

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

Subject: -

APPEAL NO.100 OF 2021

M/s Hero Realty Private Limited, through its Director/Authorized Signatory with its Registered & Corporate Office at 264, Ground Floor, Okhla Industrial Estate, Phase-3, New Delhi-110020 and with its corporate office at Plot No.1, Sector-88, SAS Nagar, Punjab-160055.

...Appellant

Versus

Arun Premdhar Dubey S/o of Mr. Premdhar Parasnath Dubey resident of house number 73, Street No.5, Deep Nagar, Ludhiana, Punjab-141001.

AND

Mrs. Mamta Arun Dubey W/o Mr. Arun Premdhar Dubey resident of house number 73, Street No.5, Deep Nagar, Ludhiana, Punjab-141001.

....Respondents

APPEAL NO.104 OF 2021

M/s Hero Realty Private Limited, Corporate Office at 264, Ground Floor, Okhla Industrial Estate, Phase-3, New Delhi-110020.

...Appellant

Versus

1. Nitin Paragal, R/o House No.6434 C, Top Floor, Sector-56, Near Guru KripaMandir, SAS Nagar (Mohali), 160055.
2. Prachee Mahajan, R/o House No.6434 C, Top Floor, Sector-56, Near Guru KripaMandir, SAS Nagar (Mohali), 160055.

....Respondents



Memo No. R.E.A.T./2022/429

To,

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

Whereas appeals 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 appeals 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 30th day of August, 2022.

Dhanendra Kumar
30-8-2022

REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB



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IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 100 of 2021
(Arising out of Complaint No. GC No. 1835 of 2020)
[Date of decision: 18.08.2021]

IN THE MATTER OF:

Appeal under Section 44 of the Real Estate (Regulation and Development) Act, 2016

IN THE MATTER OF:

Hero Realty Private Ltd.

...APPELLANT

Vs.

Arun Premdhar Dubey and Another

...RESPONDENTS

MEMO OF PARTIES

M/s Hero Realty Private Limited, through its Director/ Authorized Signatory with its Registered & Corporate Office at 264, Ground Floor, Okhla Industrial Estate, Phase-3, New Delhi-110020 and with its corporate office at Plot No.1, Sector88, SAS Nagar, Punjab-160055

VERSUS

Arun Premdhar Dubey S/o of Mr. Premdhar Parasnath Dubey resident of house number 73, Street No. 5, Deep Nagar, Ludhaina, Punjab-141001

AND

Mrs. Mamta Arun Dubey W/o Mr. Arun Premdhar Dubey resident of house number 73, Street No 5, Deep Nagar, Ludhaina, Punjab-141001



APPELLANT

Dhruv Kapur
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IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 104 of 2021
(Arising out of Complaint No. GC No. 0033 of 2021)
[Date of decision: 18.08.2021]

IN THE MATTER OF:

Appeal under Section 44 of the Real Estate (Regulation and Development) Act, 2016

IN THE MATTER OF:

Hero Realty Private Ltd.

...APPELLANT

Vs.

Sh. Nitin Pargal and Another

...RESPONDENTS

MEMO OF PARTIES

M/s Hero Realty Private Limited,
Corporate Office at 264, Ground Floor,
Okhla Industrial Estate,
Phase-3, New Delhi-110020

...APPELLANT

VERSUS

1. Nitin Paragal,
R/o House No.6434 C, Top Floor,
Sector 56, Near Guru KripaMandir,
SAS Nagar (Mohali)-160055
2. Prachee Mahajan,
R/o House No.6434 C, Top Floor,
Sector 56, Near Guru KripaMandir,
SAS Nagar (Mohali)-160055

...RESPONDENTS



APPELLANT

Dhruv Kapur
Filed through

D&V LEGAL
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13.10.2021

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

APPEAL NO.100 OF 2021

M/s Hero Realty Private Limited, through its Director/Authorized Signatory with its Registered & Corporate Office at 264, Ground Floor, Okhla Industrial Estate, Phase-3, New Delhi-110020 and with its corporate office at Plot No.1, Sector-88, SAS Nagar, Punjab-160055.

...Appellant

Versus

Arun Premdhar Dubey S/o of Mr. Premdhar Parasnath Dubey resident of house number 73, Street No.5, Deep Nagar, Ludhiana, Punjab-141001.

AND

Mrs. Mamta Arun Dubey W/o Mr. Arun Premdhar Dubey resident of house number 73, Street No.5, Deep Nagar, Ludhiana, Punjab-141001.

...Respondents

APPEAL NO.104 OF 2021

M/s Hero Realty Private Limited, Corporate Office at 264, Ground Floor, Okhla Industrial Estate, Phase-3, New Delhi-110020.

...Appellant

Versus

1. Nitin Paragal, R/o House No.6434 C, Top Floor, Sector-56, Near Guru KripaMandir, SAS Nagar (Mohali), 160055,
2. Prachee Mahajan, R/o House No.6434 C, Top Floor, Sector-56, Near Guru KripaMandir, SAS Nagar (Mohali), 160055.

...Respondents

Present: Mr. Sanjeev Sharma, Advocate for the appellant.
Mr. Deepak Sangwan, Advocate for the respondents in Appeal No.100 of 2021.
Mr. Sanjiv Gupta, Advocate for the respondents in Appeal No.104 of 2021.



APPEAL NO.100 OF 2021 AND APPEAL NO.104 OF 2021

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**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)

1. By this order we will dispose of Appeal No.100 of 2021 and Appeal No.104 of 2021 preferred by the appellant/promoter against the impugned order of the Real Estate Regulatory Authority, Punjab (hereinafter referred to as the Authority) dated 18.08.2021. The facts are being extracted from Appeal No.104 of 2021 titled as "Hero Realty Private Ltd. Versus Nitin Pargal and another".
2. The appellant is aggrieved by order dated 18.08.2021 passed by the Authority. The complainant filed a complaint praying for statutory interest for the delayed possession and that too without obtaining the occupation certificate.
3. The appellant/promoter relied upon Clause 3.1 of the Buyer's Agreement to contend that date of submission of application with the Competent Authority for obtaining completion/occupancy certificate in respect of the tower in which the apartment is comprised shall be reckoned



APPEAL NO.100 OF 2021 AND APPEAL NO.104 OF 2021

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as the date of completion of development of the said towers/apartments. Accordingly, the date of application for grant of occupancy certificate was claimed by them as 08.07.2020.

4. Apart from this, even though, the delayed possession was not denied but plea of force majeure was taken up on account of the Covid-19 epidemic.
5. The Authority disposed of the complaint in the following terms:-

APPEAL NO.104 OF 2021

- i. The respondent shall be liable to pay interest @ 9.30% per annum (today's highest MCLR rate of 7.30% plus 2%) U/s 18(1) of the Act for the delay in handing over possession from 19.11.2019 till 13.01.2021. This amount shall be paid within 60 days.
- ii. The complainant shall take possession of the apartment offered, within 2 months of this order, after making all the pending payments along with taxes, as applicable, as provided in the buyers agreement.
- iii. The complainant shall also be liable to pay interest for the period of delay, if any, in making timely payments of the instalments as per the construction linked plan, as per the provisions of the buyers agreement executed on 20.05.2016.
- iv. No other relief is made out.



APPEAL NO.100 OF 2021 AND APPEAL NO.104 OF 2021

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APPEAL NO.100 OF 2021

- i. *The respondent shall be liable to pay interest @ 9.30% epr annum (today's highest MCLR rate of 7.30% plus 2%) U/s 18(1) of the Act for the delay in handing over possession from 13.01.2020 till 14.01.2021. This amount shall be paid within 60 days.*
- ii. *The complainants shall also be liable to be pay interest for the period of delay, if any, in making timely payments of the instalments, as per the provisions of the buyers agreement executed on 08.07.2019.*
- iii. *No other relief is made out.*

6. While impugning the order, the learned counsel for the appellant contended that the issue of force majeure has not been effectively dealt with. The promised date of possession was 19.11.2019 and offer of possession was made on 13.01.2021 and the plea of the appellant with regard to Clause 3.1 of the Agreement to consider the date of application of occupancy certificate as the date of valid offer of possession was wrongly negated by the Authority. It was contended that assuming the valid offer of possession was 13.01.2021 as held by the Authority even, then the plea of force majeure and the benefit on account thereof could not be denied to the appellant. That apart it was contended by the appellant that amount had not been paid by the respondent/allottee.



APPEAL NO.100 OF 2021 AND APPEAL NO.104 OF 2021

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7. Learned counsel for the respondent/allottee on the other hand pleaded that order of the Authority was completely just.
8. After hearing learned counsel for the parties and going through the impugned order and other relevant material, we are of the opinion that the order of the Authority with regard to the reliefs granted at Para 8(ii) and 8(iii) cannot be faulted with. Likewise although the relief granted under Clause 8(i) cannot be termed to be totally erroneous but we are of the opinion that the plea of force majeure should have been tested by a benevolent interpretation, rather than leaving it captive to a circular of the Authority dated 30.05.2020, limiting the benefit available to the promoters, only with regard to the statutory compliances in relation to real estate projects with reference to the date of completion or revised date of completion or extended completion date.
9. The situation emerging from Covid epidemic was unique and unknown to humanity. It was fluid as is evident from the response of the authorities resulting in repeated revisions and overhauling of decisions frequently. It is undeniable that the migrant labour was affected in a huge way, when reverse migration took place on a drastic scale. It is also common knowledge that this unorganized



APPEAL NO.100 OF 2021 AND APPEAL NO.104 OF 2021

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labour sector on which the realty sector depends wholly or substantially did not recover fully even when relaxations were granted by the authorities in human and vehicular movement.

10. It is for this reason, we are of the opinion that the benefit of a plea of force majeure on account of the epidemic has to be interpreted more beneficially, to take into consideration the uncertainties and vagaries of a fluctuating labour force at that point of time depriving the real estate sector driven completely by this unorganized labour segment into throes of accumulated losses, resulting from incomplete projects and unsold inventory.
11. Therefore, since a complete lockdown was imposed in March, 2020 and with no assigned verifiable point of total reversal in movement of labour, we are of the opinion that a benefit of at least 4 to 5 months on account of force majeure should be afforded to the developer to absolve him of the liability of completing the projects within the timeline prescribed.
12. We are not oblivious to the fact that the benefit of 4 to 5 months as deduced by us is based on discretion and some amount of guess work, which is inevitable for the reasons, we have mentioned in the forgoing paragraphs



APPEAL NO.100 OF 2021 AND APPEAL NO.104 OF 2021

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about the resultant situation from the spread of epidemic. Therefore, the liability fastened upon the developer under Clause 8(i) shall now stand reduced by four months in calculating the period.

13. Therefore, the relief under Clause 8 (i) shall accordingly stand reduced by four months.

14. We are at pains to point out that the Authority granted interest @9.3% per annum under Section 18 of the Act in delay in handing over possession and construed the period from 19.11.2019 and till 13.01.2021 (period of 13 months). This shall now stands reduced to 9 months in Appeal No104 of 2021.

In Appeal No.100 of 2021 delay in handing over possession has been construed as period from 13.01.2020 till 14.01.2021 (period of 12 months). This shall now stand reduced to 8 months.

12. With the aforesaid modification, the appeal stands disposed of.



Sd/-
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

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

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

August 22, 2022
AN

Certified To Be True Copy
Anand Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
30/08/2022

Appeal No. 100 of 2021 and Appeal No. 104 of 2021

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

APPEAL NO. 100 OF 2021

M/s Hero Reality Private Limited, through its Director/ Authorized Signatory with its Registered & Corporate Office at 264, Ground Floor, Okhla Industrial Estate, Phase-3, New Delhi-110020 and with its corporate office at Plot No. 1, Sector 88, SAS Nagar, Punjab-160055

.....Appellant

Versus

Arun Premdhar Dubey S/o of Mr. Premdhar Parasnath Dubey resident of house number 73, Street No. 5, Deep Nagar, Ludhiana, Punjab-141001
AND

Mrs. Mamta Arun Dubey W/o Mr. Arun Premdhar Dubey resident of house number 73, Street No 5, Deep Nagar, Ludhiana, Punjab-141001

.....Respondents

APPEAL NO. 104 OF 2021

M/s Hero Reality Private Limited, Corporate Office at 264, Ground Floor, Okhla Industrial Estate, Phase-3, New Delhi-110020

.....Appellant

Versus

Nitin Paragal, R/o House No.6434 C, Top Floor, Sector 56, Near Guru KripaMandir, SAS Nagar (Mohali)-160055

Prachee Mahajan, R/o House No.6434 C, Top Floor, Sector 56, Near Guru KripaMandir, SAS Nagar (Mohali)-160055

.....Respondents

Present: Mr. Sanjeev Sharma, Advocate for the appellant.

Mr. Deepak Sangwan, Advocate for respondents in Appeal No. 100 of 2021

Mr. Sanjiv Gupta, Advocate for the respondents in Appeal No. 104 of 2021.



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)**

Appeal No. 100 of 2021 and Appeal No. 104 of 2021

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1. By this common order, I shall dispose off above mentioned two appeals bearing Appeal No. 100 of 2021 (**Hero Reality Private Limited versus Arun Premdhar Dubey and another**) and Appeal No. 104 of 2021 (**Hero Reality Private Limited versus Nitin Paragal and another**) filed against two separate orders, both dated 18.08.2021 and passed by the Real Estate Regulatory Authority, Punjab (*hereinafter referred to as the Authority*), in complaints bearing GC No. 18352020 and GC No. 00332021 instituted on 29.01.2021 and 27.01.2021 respectively.
2. Both the appeals arise from the complaints pertaining to same project namely 'Hero Homes'. It has been stated by the counsel for the appellant before us on 26.10.2021 in Appeal No. 104 of 2021 that the matter in Appeal No. 100 of 2021 is similar. Therefore, common judgment is hereby being passed in these two appeals.

FIRST CASE (APPEAL NO. 100 OF 2021):

3. The facts in respect of Appeal No. 100 of 2021 (**Hero Reality Private Limited versus Arun Premdhar Dubey and another**) have been discussed in detail hereinafter.
4. Mr. Arun Premdhar Dubey and Mrs. Mamta Arun Dubey (*the respondents, hereinafter also referred to as the complainants or as the allottees*) filed their complaint bearing GC No. 18352020 on 29.01.2021 against Hero Reality Private Limited (*the appellant, hereinafter also referred to as the promoter*) 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*), wherein they have inter alia alleged (i) that they booked Flat No.



T-03/1205, having carpet area of 824 square feet, in the appellant-promoter's project 'Hero Homes' at Sector 88 Mohali for a total sale consideration of Rs. 59,78,424/- and executed agreement dated 08.07.2019; (ii) that they had already paid as per payment schedule an amount of about Rs. 47,82,738/-; (iii) that the promised date of possession of the unit was by 13.01.2020; (iv) that the appellant has failed to develop the unit and hand it over to the respondents till that date despite communicating to the appellant-promoter vide email dated 21.02.2020 that the respondents have taken a bank loan and repaying it and followed by another email dated 20.06.2020; (v) that rather than replying the emails, the appellant demanded payment of dues vide its email dated 21.09.2020, thereby demanding illegal charges.

5. The respondents, vide their above mentioned complaint, have prayed the Authority to revoke registration granted to the appellant and to direct the appellant to (i) place on record all statutory approvals and sanctions of the project; (ii) pay the entire amount of rent as paid by the complainants for the delayed period i.e. from January 2020; (iii) pay interest for delay in possession from 13.01.2020 till actual delivery of possession in accordance with Section 18 of the Act.



6. After considering the reply dated 29.07.2021 of the appellant-promoter to the complaint and the arguments (oral as well as written) of the parties, the Authority passed order dated 18.08.2021, the concluding and operative parts of which read as under:-

“7. Based on the written submissions and the verbal pleadings, we are of the following view:

i. As per the agreement, the promised date of possession was 13.01.2020. However, after obtaining O.C. the respondent offered possession on 14.01.2021 and the complainants took over the possession on 16.04.2021. Hence, valid possession was offered after a delay of 12 months.

ii. Although the agreement specifies that the date of submission of application with the competent authority for obtaining completion/occupancy certificate shall be reckoned as the date of completion of the development but as per provisions of Section 19(10) of the Act, it is binding on the allottee to take physical possession of the apartment within a period of 2 months of the O.C. issued for the said apartment. As such, the plea of the respondent to consider the date of application for O.C. i.e. 08.07.2020 cannot be accepted and a valid offer of possession can only be made after obtaining the O.C.

iii. The contention of the respondent in regards to applicability of Clause 7.1 & 7.3 regarding "the possession of the plot/apartment shall be extended to the extent of period of delay in paying the defaulted amount", has to be read in harmony with Clause 9.2(i) which entitles the allottee to "stop making further payments to the promoter" in case of default by promoter under the conditions listed in the agreement to sale. Accordingly, the respondent cannot take one sided view selectively of some of the provisions of the agreement to sale. He is, accordingly, not entitled to any unilateral extension in the time period agreed upon for offering possession.

iv. This Authority vide its circular dated 13.05.2020 had held that the benefit of force majeure shall be available to promoters only in regards to the statutory compliances in relation to real estate projects with reference to the date of completion or revised date of completion or extended completion date given at the time of registration of the projects. In this case the promised date for possession to be delivered was



Appeal No. 100 of 2021 and Appeal No. 104 of 2021

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13.01.2020 i.e. much prior to the onset of COVID-19. Hence, the respondent is not entitled to the benefit of force majeure.

8. *In view of the above, the following is ordered:*

i. The respondent shall be liable to pay interest @ 9.30% per annum (today's highest MCLR rate of 7.30% plus 2%) U/s. 18(1) of the Act for the delay in handing over possession from 13.01.2020 till 14.01.2021. This amount shall be paid within 60 days.

ii. The complainants shall also be liable to pay interest for the period of delay, if any, in making timely payments of the instalments, as per the provisions of the buyers agreement executed on 08.07.2019.

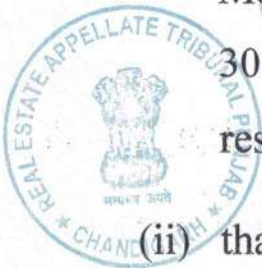
iii. No other relief is made out."

7. Aggrieved by the aforementioned order dated 18.08.2021 of the Authority, the appellant-promoter filed an appeal dated 06.10.2021, which has been assigned Appeal No. 100 of 2021 (**Hero Reality Private Limited versus Arun Premdhar Dubey and another**).

8. The appellant in his appeal has inter alia contended as under:-

(i) that the registration of the project in question "Hero Homes, Mohali-Phase-1" was valid for the period from 06.11.2017 to 30.03.2021, whereas offer of possession was given to the respondents on 14.01.2021;

(ii) that clause 7.1 of the agreement for sale mentions that appellant is entitled to the benefit of force majeure due to Covid-19 pandemic and will get extension of time for delivery of possession; and that its clause 7.3 provides that in case of failure of allottee to pay the installments on time, apart from paying interest on delayed amount, the possession shall be



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extended to the extent of period of delay in paying the defaulted amount; and that there is a delay of 263 days (209 days i.e. from 25.08.2020 to 22.03.2021 + 54 days i.e. from 28.01.2021 to 22.03.2021) on the part of the respondents in making the balance payment; and that it is important to note that Clauses 9.1 and 9.2 which provide for events of defaults and consequences thereof on part of the Promoter, the defaults in the said clauses are also subject to Clause 7, which means that in such circumstances also, in which the Allottee has an option to terminate the Agreement, the Promoter is entitled to the benefit of Force Majeure;

- (iii) that the pandemic of Covid-19 started from February 2020, with complete lockdown from March 2020 to June 2020 because of which the appellant could not offer possession sooner;
- (iv) that the Finance Ministry of Government of India, vide its circular dated 19.02.2020, declared Covid-19 to be force majeure event; and that the Ministry of Housing and Urban Affairs, vide its circular dated 13.05.2020 issued an advisory for extension of registration of real estate projects due to force majeure under the provisions of the Act; that Maharashtra Real Estate Regulatory Authority, vide its circular dated 18.05.2020, directed that force majeure period will be treated as a moratorium period for the purpose of calculating interest inter alia under Section 18; that the Authority, vide its circular dated 28.10.2020, also declared Covid-19 as force majeure;



Appeal No. 100 of 2021 and Appeal No. 104 of 2021

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- (v) that as soon as the lockdown ended, at the first opportunity appellant applied for the occupation certificate to the appropriate authority vide application dated 08.07.2020;
- (vi) that a demand was raised for payment of the installment due on the application of occupation certificate on 10.08.2020, which was due on 25.08.2020, which was finally paid by the respondents on 22.03.2021 after a delay of 209 days;
- (vii) that the occupation certificate was received by the appellant on 12.01.2021; and
- (viii) that the appellant offered possession on 14.01.2021 and requested the respondents to complete the due process and to take possession and that demand letter dated 13.01.2021 for Rs. 7,41,826/- due for 28.01.2021 was also enclosed therewith.

9. The appellant, in his appeal, has sought to partially set aside the order dated 18.08.2021 to the extent of payment of interest under Section 18(1) of the Act for delay in handing over possession. However, during his arguments before us on 11.08.2022, the appellant's learned counsel sought only relief of not to charge interest for delay in possession for the lock down period from March 2020 to June 2020.

10. As none was present on behalf of the respondents during the arguments on 11.08.2022 before this Tribunal, only the complaint (Annexure A-14) of the respondents, placed on record before us by the appellant that too without its Annexures C-2 to C-7, is available.



11. As informed by the respondents' counsel on 19.05.2021 during the proceedings, as mentioned in aforesaid order dated 18.08.2021 of the Authority, the complainants had already taken possession.

MY FINDINGS:

12. One of the contention taken by the appellant in its appeal is that clause 7.1 of the agreement for sale mentions that appellant is entitled to the benefit of force majeure due to Covid-19 pandemic and will get extension of time for delivery of possession; and that its clause 7.3 provides that in case of failure of allottee to pay the installments on time, apart from paying interest on delayed amount, the possession shall be extended to the extent of period of delay in paying the defaulted amount; and that there is a delay of (209 + 54 days) 263 days on the part of the respondents in making the balance payment; and that it is important to note that clauses 9.1 and 9.2 which provide for events of defaults and consequences thereof on part of the Promoter, the defaults in the said clauses are also subject to clause 7, which means that in such circumstances also, in which the allottee has an option to terminate the agreement, the promoter is entitled to the benefit of force majeure.

13. On 11.10.2021, on the basis of this very contention of the appellant, whereby the appellant's learned counsel laid emphasis on "it is important to note that clauses 9.1 and 9.2 which provide for events of defaults and consequences thereof on part of the promoter, the defaults in the said clauses are also subject to clause 7, which means that in such circumstances also, in which the allottee has an option to terminate the agreement, the promoter is



entitled to the benefit of force majeure.”, operation of the impugned order was stayed.

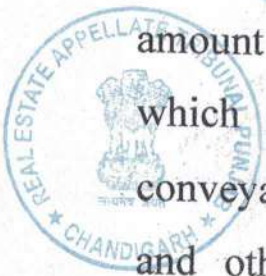
14. During the course of dealing with the other appeals as a matter of routine, it has come to my notice that no such stipulation (that the promoter's defaults in clauses 9.1 and 9.2 are subject to clause 7) in the clauses 7, 9.1 and 9.2 of the Form 'Q' (i.e. the 'agreement for sale' prescribed, in terms of Section 13(2) of the Act, under Rule 8(1) of the Rules).
15. Therefore, comparison of clauses 7 and 9 of the agreement dated 08.07.2019 viz-a-viz those of the Form 'Q' revealed that the appellant has made many changes, ostensibly to watch his own interest. Hence, it is apprehended that the appellant might have made changes in other clauses of the agreement also. This is blatant violation of Section 13(2) of the Act and attracts penal action against the appellant under Section 61 of the Act.
16. As per Schedule D of the agreement dated 08.07.2020, the last two installments (12th and 13th), each amounting to Rs. 2,66,894/- (without GST and other taxes) are payable “On Application of OC” and “On Offer of Possession”; and as per clause 7.1 of the agreement dated 08.07.2019, the appellant had assured to hand over possession of the apartment on 13.01.2020.
17. The appellant, vide its letter dated 08.07.2020 (Annexure A-6), gave notice to the Estate Officer (Plots), Greater Mohali Development Authority (GMADA), SAS Nagar that the building part of certain buildings (including Tower T3) has been completed in all respects and applied for permission to convey those buildings as required under rule 7 of the Punjab Urban Planning and Development Building Rules, 2018.



Appeal No. 100 of 2021 and Appeal No. 104 of 2021

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- 18.** The appellant raised a demand of Rs. 2,18,631/- (Rs. 2,66,894/- towards 12th installment "On Application of OC" plus Rs. 32,028/- towards GST minus Rs. 80,291/- paid against the milestone) vide its demand letter -cum-invoice dated 10.08.2020, payable by 25.08.2020. It was followed by reminder dated 21.09.2020 which included interest amounting to Rs. 1,630/- till that date (Annexure A-7 Colly.).
- 19.** GMADA, vide its letter dated 12.01.2021 (Annexure A-12) granted the appellant permission for the completion of Tower-T3 and some other buildings of the project.
- 20.** The appellant, vide his letter dated 14.01.2021 (Annexure A-13), informed the respondents that their apartment is ready for possession and requested to (i) pay Rs. 7,41,926/- (which inter alia included an amount of Rs. 1,77,000/- towards club membership charges, which is not mentioned in the Schedule-D of the agreement dated 08.07.2019) within 15 days of the letter; (ii) obtain a no due certificate within a week of payment; (iii) seek appointment for visit to the apartment within a week of payment, which was to be scheduled approximately 30 days after such request; (iv) pay advance maintenance (ostensibly besides an amount of Rs. 38,700/- towards IFMS included in aforesaid amount of Rs. 7,41,926/-) and any other applicable charges for which separate intimation was to be sent; (v) execute the conveyance deed after submission of advance maintenance charges and other charges including stamp duty, registration fee and expenses; and (vi) take over physical possession simultaneous with registration of conveyance deed.



21. A period of two to three months may be required to complete the above mentioned process between the date of offer of possession and the date of taking it over; and therefore, possession is expected to be handed over two to three months after its offer, which is in line with the spirit of the provisions under Section 19(10) of the Act and clause 7.2 of the Form 'Q'.
22. The respondents, in their complaint dated 23.11.2020/29.01.2021 (Annexure A-14), have inter alia pleaded that (i) they, vide email dated 21.02.2020 (Annexure C/3, not placed on record before this Tribunal by the appellant) asked the appellant to expedite handing over of the apartment and specifically conveyed to the appellant that they were paying monthly installment of about Rs. 40,000/- towards repayment of bank loan (Annexure C/4, not placed on record); (ii) they sent another email dated 20.06.2020 (Annexure C/5, not placed on record) highlighting the hardships being faced by them as they have to pay monthly installments along with monthly rent, which could have been avoided if the possession was given timely; (iii) that the appellant sent email dated 21.09.2020 (Annexure C/6, not placed on record) demanding payment of dues overlooking its default in delaying handing over of possession, which they immediately questioned; (iv) they sent legal notice to the appellant inter alia demanding possession after adjustment of compensation (Annexure C/7, not placed on record).
23. Reverting to the benefit of force majeure claimed by the appellant, it may be noted that only under Section 6 under Chapter II, titled as "REGISTRATION OF REAL ESTATE PROJECT AND REGISTRATION OF REAL ESTATE AGENTS", of the Act and no where else in the Act, there are provisions regarding "force majeure".



24. The said Section 6 of the Act reads as under:-

“6. Extension of registration.- The registration granted under section 5 may be extended by the Authority on an application made by the promoter due to force majeure, in such form and on payment of such fee as may be prescribed:

Provided that the Authority may in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year:

Provided further that no application for extension of registration shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

Explanation.— For the purpose of this section, the expression "force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.”

25. Chapter VI, titled as “CENTRAL ADVISORY COUNCIL”, of the Act reads as under:-

“CHAPTER VI

CENTRAL ADVISORY COUNCIL

41. Establishment of Central Advisory Council.- (1) The Central Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Advisory Council.

(2) The Minister to the Government of India in charge of the Ministry of the Central Government dealing with Housing shall be the *ex officio* Chairperson of the Central Advisory Council.

(3) The Central Advisory Council shall consist of representatives of the Ministry of Finance, Ministry of Industry and Commerce, Ministry of Urban Development, Ministry of Consumer Affairs, Ministry of



Corporate Affairs, Ministry of Law and Justice, Niti Aayog, National Housing Bank, Housing and Urban Development Corporation, five representatives of State Governments to be selected by rotation, five representatives of the Real Estate Regulatory Authorities to be selected by rotation, and any other Central Government department as notified.

(4) The Central Advisory Council shall also consist of not more than ten members to represent the interests of real estate industry, consumers, real estate agents, construction labourers, non-governmental organisations and academic and research bodies in the real estate sector.

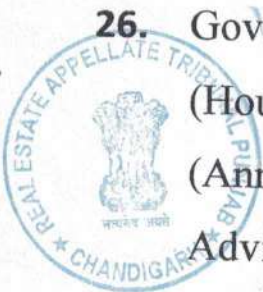
42. Functions of Central Advisory Council.- (1) *The functions of the Central Advisory Council shall be to advise and recommend the Central Government,—*

- (a) on all matters concerning the implementation of this Act;*
- (b) on major questions of policy;*
- (c) towards protection of consumer interest;*
- (d) to foster the growth and development of the real estate sector;*
- (e) on any other matter as may be assigned to it by the Central Government.*

(2) The Central Government may specify the rules to give effect to the recommendations of the Central Advisory Council on matters as provided under sub-section (1)."

26. Government of India, Ministry of Housing & Urban Affairs (Housing Section), vide its office memorandum dated 13.05.2020 (Annexure A-9), pursuant to an urgent meeting of Central Advisory Council (CAC) held on 29.04.2020, has issued advisory for extension of registration of real estate projects due to 'Force Majeure' under the provisions of Act, which reads as under:-

"Subject: Advisory for extension of registration of real estate projects due to 'Force Majeure' under the provisions of Real Estate (Regulation and Development) Act, 2016 (RERA)- regarding.



The undersigned is directed to refer to the above subject and state that in view of the situation created by the pandemic COVID-19 (Corona Virus) and consequent nation-wide lockdown w.e.f. 25th March, 2020, reverse migration of labourers to their native places and break in supply chain of construction material have adversely impacted the construction activities of real estate projects across the country. In consultation with Real Estate Regulatory Authorities of States / UTS, representatives of NAREDCO, CREDAI, FICCI, ASSOCHAM and other stakeholders. it is observed that in such circumstances, work on the real estate projects will take quite some time to restart in full gear.

2. In this regard, an urgent meeting of Central Advisory Council (CAC) was held on 29th April, 2020 over webinar under the chairmanship of Hon'ble Minister of State (I/C) Housing and Urban Affairs, wherein the Impact of outbreak of COVID-19 (Corona Virus) on real estate projects was discussed with all the stakeholders including representatives of Homebuyers, Developers, Real Estate Agents, Financial Institutions, Regulatory Authorities, State Governments etc.

3. In this meeting, it was noted that in view of the outbreak of COVID-19 Regulatory Authorities of Maharashtra, Gujarat, Uttar Pradesh and Tamil Nadu have issued orders in their respective States for extension of completion dates for real estate projects registered under the provisions of RERA by 3 to 5 months.

4. Section 6 of RERA, 2016 provides for 'extension of registration of real estate project' on account of 'force majeure', which includes any calamity caused by nature affecting the regular development of the real estate projects. It is quite evident that current pandemic caused by nature is adversely affecting regular development of real estate projects. Hence, it attracts invoking the provision of 'force majeure'.

5. In order to safeguard the interest of all stakeholders including home buyers, CAC after detailed deliberations made unanimous recommendation to invoke the 'force majeure clause by Real Estate Regulatory Authorities to extend the registration of



projects registered under RERA. It also recommended to make this simple so that it gets implemented easily.

6. Ministry has examined the said recommendation of CAC and accordingly advises all States/Union Territories and their Real Estate Regulatory Authorities that **in order to avoid submission of separate application for extension of each project and orders thereon**, Regulatory Authorities may, in pursuance of section 37 of RERA read with other enabling provisions, in their respective jurisdictions issue following orders/directions to the effect that 'notwithstanding anything contained to the contrary and by virtue of powers conferred under section 37 read with section 34(f) of the RERA, the registration or extension thereto under Section 5, 6, 7(3) of the RERA or Rules thereunder, all registered projects under jurisdiction of Regulatory Authority for which the completion date or revised completion date or extended completion date as per registration expires on or after 25th March, 2020': **[emphasis laid]**

- (i) Regulatory Authorities may issue suitable orders/directions to extend the registration and completion date or revised completion date or extended completion date automatically by 6 months due to outbreak of COVID-19 (Corona Virus), which is a calamity caused by nature and is adversely affecting regular development of real estate projects by invoking force majeure clause;
- (ii) Regulatory Authorities may, on their own discretion, consider to further extend the date of completion as per registration for another period upto 3 months, if the situation in their respective State or any part thereof, for reasons to be recorded in writing, needs special consideration of invoking 'force majeure' in view of current pandemic;
- (iii) Regulatory Authorities may issue fresh 'Project Registration Certificates' with revised timeline in each such registered real estate project at the earliest; and



(iv) *Regulatory Authorities may extend concurrently the timelines of all statutory compliances in accordance with the provisions of RERA and the rules and regulations made thereunder.*

7. *This issues with the approval of the competent authority."*

27. The circular dated 13.05.2020 issued by the Authority has been relied upon by the appellant in its reply to the complaint as well as in its appeal but the same has not been placed on record. However, this circular is available on the website of the Authority (and stands superseded by the one dated 28.10.2020 placed on record as Annexure A-11) and it reads as under:-

"The spread of Novel Corona Virus (COVID-19) has had a serious impact on the social and economic life in the country. The World Health Organization had declared COVID-19 to be a pandemic on 11.03.2020. The Government of India and the Government of Punjab have taken various steps with a view to save human lives, and also to mitigate the adverse effects of the spread of the virus.

2. *The Finance Ministry of the Government of India have already declared that COVID-19 would come under the category of 'Force Majeure'. The phenomenon has affected the real estate sector adversely, in various ways. Accordingly, many developers of real estate projects including the CREDAI, Punjab have made representations to this Authority to take steps to minimize the affect of COVTD-19 on the real estate sector.*

3. *The Real Estate Regulatory Authority, Punjab has considered the existing situation from all aspects and hereby determines that the current COVID-19 pandemic is a 'Force Majeure' situation for the purposes of the Real Estate (Regulation and Development) Act, 2016 in the State. In view of this it has been decided as follows:*

a. *For all registered projects where completion date or revised completion date or extended completion date is on or after 15th March, 2020, the period of*



validity for registration of such projects shall be automatically extended by six months from the original date.

- b. For all projects whose registration had lapsed prior to 15th March 2020 and in which applications for extension are under consideration, the period of validity for registration of such projects shall be extended by six months in addition to the extension period that would normally be granted on processing the application.*
 - c. For all registered projects the registration of which has lapsed prior to 15th March, 2020 and in which application for extension has not yet been made, the period of validity for registration of such projects shall be extended by six months in addition to the period that would normally be granted on processing the application, provided they apply for extension after paying the necessary late fee. In calculation of late fee, the period from 15th March, 2020 to 30th June, 2020 shall be excluded.*
 - d. The time limit for all statutory compliances in relation to real estate projects and real estate agents, in accordance with the Real Estate (Regulation and Development) Act, 2016 and the rules and regulations made thereunder, which had become due till date is extended upto 30th June 2020.*
- 4. The matter will be reviewed constantly to take note of, and respond appropriately, to any emerging situation."*

28. The circular dated 28.10.2020 (Annexure A-11) issued by the Authority read as under:-

"This circular is issued in compliance with the order dated 29.09.2020 of the High Court of Punjab and Haryana passed in CWP No.8781 of 2020; and is in supersession of Circular no.RERA/ENF-2020/20 dated 13.05.2020.

2. The spread of Novel Corona Virus (COVID-19) has had a serious impact on the social and economic life in the country. The World Health Organization had



declared COVID-19 to be a pandemic on 11.03.2020. The Government of India and the Government of Punjab have taken various steps with a view to save human lives, and also to mitigate the adverse effects of the spread of the virus.

3. The Finance Ministry of the Government of India have already declared that COVID-19 would come under the category of 'Force Majeure'. The phenomenon has affected the real estate sector adversely, in various ways. Accordingly, many developers of real estate projects including the CREDAI, Punjab have made representations to this Authority to take steps to minimize the affect of COVTD-19 on the real estate sector.

4. The Real Estate Regulatory Authority, Punjab has considered the existing situation from all aspects and hereby determines that the current COVID-19 pandemic is a 'Force Majeure' situation for the purposes of the Real Estate (Regulation and Development) Act, 2016 in the State. In view of this it has been decided as follows:

- a. For all registered projects where completion date or revised completion date or extended completion date is on or after 15th March, 2020, the period of validity for registration of such projects shall be automatically extended by six months from the original date. This extension will be allowed without payment of extension fee.
- b. For all projects whose registration had lapsed prior to 15th March 2020 and in which applications for extension are under consideration, the period of validity for registration of such projects shall be extended by six months in addition to the extension period that would normally be granted on processing the application.



Similarly, the time limit for all statutory compliances in relation to real estate projects and real estate agents, in accordance with the Real Estate (Regulation and Development) Act, 2016 and the rules and regulations made thereunder, which had become due between 15th March 2020

and 15th September 2020 is extended by six months from the original date.

d. The above would not be applicable to those projects whose registration had expired on or before 15.05.2019."

29. Hon'ble High Court of Punjab and Haryana in its interim order dated 29.09.2020 in CM-9374-2020 in CM-6074-CWP-2020 in CWP-8781-2020 (**Vinod Kumar versus Union of India and others**), has ordered as under:-

"This is an application seeking clarification in the statement made by Mr. Patwalia before this court at the time when the case was disposed off vide order dated 27.08.2020. According to Mr. Patwalia, his statement should be read as "circular would not apply to those builders/persons in whose projects period expiry of registration is more than one year" instead of "circular will not apply to those builders/persons whose period of expiry of registration is more than one year". According to him, this clarification is necessary as one builder/person may have various projects.

In view of above, we accept the prayer. It is clarified that in order dated August 27, 2020 statement made by Mr. Patwalia be read as indicated above. Necessary correction be carried out in the order:

30. Aforesaid order dated 27.08.2020 of Hon'ble High Court is not available on the website of the courts.
31. However, Hon'ble High Court of Punjab and Haryana, in its interim order dated 30.06.2020 in CWP-8781-2020 (**Supra**), with respect to the petitioner's grievance in respect of paragraph 3 of aforementioned circular dated 13.5.2020 issued by Authority, whereby it extended the period of validity of registration of projects by six months in addition to the period that would be normally granted for processing the application provided



application is made on payment of necessary late fee, had inter alia held as under:-

"It has been contended by learned counsel for the petitioner that ostensibly the circular was issued to give relief to those projects whose registration was expiring on or before 15.3.2020. However, by virtue of impugned circular which is in the nature of a notification even term of those projects whose registration has expired long back has been extended by six months. According to him, power to issue circulars/notifications of this nature vests in the State Government and not in the adjudicatory bodies. At best, RERA could have entertained an application under Section 84 or 85 of the Real Estate (Regulation and Development) Act, 2016. However, no such application was moved in the instant case. Learned counsel further submits that there are many similarly placed small time home buyers comprising two/three bed room flats who are suffering as builders have stopped work under the umbrella of the impugned circular.

A query was put to Mr. Jain as to the letter, Annexure P-2, issued by Government of India, Ministry of Housing and Urban Affairs and effect thereof. He candidly submits that same is only advisory in nature and it is left to every State Government to consider the advisory in the light of the situation prevailing in the State and in the facts and circumstances of each case. The said letter does not contain the mandate to adjudicatory bodies to act in a particular manner. He further submits that for issuance of circular/notification of general nature, State Government would be the competent authority.

We, however, find that the present circular has been issued by the RERA whose primary function is to adjudicate upon the disputes which come before it. Though, Ms. Sudeepti Sharma, Additional Advocate General, Punjab has vehemently taken a stand in favour of the promoters/builders and submitted that no fault can be found with the order passed by the RERA, we are not impressed by the argument. We fail to understand the need for passing a omnibus order giving protection to all the projects in State of Punjab, particularly when the Act has a specific provision for entertaining an application on behalf of the promoter/builder for extension of time. There is no



doubt that 'Force Majeure' clause can be invoked for this purpose. However, the applicant who would approach the RERA would have to convince it that he has been forced by circumstances beyond his control to continue with the project.

Surprisingly, the circular may even give protection to those promoters/builders whose registration may have expired long back. The intent of the advisory issued by the Government of India was certainly not to accommodate such defaulters. We, thus, find something palpably wrong with the circular. Thus, operation of impugned circular dated 13.5.2020 (Annexure P-1) is hereby stayed.

To come up on 28.9.2020."

32. Vide aforementioned circular dated 28.10.2020 of the Authority, it has inter alia been decided by the Authority that the time limit for "all statutory compliances in relation to real estate projects and real estate agents", in accordance with the Act and the rules and regulations made thereunder, which had become due between 15th March 2020 and 15th September 2020 is extended by six months from the original date.

33. Under chapter II, titled as "REGISTRATION OF REAL ESTATE PROJECT AND REGISTRATION OF REAL ESTATE AGENTS", of the Act, there are many statutory compliances in relation to the registration of real estate projects and real estate agents and are stipulated under Sections 3 to 10.

34. The decision by the Authority to extend the time limit for "all statutory compliances in relation to real estate projects and real estate agents", in accordance with the Act and the rules and regulations made thereunder, which had become due between 15th March 2020 and 15th September 2020 by six months from the original date, can not be contrued to be applicable to the provisions of the Act other than those under its Sections 3 to 10, especially



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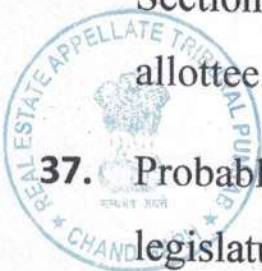
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when the manifest intent of legislation under provisions of Section 6 of the Act, which is reproduced above, is clear to restrict 'force majeure' only to registration of the projects as provided only under Section 6 of the Act and no where else in the Act.

35. The Authority in its aforesaid order dated 18.08.2021 has inter alia held that *“This Authority vide its circular dated 13.05.2020 had held that the benefit of force majeure shall be available to promoters only in regards to the statutory compliances in relation to real estate projects with reference to the date of completion or revised date of completion or extended completion date given at the time of registration of the projects. In this case the promised date for possession to be delivered was 13.01.2020 i.e. much prior to the onset of COVID-19. Hence, the respondent is not entitled to the benefit of force majeure.”*

36. If benefit of force majeure period is construed to be applicable for the purpose of not counting the said period for delay in handing over possession, it will deprive the allottee of its right under Section 18(1) of the Act for the said period even though the allottee continues to pay rent or is deprived of the rental income for the said period from the apartment in question and/or pays interest to the bank/financial institution while repaying loan, etc. Thus, such extension of force majeure to other Sections of the Act than its Sections 3 to 10 shall be a benefit to the promoter at the cost of the allottee.

37. Probably, keeping this fact, besides the others, if any, the legislature has not made provisions for the 'force majeure' any where else in the Act except under its Section 6 regarding registration.



38. In view of above discussion, I am of the opinion that no benefit of Covid-19 can be given to the promoter for reduction in the amount of interest payable by the promoter to the allottee for the delay in delivery of possession of the unit.
39. Reverting to the defaults of the appellant and the respondent as per rival contentions of the parties, clause 7.3 of the Form 'Q' (i.e. the 'agreement for sale' prescribed, in terms of Section 13(2) of the Act, under Rule 8(1) of the Rules) appended to the Rules inter alia provides that on failure of allottee to pay the installment as per schedule given in allotment letter/agreement, apart from paying the interest on the delayed amount, the possession of the plot/apartment shall be extended to the extent of period of delay in paying the defaulted amount.
40. However, the provisions under clause 9.1 of the Form 'Q' read with its clause 9.2(i) provide that if the promoter fails to provide possession of the apartment/plot to the allottee within the time period specified, then the allottee is entitled to stop making further payments to the promoter as demanded by the promoter and that if the allottee stops making payments, the promoter shall correct the situation by completing the construction milestones and only thereafter, the allottee will be required to make the next payment without any penal interest.



41. In the present case, the appellant had assured, under clause 7.1 of the agreement dated 08.07.2019, to hand over possession of the apartment on 13.01.2020. However, it failed to do so and the possession of the apartment was admittedly offered only on 14.01.2021 (after permission for the completion of Tower-T3 and some other buildings granted by GMADA vide its memo dated

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12.01.2021) and the possession was to be handed over after completing the due process which is expected to take about two to three months. Therefore, the respondents were entitled to stop payments in terms of clause 9.1 of the Form 'Q' read with its clause 9.2(i) till the achievement of the milestones.

42. On the other hand, in terms of clause 7.3 of the Form 'Q', which provides that on failure of allottee to pay the installment as per schedule given in allotment letter/agreement, apart from paying the interest on the delayed amount, the possession of the plot/apartment shall be extended to the extent of period of delay in paying the defaulted amount.
43. The amount due 'On Application of OC' could have easily been adjusted by the appellant out of the interest payable by that time by the appellant for delay in possession; and at least part of the amount due "On Offer of Possession' could also have been adjusted similarly.
44. The Authority, vide paragraph 8(ii) of its order dated 18.08.2021, has also directed the complainants-respondents to pay interest for the period of delay, if any, in making timely payments of the installments, as per provisions of the agreement dated 08.07.2019.

45. In view of above discussion, the appeal is devoid of any merit and is liable to be dismissed.

SECOND CASE (APPEAL NO. 104 OF 2021):

46. This second case is in respect of appeal dated 13.10.2021 bearing Appeal No. 104 of 2021 (**Hero Reality Private Limited versus Nitin Paragal and another**) arising out of order dated 18.08.2021

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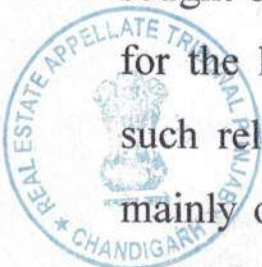
passed by the Authority in the complaint bearing GC No. 00332021 instituted on 27.01.2021.

- 47.** In their complaint dated 27.01.2021, the respondents-complainants have inter alia alleged (i) that they booked an apartment No. 1301, Tower No. T-04 with super area area of 1200 square feet in the appellant-promoter's project Hero Homes at Sector 88 Mohali on 28.03.2016 for a total sale consideration of Rs. 59,48,538/-, including all charges like club membership, IFMS, PLC, Parking and all taxes etc. and executed agreement dated 20.05.2016; (ii) that they paid as per payment schedule about Rs. 54,50,195/-; (iii) that the promised date of possession of the apartment was by 19.11.2019 as per clause 4.1 of the agreement; (iv) that the appellant offered possession few days before the complaint but has not shown occupancy certificate & completion certificate despite several requests and has not provided all the amenities in the project; and (v) that the respondents have taken a bank loan and repaying it and have paid Rs.9,28,322/- as interest on it till January 2021.
- 48.** The respondents, vide their above mentioned complaint, have prayed the Authority to (i) hold them entitled to interest @ 18% for the delayed period on Rs.54,50,195/-; (ii) direct the appellant to obtain occupancy certificate and completion certificate and provide the flat with all amenities and facilities as promised; (iii) direct the appellant to pay interest @ 18% on interest paid by them till that date on bank loan; and (iv) Rs. 1,50,000/- as litigation charges.
- 49.** After considering the reply dated 23.02.2021 of the appellant to the complaint and the rejoinder (not placed on record by the appellant) and the arguments (oral as well as written) of the parties, the



Authority passed order dated 18.08.2021, the concluding and operative parts of which are in essence similar to the one of even date passed by the Authority in the first case except for variations on account of the dates and amounts and except that the respondents have additionally been directed by the Authority to take possession of the apartment offered, within 2 months of the said order dated 18.08.2021, after making all pending payments along with taxes, as applicable, as provided in the buyers agreement.

50. During the proceedings on 24.03.2022, the appellant's representative stated that he has absolutely no objection if the respondents take the possession of the residential unit without prejudicing his right in the appeal; and learned counsel for the respondents accepted such offer of possession. Therefore, this Tribunal directed that possession of the residential unit be handed over to Mr. Nitin Pargal, who was present, on that day itself at 04:00 PM.
51. The appellant's contentions in this appeal are more or less similar to those taken by him in the first case discussed above; and the relief sought is similar.
52. During his arguments before us, the appellant's learned counsel sought only relief of not to charge interest for delay in possession for the lock down period from March 2020 to June 2020. Even such relief was opposed by learned counsel for the respondents mainly on the basis that Covid-19 pandemic started affecting this part of the country from March 2020 whereas the possession was over due since 19.11.2019.



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53. There is no merit even in this appeal and thus this appeal too is liable to be dismissed.

MY DECISION IN THE PRESENT APPEALS:

54. In view of above discussions, I deem it appropriate to order as follows:

- (i) Appeal No. 100 of 2021 (**Hero Reality Private Limited versus Arun Premdhar Dubey and another**), arising out of order dated 18.08.2021 passed by the Authority in the complaint bearing GC No. 18352020, is hereby dismissed, being devoid of any merit;
- (ii) The Authority is hereby directed to initiate action against the appellant under Section 61 of the Act for violation of Section 13(2) of the Act, because the agreement for sale dated 08.07.2019, relating to above mentioned Appeal No. 100 of 2021, blatantly deviates at least from the provisions under clauses 7 and 9 of the Form 'Q' (i.e. the 'agreement for sale' prescribed, in terms of Section 13(2) of the Act, under Rule 8(1) of the Rules); and
- (iii) Appeal No. 104 of 2021 (**Hero Reality Private Limited versus Nitin Paragal and another**), arising out of order dated 18.08.2021 passed by the Authority in the complaint bearing GC No. 00332021, too is dismissed, being devoid of any merit.

55. A copy each of this order be placed in each of the files of aforementioned two appeals and also be sent to the parties as well as the Authority and thereafter, the files be consigned to the record room.

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



August 22, 2022

Certified To Be True Copy
Shanendra Kaur
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

30/08/2022