HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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1. COMPLAINT NO. 2275 OF 2022

Sujata Kumari and Anr. ....COMPLAINANTS

VERSUS

Express Projects Pvt Ltd and Anrs .....RESPONDENTS

2. COMPLAINT NO. 2740 OF 2022

Suman Sharma and Anr. ....COMPLAINANTS

VERSUS

Express Projects Pvt Ltd and Anrs .....RESPONDENTS

3. COMPLAINT NO. 2853 OF 2022

Suvercha Bhardwaj and Anr. ....COMPLAINANTS

VERSUS

Express Projects Pvt Ltd and Anrs .....RESPONDENTS

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

Hearing: 8th

Date of Hearing: 30.05.2024

Present: - Mr. Akshat Mittal, ld counsel for the complainants.

Mr. Kamal Dahiya, ld counsel for the respondents.

ORDER- (PARNEET SINGH SACHDEV-CHAIRMAN)

1. Above captioned complaints pertain to same project of the respondents and involve-similar issues. Therefore, for deciding these complaints, complaint no. 2275 of 2022 is being taken as the lead case.

2. On the last date of hearing the cases were fixed for the parties to argue on the issue of maintainability. The learned counsel for the respondents had challenged maintainability of the complaint stating that the conveyance deeds were executed in captioned cases in the year 2019-2021 and the contract between the parties stands concluded.

3. Complainants' case is that they booked a plot measuring 400 sq. yds. in the respondents' project in the year 2008. Complainants were allotted plot no. 59 Block D. Plot buyer agreement dated 14.04.2008 was executed between the parties. As per clause 34 of the said plot buyer agreement respondents was duty bound to complete the development works and hand over the possession of the plot within 36 months from the date of agreement, which works out to be 14.04.2011. Complainants have paid an amount of ₹ 34,43,420/- against the basic sale price of ₹24,25,600/- Respondents unilaterally changed the plot no. of the plot of the complainant from plot no. 59 admeasuring 400 sq. yd to plot no.D-70 admeasuring 400 sq.yd. Respondents have offered possession to the complainant on 15.01.2014 after a delay of approx. 3 years. Conveyance deed was executed between the parties on 18.03.2019.

4. Complainant alleges that respondents is charging non-construction penalty at the rate of Rs. 50/- per sq. mtr. per month, as per clause 26 of the plot buyer agreement. This amount is unreasonable. Further, respondents has revised the demand of enhanced EDC from Rs. 1250 per sq. yd to Rs. 2200 per sq. yd. Charges qua the enhanced EDC have been stayed by the Hon'ble High Court. Respondents has also been charging excessive and exorbitant charges qua maintenance without any justification.

5. Complainants have sought various reliefs including delay interest, to rectify demands with respect to maintenance charges, Interest on club charges, refund of amount taken for PLC, to set aside demand of EEDC, set aside demand of non-construction penalty etc.

6. Today, ld. counsel for the complainants have submitted that in the captioned complaints, complainants have sought various reliefs including delay interest to set aside unreasonable demands with respect to maintenance charges, set aside demand of non-construction penalty, EEDC and the amounts be refunded or deposited in F.D. until clarification of High Court, refund of Club Charges amounting to Rs. 50,000/-. Respondents be directed to complete project works as mentioned in approved layout plan– club, 3 schools, Creche, Dispensary, Nursing Home, Religious building, Taxi Stand, and respondents be also directed to facilitate adequate electricity infrastructure and connections etc.

7. Ld. Counsel for the complainants submitted that Limitation Act, 1963 does not apply in the present case as RERD Act, 2016 is a special enactment. He also stated that the cause of action is surviving in these cases as respondents has till date failed to fulfill its obligations as enumerated in the builder buyer agreement.

8. The learned counsel for the respondents, Sh. Kamal Dahiya, in his reply to the complainant's submissions has raised various issues. However, the foremost argument and the one that is a prerequisite to the examination of the merits of the case is the question of maintainability of this complaint. Therefore, in the last order dated 23-02-2024, Authority had ordered that on the next date of hearing, both sides will argue on the issue of maintainability. Today, both the counsels argued on this issue.

9. Ld. Counsel for the complainants argued that only because the possession has been taken over and conveyance deeds have been executed, the allottee does not lose his right to claim delayed possession interest as valid possession was never offered to the complainants. He further submitted that the project has not got completion certificate till date. Two, part completion certificates have been obtained by the respondents in the year 2018 but Completion Certificate has not been granted as there are violations of the sanctioned plans.

10. Ld. Counsel for the respondents has argued that complainants have taken possession in all these cases to which ld. counsel for the complainants has agreed but he has submitted that valid possession as per agreement has not

been given to him. Ld. Counsel for the complainant has referred to the para 7 of the order of the Authority dated 31.05.2022 in complaint no. 903 of 2019 wherein ingredients of valid offer of possession have been given. He also referred to section 18(1)(a) stating that possession has not been given to him as per agreement. Reference has also been made to section 14, stating that sanctioned plans were violated. Sections 12 and 17 were also referred by ld. Counsel for the complainant stating that what has been promised by the respondents has not been delivered.

11. As per the written reply submitted by the respondents, the following points pertain to the issue of maintainability. These are reproduced below:

> *That without prejudice to the aforementioned, it is submitted that the complainant, in any event, cannot get his claims adjudicated under the provisions of 2016 Act and Rules framed there under inter-alia, keeping in view the fact that the project in respect whereof the complaint has been made, does not fall under the jurisdiction of this Ld. Authority. Till such time the project is registered with the Authority, no complaint or claim, much less as raised by the complainant can be adjudicated before the Ld. Authority .Thus even on this count, no indulgence much less as claimed by the complainant can be granted. Sec. 34 of the Act, 2016 provides the functions of Authority, which is sacrosanct provision as it defines the parameters or functions and domain of the RE(R&D) Authority, within which the Authority can exercise its jurisdiction. Sec. 34(a) is reproduced herein below, for the convenience of the Hon'ble Authority.*
>
> *"The Functions of the Authority shall include-*
>
> *a) To register and regulate real estate projects & real estate agents registered under this Act; "*

The authority has the function to regulate the affairs only of the projects, which are registered with the Authority. So, the Authority has jurisdiction to regulate such projects, which are registered/not registered with the Authority. It is pertinent to mention that instant project against which the complaint is made is not registered with the Authority, so the Ld. Authority has no jurisdiction to entertain the complaint. Thus, the complaint is liable to be dismissed solely on this ground.

It is submitted that the respondents got the completion certificate of the project on 05.08.2013 from the Directorate Town & Country Planning and another completion certificate on 19.11.2013 which include the completion of unit/plot of the complainant. The copies of completion certificates are annexed herewith as Annexure R-2(Colly).Hence the project in question does not fall under the category of "Ongoing Project".

It is submitted that the term "ongoing project" has not been so defined under the Act while the expression "real estate project" is defined under Section 2(zn) of the Act which reads as under:

"2(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;"

The Act is intended to comply even to the ongoing real estate project. The expression "ongoing project" has been defined under Rule 2(h) of the Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016 which reads as under:

"2(h) "Ongoing project" means a project where development is going on and for which completion

certificate has not been issued but excludes such projects which fulfil any of the following criteria on the date of notification of these rules:

(i) where services have been handed over to the Local Authority for maintenance.

(ii) where common areas and facilities have been handed over to the Association for the Residents' Welfare Association for maintenance.

(iii) where all development work have been completed and sale/lease deeds of sixty percent of the apartment/houses/plots have been executed.

(iv) where all development works have been completed and application has been filed with the competent authority for issue of completion certificate."

In instant matter, the promoter has applied and received the Completion Certificate in 2013 i.e. long before the commencement of RE(R&D) Act, as such the project in question does not fall under the category of "ONGOING Project" and hence RE(R&D) act is not applicable to instant project. Hence the present complaint is not maintainable before Hon'ble Authority and needs to be set aside.

It is submitted that the Hon'ble Apex Court has also made it clear in "Newtech Promoters and Developers Limited Vs State of UP" that RERA act does not apply to the projects already completed or to which the completion certificate has been granted at the commencement of the Act, the relevant extract of said judgment are adduced hereunder for kind perusal of the Hon'ble Authority:

'"Learned counsel further submits that the key word, i.e., "ongoing on the date of the commencement of this Act" by necessary implication, exfacie and without any ambiguity, means and includes those projects which were ongoing and in cases where only issuance of completion certificate remained pending, legislature intended that even those projects have to be registered under the Act. Therefore, the ambit of Act is to bring all projects under its fold, provided that completion certificate has not been issued. The case of the appellant is based on "occupancy certificate" and not

of "completion certificate". In this context, learned counsel submits that the said proviso ought to be read with Section 3(2)(b), which specifically excludes projects where completion certificate has been received prior to the commencement of the Act. Thus, those projects under Section 3(2) need not be registered under the Act and, therefore, the intent of the Act hinges on whether or not a project has received a completion certificate on the date of commencement of the Act.

"54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of theAct2016. "

Thus it can be safely construed from above, that if the Completion Certificate is issued to a particular project prior to commencement of RE(R&D) Act, the same loses the tag of an ongoing project and a complaint under the Act is not maintainable and hence the instant complaint needs to be dismissed on this score only.

Further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.

That at the very outset it is submitted that the instant complaint is not maintainable as the project does not fall under the category of 'Ongoing Project' as the respondents had received the Completion Certificate of the Project in question prior to the commencement of RE(R&D) Act. Furthermore the respondents had not breached or violate any of the obligation as promoter as per the provisions of the act and hence the instant complaint is not maintainable before the Hon'ble Authority."

12. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:

Respondents have raised an objection that the Authority does not have jurisdiction to decide the complaint, mentioning the following issues:-

(i) Present complaint is barred by limitation as complaint has been filed after 9 years of cause of action.

(ii) It can also not be adjudicated upon in view of the judgement of the Hon'ble Apex court in the case of Union of India v N Murugesan, (2022) 2 SCC 25.

(iii) That the project had already received completion certificates on 5/8/2013 and 19/11/2013, so the project does not get covered within the definition of 'on-going project' and is not within purview of RERA Act,2016.

13. Essentially, the learned counsel for the respondents, Sh. Kamal Dahiya, argued that the present complaint is not maintainable *ab-initio* because it is time-barred as per the law of limitations. Further, it can also not be adjudicated upon in view of the judgement of the Hon'ble Apex Court in the case of Union of India versus N Murugesan, (2022) 2 SCC 25. Finally, since the completion certificate was obtained by the respondents, the RERD Act does not have any jurisdiction on this adjudication as the project is not on-going.

14. The first issue w.r.t 'S No (i)' supra, that will allow the Authority to proceed further and decide on maintainability is that of statutory limitation. This issue has been examined by the Authority in a number of cases in view of various

judgements of the Hon'ble Apex Court and other Courts. It is the considered opinion of this Authority that the provisions of the Limitation Act 1963, would not be applicable to the proceedings under the Real Estate (Regulation and Development) Act 2016, as the Authority set up under the Act is quasi-judicial and not a "Court''. Some of the important judgments that are relied upon by the Authority are as below:

In the case of Town Municipal Council Athani Vs. Presiding Officer, 969(1) SCC 873, it was held that Article 137 of the Schedule of the Limitation Act will not apply to bodies other than Courts.

Nityananda M Joshi Vs. LIC (3 judge bench) -1970 SC 209 1969(2) SCC 199 wherein, it has been held that Article 137 only contemplates application to Courts.

In the case of M.P. Steel Corporation vs Commissioner of Central Excise, 2015(7) SCC 58, the Hon'ble Supreme Court has examined the issue at length. Following important portions of this judgement are reproduced below:

> . *"A perusal of the Limitation Act, 1963 would show that the bar of limitation contained in the Schedule to the Act applies to suits, appeals, and applications. "Suit" is defined in Section 2(l) as not including an appeal or an application. The word "Court" is not defined under the Act. However, it appears in a number of its provisions (See: Sections 4,5,13,17(2),21). A perusal of the Schedule would show that it is divided into three divisions. The first division concerns itself with suits. Articles 1 to 113 all deal with "suits"……*
> *11. A perusal of Section 3(2) shows that "suits" are understood as actions begun in courts of law established under the Constitution of India.*

12. In the Schedule, the second division concerns itself with appeals. These appeals under Articles 114 to 117, are either under the Civil Procedure Code, the Criminal Procedure Code, or intra-court appeals so far as the High Courts are concerned. These appeals again are only to "Courts" established under the Constitution……

15. Section 21 also makes it clear that the suit that the Limitation Act speaks of is instituted only by a plaintiff against a defendant. Both plaintiff and defendant have been defined as including persons through whom they derive their right to sue and include persons whose estate is represented by persons such as executors, administrators or other representatives. This again refers only to suits filed in courts as is understood by the Code of Civil Procedure. In this regard, Section 26 of the CPC states:

"Section 26- Institution of suits (1) Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

(2) In every plaint, facts shall be proved by affidavit."

16. When it comes to applications, again Articles 124, 130 and 131 throw a great deal of light. Only review of judgments by a "court" is contemplated in the Third Division in the Schedule. Further, leave to appeal as a pauper again can be made either to the High Court or only to any other court vide Article 130. And by Article 131, a revision petition filed only before Courts under the Code of Civil Procedure Code or the Code of Criminal Procedure are referred to……

On a plain reading of the provisions of the Limitation Act, it becomes clear that suits, appeals and applications are only to be considered (from the limitation point of view) if they are ***filed in courts and not in quasi- judicial bodies.****""(Emphasis provided).*

15. RERA is a special enactment with the particular aim and object covering certain issues and violations relating to the housing sector. Provisions of the Limitation Act 1963 would also not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up

under this Act is quasi-judicial Authority and not a Court. Further, in view of overwhelming judgements of the courts as discussed above, the Authority holds that the provisions of the Limitation Act 1963, will not apply to proceedings under the Real Estate (Regulation and Development) Act 2016. Therefore, the Authority holds that the statute of limitations does not prevent the complainants to pursue their claims.

16. Learned counsel for the respondents Mr. Kamal Dahiya relied heavily on the judgement of the Hon'ble Apex court in the case of Union of India versus N Murugesan, (2022) 2 SCC 25 (judgement dated 7 October, 2021). The facts in this judgement are that Sh. N. Murugesan was appointed by the Government of India as Director General, Central Power Research Institute (CPRI) "*from the date he assumes charge up to the date of his retirement on superannuation (31.05.2019) or until further orders, whichever is earlier.*" Due intimation was given to Sh. Murugesan and the terms and conditions of his appointment were clearly spelled out for him. After working for 4 years and nine months and finding that his tenure would soon come to an end, he submitted a representation to the Secretary, Ministry of Power on 30.12.2014, taking a stand that since his appointment was made by way of direct recruitment, he should be treated as a regular employee and therefore, be allowed to continue until the date of his superannuation as if he were a regular employee.

17. The Hon'ble court, considered all the circumstances. It went into the maxims of Laches, Delay, Acquiescence and wrote

> *"The first of the representations were made on 30.12.2014, followed by others. The conduct speaks for itself. Hence, on the principle governing delay, laches, and acquiescence, followed by approbation and reprobation, respondents no. 1 ought not to have been granted any relief by invoking Article 226 of the Constitution of India...."*

18. Considering other factors also, the Hon'ble Apex Court decided that it was correct on the part of the Government of India to appoint another person, replacing Sh. Murugesan. The learned counsel for the respondents in the present case seems to rely only on the above quoted portion as in the aforementioned observation, and not on the final judgement of the court. Nevertheless, the principles behind the above mentioned observations of the court are discussed below.

Hon'ble Apex court in the case of Union of India v N Murugesan, (2022) 2 SCC 25 elucidated the following principles governing delay, laches and acquiescence

> *"20. The principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions. However, they have their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration of condonation in certain circumstances. They are bound to be applied by way of practice requiring prudence of the Court than of a strict application of law. The underlying principle governing these concepts would be one of estoppel. The question of prejudice is also an important issue to be taken note of by the Court."*

19. Acquiescence suggests tacit or passive acceptance. It is an implied and reluctant consent to an act. In other words, such an action would qualify as a passive assent. *Thus, when acquiescence takes place, it presupposes knowledge against a particular act.* This is a very important underlying aspect of acquiescence. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place.

The court also observed about acquiescence

> *"As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms... Hence, what is essential, is the conduct of the parties. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis."*

Laches can only be invoked when there is no statutory bar on the claim. In the present case, from the aforementioned discussion, it is amply clear that no statutory bar exists with regard to the limitation law.

Laches is an equitable defense, or doctrine. The word laches is derived from French meaning "remissness and slackness". A defendant who invokes the doctrine is stating that the claimant has delayed in asserting its rights, and, because of this delay, is no longer entitled to bring an equitable claim. This

failure violates the maxim of equity that *"Equity aids the vigilant, not the negligent."*

However, delay alone is not enough to prevent a claimant obtaining relief. The consequence of the delay must be that it would be unfair for the court to give relief, usually because the defendant has changed its position because of the delay.

The party asserting laches has the burden of proving that it is applicable.

20. The Hon'ble Supreme Court, in the aforementioned judgement relied upon by the respondents, laid down the following test for invoking laches

> *"22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the Court apart from the change in position in the interregnum."*

21. Laches is distinguishable from the statute of limitation, which prevents a party from asserting claims after the designated limitations period has expired. This doctrine provides a court with the discretion to deny relief to a claimant, even if their claim is ostensibly valid, where there has been an unreasonable delay in its assertion. This delay must prejudice the opposing party's position. It is pertinent to note that mere passage of time is insufficient to invoke laches. The cornerstone of this doctrine lies in the unreasonable nature of the delay on the part of the plaintiff and the resultant prejudice caused to the defendant, rendering the grant of the sought-after relief inequitable. However, if the

plaintiff can furnish a satisfactory explanation for the delay, such as lack of knowledge of their rights, the court may be inclined to excuse the delay.

The Hon'ble supreme Court in the decision referred to supra, while discussing the above maxims and the contract stated as below:

> *We have already dealt with the principles of law that may have a bearing on this case.* ***There is no element of an unequal bargaining power involved. Nobody has forced the respondents to enter into a contract****. He indeed was an employee of the society for 3 years..."(emphasis provided).*

22. From the above explanations it is amply clear that for invoking the maxims of delay, laches and acquiescence the

- overall conduct
- the quantum of delay
- the knowledge of a particular act
- unequal bargaining power etc are all to be considered.
- Further, the one who has invoked laches must bear the burden of proving it.

23. In the present case, the core relief sought by the complainant delayed possession interest and to set aside the demand qua non-construction penalty. While, at this stage, the Authority is not adjudicating upon the merits of the claim, however, some facts as quoted by the complainants and the respondents will help the Authority to come to a conclusion regarding maintainability. While the agreement was made on 14.04.2008 and the due date of possession of the plot was 14.04.2011, the actual possession was offered on 15.01.2014. That too, after the respondents had changed the allotted plot from 59, block D (400 sq yd) to D-70 (400 sq yd) on his own. The respondents have alleged that

nearly 9 years have elapsed since the possession, hence the doctrine of laches gets attracted.

Relying upon the Hon'ble Apex Court judgement in the case of Union of India versus N Murugesan, (2022) 2 SCC 25 does not help the case of the respondents. Firstly, the above case pertains to the appointment of Mr Murugesan as DG CPRI and his seeking to retire later than 5 years. The present case relates to the RERD Act. Mr Murugesan worked through almost his entire term peacefully. Close to retirement, he suddenly fired the salvo. In the present case, the complainant was dealing with sudden change in plot and location, arbitrary rise in maintenance charges, non-construction penalty etc. Conveyance deed was executed between the parties on 18.03.2019 but the said deed was also one-sided. Reference is made to the clauses below:

*That the vendee agrees to re-imburse the cost of any damage caused during the development of the said plot/construction on the said plot to the vendor as per the charges solely decided by vendor(**clause 11**)*

.....

*That, the expenditure incurred/to be incurred (including overheads) by the Vendor, for connecting sewer and potable water lines in respect of the said plot from the mains laid along road shall be reimbursed by the Vendee to the Vendor as and when such demand is raised by the Vendor. The amount as apportioned by Vendor shall be final and binding on the Vendee. **(clause 18)***

.....

That, the Vendee (s) shall be bound to start construction of the house with the due sanction of the Competent Authority within a period of

three years from the date of intimation to take possession, failing which it shall be the sole discretion of the Vendor to extend the period for commencement of construction, but in that event the Vendee shall be liable to pay charges @ Rs. 50/- per Sq.mtr per month for the delayed period or such charges as may be applicable at the appropriate time. The Vendee undertakes to submit to the occupancy certificate to the full satisfaction agreed and understood by the Vendee that the construction of will be carried out in accordance with applicable building bye-laws, rules and regulations. ***(clause 20)***

.....

The Vendee (s) acknowledges and confirms that Maintenance Agency reserve the sole right to modify/revise all or any of the terms of the Maintenance Agreement and the Vendee (s) agrees not to raise any objection to the same. ***(clause 26)***

.....

The Vendee (s) agrees and undertakes not to raise any claim/compensation etc. or initiate any action/proceedings against the Express Projects Pvt. Ltd./Vendor/Maintenance Agency on account of any harm, damage or loss caused due to theft/fire/accident etc. in the colony/said Plot. ***(clause 30)***

.....

The Vendee (s) shall obey all directions, rules and regulations made by the Express Projects Pvt. Ltd. / Maintenance Agency/Concerned Government authorities/Local Authorities, now existing or hereinafter to exist so far as the same are incidental to the possession of immovable property or so far as it affects the health, safety or convenience of other inhabitants of the Colony. ***(clause 33)***

.....

The Vendee (s) shall keep indemnified, defend and hold harmless the Vendor against any/all actions, proceedings, third party claim/s or any losses, costs, charges, penalties, expenses of damages incurred and suffered by or caused to the Vendors/Maintenance Agency/other occupants of end Colony, by reason of any breach, non-compliance with any rules and regulations and / or non-payment of any taxes, levies, charges and other outgoings. ***(clause 36)***

A conjoint reading of above referred clauses bars the allottee from raising any objection to the acts of the respondents and the maintenance agency appointed by the respondents. These clauses clearly stipulate only the purchaser's liability and respondents or its maintenance agency cannot be held liable for any wrong as per clauses of the conveyance deed. Allottee has not been endowed with any bargaining power with respect to 'charges, rules or regulations' as made by the respondents or maintenance agency.

24. It is important to explore the importance of the term conveyance-deed itself in order to understand the attributes 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. A conveyance deed is used to transfer the ownership of a property from the seller to the buyer. In India, conveyance deeds must be made according to the Transfer of Property Act of

1882 and must be executed and registered as per the Indian Registration Act of 1908.

Thus, a conveyance deed is essentially a conract wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or movable. In this case, the assets under consideration are immovable property. Moreover, conveyance deed is another agreement, on signing of which, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration (usually monetary). A Conveyance deed becomes a final agreement which cannot be one sided and arbitrary as it cannot place a party in a disadvantageous position.

25. In this context, the above clauses of the conveyance deed as highlighted, unfairly binds the purchaser to obey all directions issued by the respondents and the maintenance agency appointed by the respondents. The purchaser is bound to accept the terms and conditions and the charges levied by the maintenance agency without raising any objection. The agreement and its implementation are absolutely one sided and place the complainant in a position where he has to bear all the arbitrary acts of the respondents and the maintenance agency.

In the leading case *Pioneer Urban Land And others v. Govindan Raghavan (2019)*, it was stated by the Hon'ble Apex Court that "A term of a contract will not be final and binding in nature if it manifests that the flat purchaser had no choice except signing on the dotted line, on the contract

which is formulated by the builder." It was held by the Supreme Court that the amalgamation of one-sided clauses in a builder-buyer agreement established an unfair trade practice according to Section 2 (1)(r) of the Consumer Protection Act, 1986. The bench comprising Justice Indu Malhotra and Justice UU Lalit also observed that a builder could not strive to confine a flat buyer with one-sided contractual terms contained in the Apartment Buyer's Agreement.

Based upon this fundamental difference in facts and the one-sided conveyance deed, the judgement relied upon by the respondents does not fit into the factual matrix of the present case at all.

26. Further, as already discussed, the Hon'ble Apex court never dismissed the case of Mr Muruganesan on the basis of laches. What the respondents has relied upon was only an observation. The court actually opined as below:

> *24.At this juncture, we are obliged to state that the question of delay and laches in all kinds of cases would not curb or curtail the power of the writ court to exercise the discretion. In Tukaram Kana Joshi v. Maharashtra Industrial Development Corpn. [Tukaram Kana Joshi v. Maharashtra Industrial Development Corpn., (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] it has been ruled that: (SCC pp. 359-60, para 12) "12. ... Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause of action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is involved. Thus*

analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience." And again: (SCC p. 360, para 14) "14. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. ***When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non- deliberate delay****."(emphasis provided).*

27. In the case of Complaint GC No. 1828/2020, the RERA, Punjab ruled as below:

"17. Likewise, the doctrine of laches would also have no application to proceedings under the RERA Act, due to the following reasons

i) The doctrine of delay and laches is a doctrine of equity. It is brought into the picture in proceedings arising out of claims based on equity like writ petitions and would have no application when claims are made based on rights granted under a statute. The Real Estate {Regulation and Development) Act 2016 is a special enactment under which clear rights and liabilities are provided for all the parties transacting in the real estate sector;

Further the doctrine of delay and laches is normally used so as not to unsettle rights that have accrued to the defendant due to the passage of time. There is no question of accrual of any right in favour of a defaulting promoter. In case the doctrine of delay and laches is brought into proceedings under the Real Estate (Regulation and Development) Act 2016, it would amount to rewarding realtors who have cheated people after making commitments to them and the principles of natural justice by which the proceedings under the Act are not to be guided would naturally be thrown out of the window;

iii) Another reason, in our considered opinion, for the non-applicability of the doctrine of delay and laches to proceedings being initiated now under the Act is that the Act itself came into force in 2016, Section 2, Sections 20 to 39, Sections 41 to 58, Sections 71 to 78 and Sections 81 to 92 came into force w.e.f. 01.05,2016 and Sections 3 to 19, Seclion 40, Sections 59 to 70 and Sections 79 and 80 came into force w.e.f 01.05.2017. There is no question of any undue delay and laches in 2021 in proceedings initiated under provisions which were enforced as recently as 2016-2017;
The Authority finds support, for the above propositions from the following decisions of the Supreme Court:-
i)1998 SC 688-M/a Hindustan Times Ltd Vs.Union of India and others.
ii) AIR 1964 SC 752-The Bombay Gas Co. Ltd Vs. Go pal Bhiva and others.
iii) Commissioner of Income Tax (TDS) Vs. HMT Ltd, 2012 (340) 1TR 219."

28. In view of the above discussion, the authority holds that the respondents's reliance on the case of Union of India versus N Murugesan, (2022) 2 SCC 25 does not support its argument regarding lack of maintainability using maxims of laches etc. In this case, clearly there is a huge difference in bargaining power between the complainant and the respondents. Therefore, this judgement does not adversely impact maintainability of the complaint.

29. The last issue to be adjudicated is that raised by the respondents stating that the Completion Certificate (CC) had been obtained by respondents in the year 2013 itself. Hence the project is out of the ambit of RERA as it was not an 'on-going' project when the RERD Act came into operation in the year 2016.In this case it is observed that the issue as to whether project shall be considered as " on-going project" has been dealt with and settled by the

Hon'ble Supreme court in **Newtech Promoters and developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021** herein reproduced:

> *" 37. Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all "ongoing projects" that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority."*

Wherein Hon'ble Apex Court held that the projects in which completion certificate has not been granted by the competent authority, only such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects. Furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder.

30. In light of aforesaid observations, Authority observes that respondents had received two *part completion certificates* on 5/8/2013 and 19/11/2013. No completion certificate was ever granted. It is very clearly mentioned that the certificates are only *part completion.*

The receipt of part completion certificate does not absolve the respondents of obligations cast upon it pertaining to handing over of possession of plot and execution of conveyance deed. The RERA Act, 2016 was enacted to ensure that both parties, i.e., respondents-promoter as well as complainant-allottee duly fulfils their respective obligations as per agreement for sale executed between them.

31. Ld. Counsel for the complainants in his arguments relied upon the judgment of Apex Court *Wing Commander Arifur Rahaman Khan v/s DLF Southern Homes Pvt. Ltd, AIRONLINE 2020 SC 693*, wherein it has been held that the allottees will not lose their right to claim interest for delayed possession merely on the ground that the conveyance deed has already been executed. He also referred to Appeal no. 79 of 2020 titled as Amit Gupta vs Athena Infrastructure Ltd., wherein the Hon'ble Appellate Tribunal has referred to the aforementioned case.

He further submitted that the project has not got completion certificate till date. Two, part completion certificates have been obtained by the respondents in the year 2013 but completion certificate is not there as there are violations of the sanctioned plans.

32. Ld. Counsel for the respondents argued that complainants have already taken possession and do not have any *locus standi.* However, the Ld counsel for the complainant argued that possession as per agreement has not been given to him. He has referred to the para 7 of the order of the Authority in complaint

no. 903 of 2019 dated 31.05.2022 wherein ingredients of valid offer of possession have been given. He also referred to section 18(1)(a) that possession has not been given to him as per agreement.

33. Furthermore, it has been clarified by this Authority in its numerous orders that the term 'on-going project' is only used in Section 3 of RERA Act,2016 which deals with only one of the obligations of the promoter under RERA Act,2016, ,i.e, to get the project registered. There are various other obligations of promoter illustrated in the RERA Act and under those provisions it is nowhere provided that those obligations are only limited to registered projects.

Definition of allotee, promoter and real estate project is referred. As per S.2(d) of the RERA Act, "allottee" is defined as follows:

> *(d) "allottee" in relation to a real estate project, means the person to whom a plot apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given. on rent:*

34. Definition of "promoter" under section 2(zk) is provided below:

> *(zk) "promoter" means,—*
> *(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*
> Further, as per Section 2(zj) & (zn) of the RERA Act,2016. "project" &

"real estate project" are defined respectively as follows:

(zj) "project" means the real estate project as defined in clause (zn):
(zn) "real estate project means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works. all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;

35. A conjoint reading of the above sections shows that respondentss are promoters in respect of allottees of units/plots sold by it in its real estate project in question. There exists a relationship of an allottee and promoter between the parties. Since, relationship of an allottee and promoter between complainants and respondentss is established and the issues/transaction pertains to the real estate project developed by respondents, hence, provisions of RERA Act, 2016 apply to the matter and Authority has the exclusive jurisdiction to deal with the matter. Furthermore, the preamble of the Real Estate (Regulation and Development) Act, 2016 provides as under.

An Act to establish the real estate regulatory authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the appellate tribunal to hear appeals from the decisions, directions or orders of the real estate regulatory authority and the adjudicating officer and for matters connected therewith or incidental thereto;

36. The Real Estate (Regulation and Development) Act, 2016 basically regulates relationship between buyer (i.e. allottee) and seller (i.e. promoter) of

real estate, i.e., plot, apartment or building, as the case may be and matters incidental thereto. So, the issues involved in the present complaint and reliefs sought are well within the ambit of the Authority. Section 79 of RERA Act exclusively bars the jurisdiction of Civil Courts with respect to any matter which is the subject matter (real estate transaction) under the Act and falls within the purview of the Authority, or the Real Estate Appellate Tribunal.

37. Accordingly, the Authority holds that objections raised by the respondents on ground of maintainability are declared devoid of any merit. Therefore, captioned complaints are maintainable in the Authority and can be adjudicated under the provisions of the RERD Act, 2016.

38. All the above cases are adjourned to **24.10.2024** for further arguments on merits.

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CHANDER SHEKHAR
[MEMBER]

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

.....
NADIM AKHTAR
[MEMBER]

.....
PARNEET SINGH SACHDEV
[CHAIRMAN]