charges @ Rs.5/- per sq. ft. of the super built-up area per month as holding charges for the entire period of such delay. On the other hand, if the Developer fails to give possession of the said Unit within the aforesaid period then the Developer shall pay to the Buyer compensation/penalty @ Rs. 5/- per sq. ft. of the super built-up area per month for the entire period of such delay. The adjustment of compensation shall be done at the time of conveying the said Unit and not earlier. The said compensation shall be a distinct charge in addition to maintenance charges and not related to any other charges as provided in this Agreement. However it is clarified that the Developer shall send its intimation regarding the handing over of the possession to the Buyer at his/her address which has been provided by him/her at the time of deposit of earnest money unless modified/alterd by way of Courier / Registered A.D. letter and / or personal receipt of letter regarding the change of address before that at the office of the Developer mentioned herein."*

13. As per demand letters, payment receipts, ledger account, statement of account, etc placed on record before this Tribunal, the status of demand raised by the respondent from time to time, payments made thereagainst by the allottee, and interest demanded by the respondent from the appellant for delay in payments etc is as under:-

Particular	Demand letter dated	Amount demanded (including tax) (in Rs.)	Due date given in demand letter etc	Interest demand made on 07.10.16 @ 24%/ 05.02.20/ 02.02.21	Amount paid (in Rs.)	Date of payment
Booking amount		5,52,006	24.11.13		6,55,096	24/26.11.13
Within 45 days of booking		17,17,094	08.01.14	29,340/ 32,861/ 32,861	22,00,000	15.01.14



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On start of foundation		5,52,006	08.01.14	10,210/ 11,435/ 11,435		
On start of ground floor roof slab		5,96,950	08.01.14	14,511/ 16,252/ 16,252	5,62,959	16/18.02.14
On start of 2 <sup>nd</sup> floor roof slab	13.03.14	5,52,006 (-) 15,000 received	28.03.14	3,768/ 4,220/ 4,220	5,37,006	07/11.04.14
On start of 5 <sup>th</sup> floor roof slab	19.06.14	5,96,950	04.07.14	22,325/ 25,004/ 25,004	5,96,951	01.09.14
On start of 8 <sup>th</sup> floor roof slab	06.04.15	5,52,005	25.04.15	11,971/ 13,408/ 13,408	5,52,005	28/29.05.15
On start of brick work	02.06.16	2,79,778	21.06.16	19,012/ 68,843/ 26,294	2,29,000	01.11.16
On start of flooring	20.12.19	2,99,858 + 50,777	05.01.20	0/ 6,112/ 13,441	2,66,257	10.02.20
On offer of possession	02.02.21	3,71,258 + 1,42,915 (interest)	22.02.21		4,02,123	05.04.21
<b>Total</b>				<b>1,11,137/ 1,78,135/ 1,42,915</b>		

*Note-1: As per Ledger Account (01.04.2013 to 03.03.2017), out of the basic sale price of Rs.53,54,600/- for the unit, the closing balance after accounting for an amount Rs.5,52,005/- on 28.05.2015 was only Rs.2,50,583/- i.e. less than 5% of the basic sale price of the unit which was, therefore, payable on offer of possession. In spite of that, the respondent raised demand even towards basic sale price of the unit vide demand letters dated 02.06.2016 and also issued termination letter dated 07.10.2016 (vide which the respondent also demanded interest amounting to Rs.1,11,137/- @ as high as 24%, must be compounded monthly as per provisions in the apartment buyer agreement, as detailed in above table), whereas possession (which was due in the year 2017) was offered vide letter dated 02.02.2021 i.e. much later than the promised period. Similarly, the respondent raised demand inter alia towards basic sale price of the unit vide demand letters dated 20.12.2019 and also issued termination letter dated 05.02.2020 (vide which the respondent also demanded interest amounting to Rs.1,78,135/- as detailed in above table), whereas as per provisions under clause 9 of the Form 'Q' appended to the Rules as the format for the agreement for sale prescribed under rule 8 pursuant to provisions of section 13(2) of the Act, if the promoter fails to provide possession within specified time, then the allottee is entitled to stop further payments demanded by the promoter till the promoter corrects the situation by completing the construction milestones and only thereafter the allottee will be required to make next payment without any penal interest.*

*Note-2 It is evident from the above table that there is wide variation in the interest demanded on 07.10.2016, 05.02.2020 and 02.02.2021 by the respondent on various instalments. It still differs in other documents like 'Applicant File' dated 01/02.02.2022 (where total interest claimed is Rs.1,08,378/-), alleged settlement agreement dated 07/23.04.2021 (where total interest claimed is Rs.1,13,822/-) etc.*

*Note-3 The respondent has charged interest even for the period prior to the acceptance of appellant's application for booking the apartment vide its allotment letter dated 28.01.2014 and before execution of agreement whereas he has accepted an amount of Rs.28,55,096/- by 15.01.2014 in contravention of the provisions of the PAPRA.*





*Note-4 In view of provisions of the section 19(7) of the Act, for any delay in payments by the allottee, the promoter is entitled to charge interest only at the rate prescribed under rule 16 of the Rules. On the other hand, in view of proviso under sections 18(1) of the Act, for any delay in handing over the possession of the unit to the allottee, the promoter is liable to pay interest to the allottee.*

14. The respondent, vide its possession letter dated 02.02.2021, inter alia (i) informed the appellant that the unit is ready for possession; (ii) informed him that final payment of Rs.5,41,393/- (= Rs.58,06,000/- towards basic sale price and other charges + Rs.2,01,951/- towards Service Tax + Rs.58,130/- towards GST + Rs.1,42,915/- towards interest - Rs.56,67,604/- as total received amount) as per demand letter of even date is required to be made on or before 22.02.2021; (iii) requested him to comply with the "take-over of possession formalities" by 02.03.2021 as per the buyer's agreement; (iv) informed him that in the event he fails to take possession of the unit on the "Date of Possession", the respondent shall be entitled to levy withholding charges @ Rs.5/- per square foot per month for the period of delay to be calculated from the "Date of offer of Possession" till the date on which he will take actual possession of the unit.
15. In response to offer of possession/demand letter dated 02.02.2021, the appellant vide its email dated 20.02.2021, informed the respondent that he had a meeting with the respondent's person on 19.02.2021 and discussed the following issues with her:-
- (i) That the flat is still not complete and there is dampness in 30% walls which will take at least 15 days to get dry and after which paint will be done as advised by site in-charge.
  - (ii) That there is some discrepancy in calculation of the charges on service tax and delay interest.
  - (iii) That the appellant was not compensated as per the guidelines of Hon'ble Supreme Court by paying interest for the delay in possession.



- (iv) That she promised to look into these issues soon and convey to the appellant accordingly.

The appellant, therefore, requested the respondent vide aforesaid email dated 20.02.2021 to look into the matter and convey the final date of possession to the appellant.

16. Further, vide email dated 01.03.2021, the appellant wrote to the respondent that the respondent agreed with the statement of interest calculations prepared and rectified by the appellant but the respondent was not satisfied with the appellant's calculations for service tax amounting to Rs. 1,62,514/- whereas it was Rs. 1,99,766/- as per the respondent; and demanded final calculation sheet for compensation/penalties payable to the appellant, interest, service tax and net payable.
17. The appellant, vide his email (page 127 of the paper-book of the present appeal, may be the one dated 06.04.2021 referred to in paragraph 6 of the impugned order quoted above), informed the respondent as under:-



*"As per discussion held on dated 27.03.2021, we have deposited the sum of Rs 4,02,123/- wide UTR No-UCBAR52021040500030369.*

*Hence you are requested to kindly release our penalty payment as per agreement immediately. This is for your kind information & further necessary action please."*

18. The appellant, vide his email dated 19.04.2021, while referring to the respondent's Whatsapp message dated 12.04.2021 that flat will be ready on that day i.e. 19.04.2021 for the appellant visit/inspection, requested to confirm the same so that the appellant could plan his tour accordingly and reach on 20.04.2021.



19. In the meantime, the agreement dated 07.04.2021 (**Annexure R-15**, page 203 to 204 of the paper-book) was ostensibly got drafted by the respondent and the same reads as under:-

**"AGREEMENT"**

*This AGREEMENT is made and executed at Chandigarh on this the 07<sup>th</sup> day of April, 2021 ("Effective Date");*

**BY AND BETWEEN**

*Mr. Ashok Kumar Chauhan, S/o Sh. M. R. Chauhan R/o Durga Niwas, Below Himfed Building, B.C.S. New Shimla, HP- 171009 jointly referred to as the "FIRST PARTY" (which term shall include his/her/their legal heirs, successors, executants and legal representatives), of the FIRST PART;*

**AND**

*SUSHMA BUILDTECH LIMITED, a Company incorporated under the Companies Act, 1956 (as amended from time to time), having its registered office at B-107, First Floor, Business Complex at Elante Mall, Industrial Area, Phase 1, Chandigarh (U.T.), hereinafter referred to as "DEVELOPER", acting hereby through its Authorized Signatory (which term shall include its successors, subsidiaries, nominees, executors, associates and assigns), of the OTHER PART.*

*The First Party and the Developer may also be collectively referred to as "Parties" and individually as "Party", as the context may require.*

**WHEREAS:**

- A. *The Developer is engaged in the business of real estate development, and is in the process of setting up and developing a residential project named as 'Sushma Crescent' inter alia in Village Gazipur, Kishanpura MC Zirakpur, District S.A.S. Nagar (Mohali) Punjab (hereinafter referred to as the "Project").*



- B. *The First Party had applied for a unit in the aforesaid Project developed by the Developer, being Unit No.901, Tower "I", 09<sup>th</sup> Floor, admeasuring 2380 sq. ft. Super Area ("Said Unit"), and in this regard the First Party entered into an Apartment Buyer's Agreement dated 10/02/2014 with the Developer, setting out the terms and conditions for the purchase of the Said Unit.*
- C. *The First Party, having admitted the delayed possession by the Developer due to certain force majeure circumstances, has expressed to the Developer that they should be remitted a mutually agreed upon delayed possession penalty amount, till the offer of possession to be issued by the Developer in terms of the present agreement. The First Party has also undertaken and assured not to file any sort of litigation, complaint, whether civil, consumer or criminal, against the Developer seeking any further compensation, interest or refund and also undertakes to withdraw the complaint(s)/case(s), if already, filed by the First Party against the Developer or its Directors/authorized representatives, employees, etc.*
- D. *As a matter of goodwill gesture and an exception, the Developer has agreed to consider the request of the First Party, provided that this shall not be considered precedence for any further default by the First Party and the First Party shall honor the terms and conditions of the present Agreement without any reservation or condition of any kind whatsoever.*
- E. *The Parties hereto have mutually agreed to record the terms of present agreement in the manner hereinafter appearing.*



**NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:**

1. *That the First Party was under an obligation to remit delayed payments interest to the tune of Rs. 1,13,822/- (Rupees One Lakh Thirteen Thousand*



*Eight Hundred and Twenty two only) and holding charges of Rs 3171/- (Rupees Thirty Thousand Eight Hundred and Fifty Three only) which has been derived in terms of the allotment / unit buyer's agreement. Pertinent to mention here that the Developer was also under an obligation to remit an amount of Rs. 4,87,132/- (Rupees Four Lakh Eighty Seven Thousand One Hundred and Thirty Two only) to the First Party on account of delayed possession penalty in terms of unit buyer's agreement executed between the Parties hereto. In terms of an amicable settlement arrived at, between the Parties hereto, the delay payment interest of Rs.80,000/- out of Rs. 1,13,822/- and Holding charges of amount Rs. 3171/- has been adjusted against delay possession penalty and First Party has unconditionally accepted the said amount of Rs. 4,03,961/- towards compensation for delayed possession of the Said Unit. The said amount has been remitted in favour of the First Party vide cheque, detail of which is mentioned hereunder, and acknowledged and accepted by the First Party unconditionally:*

Sr. No.	Cheque No.	Dated	Drawn On	Amount
1	555984*	20.05.2021*	PNB Bank CHD.*	4,03,961/-*

\* These figure, date, text and amount have been filled in hand later on and are missing in the copy attached with the complaint (part of Annexure C-7 and is available at page 151 to 153 of the paper-book).

- The First Party hereby undertakes and affirms that they shall not raise any further demand for any compensation, interest or refund in any manner whatsoever and not file any sort of litigation, whether civil, consumer or criminal in future in any court of law in terms of the present agreement. Also, the First Party, without any demur, condition or delay, hereby, undertakes and affirms to withdraw the already filed complaints or cases (whether civil or criminal), if any, before any judicial / police / economic offence wing authority(ies).*



3. That in view of the present agreement, all concerns, claims and grievances stand redressed to entire satisfaction of the First Party and nothing stands pending against the Developer and/ or any of its officers, employees, agents etc. in any manner whatsoever.
4. That the First Party categorically agrees and undertakes to respect the terms and conditions of this Agreement by keeping the same confidential and further assures the Developer not to divulge or dissimilate contents of this agreement to any third party.
5. That either of the Parties acknowledges and confirms that this Agreement shall be irrevocable in nature and is made with free will and without any coercion and duress of any kind whatsoever on the Parties hereto.
6. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof, and supersedes any prior oral or written agreements, commitments or understandings with respect to the matters provided for herein.
7. That the original copy of this agreement shall be retained by the Developer and the duly notarized photocopy of the same shall be kept by the First Party for their respective records.

**IN WITNESS WHEREOF**, the Parties have set and subscribed their hands to this Agreement on the day and year first hereinabove written.

**FIRST PARTY**

**DEVELOPER**

Sd/-

Sd/-

(Mr. Ashok Kumar Chauhan)

(AUTHORIZED SIGNATORY)

WITNESSES: -

1. Sd/-

2. Sd/-

-----XXXXXX-----

-----XXXXXX-----

ATTESTED AS IDENTIFIED

Sd/-





---XXXXX---

23 APR 2021"

20. It may be noted that the agreement is stated to be executed on 07.04.2021 and attested on 23.04.2021. However, the alleged settlement amount of Rs.4,03,961/- is stated therein to have been remitted in favour of the appellant vide cheque dated 20.05.2021.
21. In order to decide as to whether aforementioned agreement dated 07/23.04.2021 is a genuine settlement deed to estop the appellant's claim of interest for delay in delivery of possession in terms of proviso to section 18(1) of the Act or the said agreement is void as claimed by the appellant in terms of sections 23 and 28 of the Indian Arbitration Act, 1872, the bargain (give and take) between the parties in terms of the said agreement dated 07/23.04.2021 is required to be examined.
22. There is no doubt that the promoter was aware at the time of the said agreement executed in April 2021 about his liability under section 18 of the Act to pay interest for every month of delay at least from 10.08.2017 (the due date of giving possession worked out after taking a grace period of six months for completing and handing over the unit to the buyer) till the handing over of the possession at the rate prescribed under rule 16 of the Rules.
23. The respondent, vide its letter dated 02.02.2021, requested the appellant to comply with the "take-over of possession formalities" by 02.03.2021 and take possession.
24. Thus, interest liability of the promoter on account of delay in possession in terms of section 18 of the Act works out to be more than Rs.23 lakh @ 9% per annum and more than Rs.31 lakh @



12% per annum as per estimation made by the appellant in his rejoinder dated 16.03.2022.

25. Even as per clause 14(d) of the apartment buyer's agreement dated 10.02.2014, the liability @ Rs.5/- per square foot of super build up area of 2,380 square feet of the unit per month for delay in possession even after 10.08.2017 works out to be Rs.4,87,132/- as has been mentioned in the aforementioned agreement dated 07/23.04.2021.

26. While offering possession vide aforesaid letter dated 02.02.2021, the respondent raised a demand of Rs.5,41,393/- (= Rs.58,06,000/- towards basic sale price and other charges + Rs.2,01,951/- towards Service Tax + Rs.58,130/- towards GST + Rs.1,42,915/- towards interest - Rs.56,67,604/- as total received amount) to be made on or before 22.02.2021; and in the event of failure to take possession of the unit on the "Date of Possession", withholding charges @ Rs.5/- per square foot per month for the period of delay to be calculated from the "Date of offer of Possession" till the date on which he will take actual possession of the unit.

27. In response to offer of possession/demand letter dated 02.02.2021, the appellant vide its email dated 20.02.2021, informed the respondent that he had a meeting with the respondent's person on 19.02.2021 and discussed the following issues with her:-

- (i) That the flat is still not complete and there is dampness in 30% walls which will take at least 15 days to get dry and after which paint will be done as advised by site in-charge.
- (ii) That there is some discrepancy in calculation of the charges on service tax and delay interest.





- (iii) That the appellant was not compensated as per the guidelines of Hon'ble Supreme Court by paying interest for the delay in possession.
- (iv) That she promised to look into these issues soon and convey to the appellant accordingly.

The appellant, therefore, requested the respondent vide aforesaid email dated 20.02.2021 to look into the matter and convey the final date of possession to the appellant.

28. Further, vide email dated 01.03.2021, the appellant wrote to the respondent that the respondent agreed with the statement of interest calculations prepared and rectified by the appellant but the respondent was not satisfied with the appellant's calculations for service tax amounting to Rs.1,62,514/- whereas it was Rs.1,99,766/- as per the respondent; and demanded final calculation sheet for compensation/penalties payable to the appellant, interest, service tax and net payable.
29. The appellant, vide his email (page 127 of the paper-book of the appeal, may be the one dated 06.04.2021 referred to in paragraph 6 of the impugned order quoted above), informed the respondent that as per discussion held on 27.03.2021, the appellant has deposited the sum of Rs.4,02,123/- vide UTR No. UCBAR52021040500030369 (on 05.04.2021) and requested the respondent to immediately release the appellant's penalty payment as per agreement.
30. The appellant, vide his email dated 19.04.2021, while referring to the respondent's Whatsapp message dated 12.04.2021 that flat will be ready on that day i.e. 19.04.2021 for the appellant



visit/inspection, requested to confirm the same so that the appellant could plan his tour accordingly and reach on 20.04.2021.

31. As per section 19(10) of the Act, the allottee is required to take physical possession of the apartment within a period of two months the occupancy certificate issued for the apartment; and as per clause 7.2 of the format of agreement for sale prescribed pursuant to the provisions of section 13(2) of the Act (the said format is appended to the Rules as Form 'Q'), the promoter, upon obtaining the occupancy certificate or such other certificate from the competent authority shall offer in writing the possession of the apartment to the allottee in terms of the agreement to be taken within three months from the date of issue of such notice.
32. Upon payment of an amount of Rs.4,02,123/- on 05.04.2021 and only after execution of aforesaid agreement dated 07/23.04.2021, the possession of the unit was given to the appellant on 23.04.2021.
33. Thus, there is no delay on the part of the appellant in taking the possession. Hence, the respondent was not entitled to charge withholding charges amounting to Rs.3,171/- or interest for delay in payments which were due after the promised date of possession.
34. Charging of interest by the respondent for alleged delay in payments by the appellant before the execution of the apartment buyer's agreement dated 10.02.2014 is also not justified and cannot be allowed.
35. Thus, the respondent could have at the most charged interest for delay in the following payments at the rate prescribed under rule 16 of the Rules but only till the promised date of possession (i.e. 10.08.2017 as per my opinion); and such interest, even if notionally calculated @ 12% per annum just for the sake of





knowing the approximate liability of the appellant on this count, works out to be about Rs.37,162/- only as shown in the last column of the following table:-

Particular	Demand letter dated	Amount demanded (including tax) (in Rs.)	Due date given in demand letter etc	Date of payment (later one wherever two dates are there)	Amount paid (in Rs.)	Notional interest @ 12% per annum
On start of 2 <sup>nd</sup> floor roof slab	13.03.14	5,52,006 (-) 15,000	28.03.14	11.04.14	5,37,006	2,472
On start of 5 <sup>th</sup> floor roof slab	19.06.14	5,96,950	04.07.14	01.09.14	5,96,951	11,579
On start of 8 <sup>th</sup> floor roof slab	06.04.15	5,52,005	25.04.15	29.05.15	5,52,005	6,170
On start of brick work	02.06.16	2,79,778	21.06.16	01.11.16 10.08.17 (promised date of possession)	2,29,000 50,778	10,013 6,928
<b>Total</b>						<b>37,162</b>

36. As per the said agreement dated 07/23.04.2021, under the so called amicable settlement, out of alleged obligation of the appellant to remit delayed payments interest to the tune of Rs.1,13,822/- and holding charges of Rs.3,171/- derived in terms of allotment/apartment buyer's agreement, the delayed payment interest of Rs.80,000/- and entire holding charges have been adjusted out of the admitted liability of the respondent amounting to Rs.4,87,132/- and only the balance amount of Rs.4,03,961/- is stated to be remitted vide cheque dated 20.05.2021 in favour of the appellant; whereas as per provisions of the Act and the Rules as demonstrated above, no holding charges were leviable and the liability of the appellant on account delay in payments interest even at the notional rate of 12% per annum works out about Rs.37,162/- only.

37. Hence, so called amicable as settlement mentioned in the aforementioned agreement dated 07/23.04.2021 is a farce.



38. Moreover, against the demand of Rs.5,41,393/- (which included an amount of Rs.1,42,915/- towards interest charged for delay in payments) raised by the respondent vide letter dated 02.02.2021, the appellant paid an amount of Rs.4,02,123/- on 05.04.2021 even after contesting vide his email dated 01.03.2021 that as per appellant's calculations, service tax amounting to Rs. 1,62,514/- was payable instead of Rs.1,99,766/- as calculated by the respondent. However, aforesaid demand dated 02.02.2021 has been raised on the basis of total service tax amount of Rs.2,01,951/- (*i.e. demand of Rs.5,41,393/- = Rs.58,06,000/- towards basic sale price and other charges + Rs.2,01,951/- towards Service Tax + Rs.58,130/- towards GST + Rs.1,42,915/- towards interest - Rs.56,67,604/- as total received amount*). From these facts, it is evident that out of the Rs.4,02,123/- paid by the appellant on 05.04.2021, at least an amount of Rs.3,645/- (= Rs.1,42,915/- being interest demanded vide letter dated 02.02.2021 - Rs.1,39,270/- being the reduction in total final demand from Rs.5,41,393/- vide possession/demand letter dated 02.02.2021 to Rs.4,02,123/- as mentioned in the email at page 127 of the paper-book and paid by the appellant to the respondent on 05.04.2021) was paid by the appellant towards interest for delay in payments.

39. Hence, the agreement dated 07/23.04.2021 is not a genuine settlement deed, rather is an unfair trade practice adopted by a promoter to usurp the huge amount payable by it to an allottee as interest as per provisions of the proviso to section 18(1) of the Act due to delay in handing over the possession of the unit; and the said agreement is void in terms of sections 23 and 28 of the Indian Contract Act, 1872.





**COMPLETION/ OCCUPATION CERTIFICATE AND POSSESSION:**

40. The respondent, in its reply dated 01.02.2022 to the complaint, has inter alia stated that “---- copy of partial completion certificate is annexed as Annexure R-10”.
41. However, perusal of aforementioned Annexure R-10 reveals that it comprises of two letters issued by the Municipal Council, Zirakpur.
42. One of these two is letter dated 15.12.2017 vide which partial completion/occupation certificate has been issued for Block A(2), B(5), C(2) of phase-1 of group housing project of ‘Sushma Crescent’, Gazipur-Kishanpura, Old Ambala Road Zirakpur subject to certain conditions mentioned therein, non-compliance of which shall result in cancellation of the said partial completion certificate.
43. The other letter dated 31.08.2020 issued by the Municipal Council, Zirakpur is on the subject “*Regarding for Clarification letter for incorporating names of towers as per our marketing/sales plan for our project “Sushma Crescent” at Zirakpur, Punjab*” and is with reference to its diary No. 1115 dated 04.08.2020, English translation, that has been placed on record, of the matter of which reads as under:-

*“Regarding the above subject in regard to the information demanded by you it is written that spot was checked as per the requisition given by you. At the spot the names of the towers have been kept as follows, like in Block No. A towers have been given names A and I. Similarly if the names of the towers of the above project is read/used for market purpose as per given below then this office will have no objection.*”



<i>Reference in approval Layout plan "Sushma Crescent"</i>	<i>Towers as per Marketing Layout/ Sale Model "Sushma Crescent"</i>
<i>Block-A</i>	<i>A and I</i>
<i>Block-B</i>	<i>B, D,E,F and H</i>
<i>Block-C</i>	<i>C and G</i>
<i>Tower-D</i>	<i>J</i>
<i>Tower-E</i>	<i>K</i>
<i>Tower-F</i>	<i>L</i>
<i>Tower-F</i>	<i>M</i>
<i>Tower-G</i>	<i>N</i>
<i>Tower-H</i>	<i>O</i>
<i>Tower-I*</i> <i>(Studio Units/EWSO#</i>	<i>P"</i>

\* In the vernacular letter, it is "Tower-J"  
# In the vernacular letter, it is "(Studio Units/EWS)"

44. It is hereby observed that the aforesaid letter dated 31.08.2020 has not been explicitly mentioned by the respondent anywhere in its reply to the complaint.
45. Nothing has been mentioned in this letter dated 31.08.2020 about partial completion/occupation certificate or aforesaid letter dated 15.12.2017.
46. Aforesaid letter dated 31.08.2020 does not seem to be clarificatory one; and on its critical perusal, it rather appears to be more confusing. It is not clear as to what prompted the promoter to use two different sets of Blocks/Towers and Towers in the "approval plan" and the "Marketing/ Sale Model" and co-relating the two after more than 2½ years of the issue of aforesaid partial completion/occupation certificate dated 15.12.2017.
47. Moreover, possession, which was to be given after 36 or 42 months of the agreement dated 10.02.2014, i.e. by 10.02.2017 or 10.08.2017, was offered by the respondent vide letter dated





02.02.2021 i.e. after more than 3 years of aforesaid partial completion/occupation certificate dated 15.12.2017.

48. These facts speak volumes about the veracity of the said partial completion/occupation certificate dated 15.12.2017.

49. The appellant, in his rejoinder dated 16.03.2022 has inter alia contended that possession given on 23.04.2021 is illegal in the absence of valid offer of possession made after getting the occupancy certificate.

50. However, the appellant has admittedly taken possession on 23.04.2021.

51. Clause 14(d) of the apartment buyer's agreement dated 10.02.2014 stipulates that *"The Developer shall endeavour to give possession of the said Unit to the Buyer within a period of Thirty Six(36) months from the date of the execution of this Agreement unless and until restrained by circumstances beyond its contemplation and control and subject to timely payment by the allottee. Besides, the Developer can take six months grace period for completing and handing over the said unit to the Buyer. -----XXXXX-----"*.

Therefore, to my mind, the respondent is entitled to the said grace period of six months, particularly when the appellant in his aforesaid complaint dated 16.08.2021 has inter alia contended that *"That as per the clause 14(d) of the agreement, the possession of the apartment was supposed to be handed over within 36+6 months from the date of agreement i.e. by 10.08.2017, which never happened."*

52. Therefore, in terms of provisions of the proviso to section 18(1) of the Act, the appellant was entitled to be paid by the respondent interest for every month of delay in handing over the possession of



the unit for the period from 11.08.2017 to 23.04.2021 at the rate prescribed under rule 16 of the Rules. However, the amount, already paid by the respondent to the appellant in terms of clause 14(d) of the apartment buyer's agreement for delay in giving the possession of the unit @ Rs.5/- per square feet of the super built-up area per month, is liable to be set off to avoid undue enrichment of the appellant.

53. On the other hand, for delay in payments due to be made by the appellant during the period after the execution of the apartment buyer's agreement on 10.02.2014 but before the due date of giving possession i.e. 10.08.2017, the appellant is also liable in terms of section 19(7) of the Act to pay interest at the rate prescribed under rule 16 of the Rules. However, the amount already received by the respondent from the appellant for alleged delay in payments is liable to be adjusted.

54. As possession of the unit was offered by the respondent vide its letter dated 02.02.2021 and was taken over by the appellant on 23.04.2021 i.e. well within three months, therefore, the appellant is not liable to pay the withholding charges amounting to Rs.3,171/- mentioned in the alleged agreement dated 07/23.04.2021.

55. Under paragraphs 12 and 13 of the judgment dated 24.08.2020 passed by Hon'ble Supreme Court in Civil Appeal No. 6239 of 2019, the Hon'ble Supreme Court inter alia observed that the NCDRC inter alia held that flat buyers in Group D **who had settled their dispute during the pendency of the complaint** were held to be estopped from pursuing their grievances and did not accept the contention of the flat buyers in Group D that they had **settled the matter under coercion and undue influence.**





56. Paragraph 37 of aforesaid judgment dated 24.08.2020 passed by Hon'ble Supreme Court, which has been relied upon by the Authority while dismissing the complaint, reads as under:-

*37 However, the cases of the eleven purchasers who entered into specific settlement deeds with the developers have to be segregated. In the case of these eleven persons, we are of the view that it would be appropriate if their cases are excluded from the purview of the present order. These eleven flat purchasers having entered into specific deeds of settlement, it would be only appropriate and proper if they are held down to the terms of the bargain. We are not inclined to accept the contention of the learned counsel of the appellants, Mr. Prashant Bhushan, that the settlement deeds were executed under coercion or undue influence since no specific material has been produced on record to demonstrate the same."*

57. This is not the case with in the present appeal. As is established above, the agreement dated 07/23.04.2021 is not a genuine settlement deed involving give and take, rather is an unfair trade practice adopted by a promoter to usurp the huge amount payable by it to the appellant as interest as per provisions of the proviso to section 18(1) of the Act.

58. Moreover, the said judgment dated 24.08.2020 was passed by Hon'ble Supreme Court in the complaints filed under the Consumer Protection Act where there is no specific provision for payment of interest for delay in giving the possession.

**MY DECISION IN THE PRESENT APPEAL:**

59. I deem it appropriate to accept the appeal bearing Appeal No. 201 of 2022, to set aside the order dated 13.06.2022 passed by the Authority in complaint bearing GC No. 03252021 and to hereby order as under:-

- (i) The respondent shall pay to the appellant interest for delay in possession in terms of the provisions of the proviso to Section 18(1) of the Act read with rule 16 of the Rules at State Bank of India highest Marginal Cost of Landing Rate prevalent from time to time, on the amount deposited by the appellant, for the period



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from 11.08.2017 or from the date of deposit, whichever is later, till 23.04.2021 (both dates inclusive).

- (ii) An amount of Rs.4,03,961/- paid by the respondent to the appellant vide cheque No. 555984 dated 20.05.2021 towards penalty/compensation for delayed possession of the apartment in terms of clause 14(d) of the apartment buyer's agreement dated 10.02.2014 shall be adjusted towards the aforementioned interest for the delayed possession.
- (iii) The appellant shall pay interest for the period from the due date of payments till the date of actual payment or till 10.08.2017, whichever is earlier, at the prevalent rate prescribed under rule 16 of the Rules, only on delayed payments which were due to be made by the appellant during the period 10.02.2014 to 10.08.2017. However, the amount already received by the respondent from the appellant as interest on account of alleged delay in payments is liable to be adjusted.
- (iv) Net amount payable by the respondent to the appellant on above counts shall be paid by the respondent to the appellant within 60 days from the date of this order, along with interest thereon from 24.04.2021 till realization at the prevalent rate prescribed under rule 16 of the Rules.

60. Disposed of accordingly.

61. A copy each of this order be placed in the file of the appeal and also be sent to the parties as well as to the Authority and thereafter, the files be consigned to the record room.

Sd/-  
ER. ASHOK KUMAR GARG, C.E. (RETD.),  
MEMBER (ADMINISTRATIVE/TECHNICAL)

Oct  
September 09, 2023

Certified to Be True Copy  
Registrar  
Real Estate Appellate Tribunal Punjab  
Chandigarh

12/10/2023