RESERVED JUDGMENT

BENCH-1

THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL, AT LUCKNOW.

Appeal No. 230/2022

Ankur Manchanda. ……………Appellant.

Versus

1. Uppal Chadda Hi-Tech Developers Pvt. Ltd.
2. Sanjeev Tyagi
3. Smt. Kumkum Tyagi. …………Respondents.

Hon'ble Mr. Justice (Dr.) D. K. Arora, Chairman.
Hon'ble Mr. Sanjai Khare, Judicial Member.

1. Before we proceed to examine the instant matter/issue, we deem it proper to place on record that on demitting office by Technical Member from 26.09.2023 the judicial functioning of the Tribunal had come to stand still with effect from 27.09.2023. On receipt of the notification dated 28.11.2023 with respect to appointment of Judicial Member, in the larger interest as well as to resume the judicial functioning of the Tribunal and to achieve the mandate of Section 44(5) of the Real Estate (Regulation & Development) Act 2016 read with Regulation 22 and 25 a Bench consisting of Chairman and Judicial Member was constituted vide order dated 01.12.2023. The Registry was directed to issue cause list of fresh appeals and re-schedule the cause list of pending appeals from 27.09.2023 on joining of the Judicial Member. Accordingly an office order dated 02.12.2023 was issued by the Registrar, which reads as under:--

OFFICE ORDER

It is hereby informed to all the concerned that the Tribunal was working with single Bench consisting of Hon'ble Chairman and Hon'ble Technical Member after demitting office by the Hon'ble

Judicial Member on 31.12.2022. Hon'ble Technical Member also demitted office on 26.09.2023 and Hon'ble Administrative Member being on unauthorized leave from 30.09.2022 (who finally resigned on 29.10.2023) resulting the judicial functioning of the Tribunal to tune to standstill with effect from 27.09.2023.

The State Government vide Notification dated 28.11.2023 has appointed Hon'ble Judicial Member and as such presently, Hon'ble Chairman and Hon'ble Judicial Member having judicial back ground are available.

As per Section 43(3) of the Act 2016 every Bench of the Appellate Tribunal is to consist of at least one Judicial Member and one Administrative or Technical Member. The Appellate Tribunal is required to scrutinize judicially the appeals against the order of Regulatory Authority or Adjudicating Officer. Rule 30 of the Rules 2016 empowers the Appellate Tribunal to call upon such experts or consultants from the fields of economics, commerce, accountancy, real estate, competition, construction, architecture or engineering or from any other discipline as it deems necessary, to assist the Appellate Tribunal in the conduct of any enquiry or proceedings before it.

Section 55 of the Act 2016 protects the acts and proceedings of the Appellate Tribunal from being invalid merely for the reason of any vacancy in, or any defect in the constitution of the Appellate Tribunal or any defect in the appointment of a person acting as a Member of the Appellate Tribunal or any irregularity in the procedure of the Appellate Tribunal not affecting the merits of the case.

Accordingly in the larger interest and expeditious disposal of appeals as per mandate of Section 44(5) of the Act 2016 the Bench for hearing of appeals is constituted with Hon'ble Chairman & Hon'ble Judicial Member for judicial scrutiny of the appeals and in case any expert opinion/assistance is required the same will be taken as per provisions of Rule 30 of the Rules 2016 in appropriate cases or such cases will be deferred till availability of Administrative/Technical Member.

On joining of Hon'ble Judicial Member, the Registry is directed to issue cause list of fresh appeals and re-schedule the cause list of pending appeals from 27.09.2023 and upload the same on the website of the Tribunal and also inform all the parties/legal representatives about the same.

This order is issued with the approval of Hon'ble Chairman.

The judicial functioning of the Tribunal resumed with effect from 18.12.2023 after joining of the Judicial Member and the said Bench is still continuing on account of non-appointment of Technical and Administrative Members.

2. Now we proceed to deal with the instant matter. This appeal has been filed under Section 44(1) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act 2016') by Sri Ankur Manchanda (hereinafter referred to as 'the appellant') against the order dated 24.01.2022 passed by the U. P. Real Estate Regulatory Authority, Regional Office, Gautam Budh Nagar (hereinafter referred to as 'the Regulatory Authority') in Complaint No. NCR145/04/73803/2021 (Ankur Manchanda Vs. Uppal Chadda Hi-Tech Developers Pvt. Ltd.) whereby the complaint of the appellant was dismissed by the Regulatory Authority.

3. The facts of the case, as culled out from the memo of appeal are that some time in the year 2011 the appellant was approached by respondent no.1 (Uppal Chadda Hi-Tech Developers Pvt. Ltd.). It claimed to be a renowned company with long experience and exposure in providing high-quality residential and commercial projects, and to be one of the recognized real estate and infrastructure development companies in the country. The respondent further boasted of its endeavors to provide exceptional value to its customers by creating premium homes at affordable prices.

3.1 Having been approached and lured on behalf of the Respondent with the afore-mentioned claims and believing the representations of the respondent to be true, the complainant sometime in September 2011 booked a residential plot by depositing an amount of Rs. 14 lakhs as booking amount. Thereafter the respondent got signed by the complainant on 22 November, 2011 a Plot Allottee's Arrangement (PAA) and thereafter the respondent issued a provisional letter of allotment dated 28.01.2012 allotting Plot No. 3/338 (with plot area of 487.92 sq. yds. = 407.95 sq. mts.) located at Wave City, NH-24, Ghaziabad.

3.2 This plot was offered by the respondent @ Rs.9000 per sq. yard= @Rs.10764 per sq. meter making the total basic price of Rs.43,91,280/-. In addition to the above, the complainant was to be charged Peripheral

/Infrastructure Development Charges (PDC/IDC) and any other fee/taxes, all payable to the Govt. or the Statutory Authorities. As per the Allotment Letter dated 28.01.2012 and the Agreement/Arrangement dated 22.11.2011, the total consideration for the plot of 487.92 sq. yards @ Rs.9,000 per sq. yard was shown at Rs.43,91,280. In this connection, relevant para 4 of the Allotment Letter is reproduced herein below for ready reference:

> *"We offer the aforesaid plot @Rs.9000 per sq. yard making the total consideration of Rs.43,91,280. In addition, you will be required to pay PERIPHERAL/Infrastructure Development 5 3 Charges and any other fee/taxes payable to the Govt. and other charges in accordance with the Payment Plan forming part of this letter of offer as Annexure-A".*

3.3 It is evident from the above that besides the Basic Price of Rs.9000 psy, the complainant could be asked to pay only the PERIPHERAL/INFRASTRUCTURE DEVELOPMENT CHARGES and any other fee/taxes as are payable to the Govt. and other charges in accordance with the Payment Plan. No part of the additional charges would be retained or appropriated by the respondent. As per Para 1.6 of the agreement & the Payment Plan, PDCs could only be claimed by the respondent-company as amounts payable to the Govt., and not otherwise. It is also a well-known fact that such amounts like PDCs/IDCS, Fee, Taxes payable to the Govt. or the competent authorities were not chargeable to Service Tax.

3.4 At the time of signing of the agreement, it was quite explicitly promised by the respondent that the development of the proposed Wave City would be completed by the end of October, 2013 and this was the basic reason why the respondent charted out an accelerated Payment Plan for the complainant under which about 90% of the total agreed consideration was to be deposited by Feb., 2013.

3.5 Following the allotment, the complainant applied for and got sanctioned a Home loan from Indiabulls Housing Finance Limited for an amount of Rs.

30,00,000 (Thirty Lakhs Only) vide Sanction Letter dated 28.09.2012 at interest rate of around 10.5% p.a. Thereafter the Respondent on the ground that the development work on the project in which plot of the complainant was located was almost complete at the time of booking, got deposited most of the consideration within a short span of 12 months of the date of allotment on 28.01.2012 (as against the time span of over 3 years allowed in the case of other allottees).

3.6 After the booking, on regular visits to the Project site, it was observed that very slow activity was going on at the Project site. In response, the respondent would make false promises or give evasive replies to the queries of the complainant. Even at the time of booking, the respondent's project was stuck up for certain reasons like non acquisition of land within the project area and other disputes which, though unknown to the complainant, were well-known to the respondent. Yet the respondent falsely and fraudulently misrepresented to the complainant that its project was nearing completion and collected bulk of the consideration within a short span of about one year from the receipt of the provisional letter of allotment dated 28.01.2012.

3.7 No visible accretion and improvement to the project in general was effected in the next 4-5 years, yet the respondent kept on falsely assuring the complainant that it would endeavour to develop the project in time and compensate them fully for the delays.

3.8 Total payments amounting to Rs.48,73,978 have already been deposited by the complainant and acknowledged by the respondent as per the Final Statement of Account dated 16.12.2020 issued by the respondent company, which also represents the No Dues Certificate in favour of the complainant.

3.9 Finally the due date of handing over of possession of the plot arrived in the month of October, 2013 as was specified by the respondent itself. But it was noticed that at this belated stage also, much of the development work had not even been commenced. The respondent referred to the extended time under the agreement and that it will try its best to complete project as soon as possible and that the complainant would be duly compensated for the delays, if any.

3.10 The respondent further assured the complainant/appellant that the project would be completed within 4 more months i.e. by the end of FY 2013-14. The complainant/appellant was further assured that the respondent would compensate the complainant for the delays. Thereafter in the month of April, 2014, when the deadline promised by respondent for delivering the possession of property was well past, the same status continued and there was not much improvement towards the development & completion of Project.

3.11 The complainant/appellant was assured that no sums other than those payable to the Govt. by way of Development Charges or Taxes or Duty payable to the Govt. authorities would either be charged by the Developer or it will be appropriated or retained, directly or indirectly, by the Developer. PDCs were mentioned as of the nature of Infra-structural Development Charges (IDC) which are charged by or payable to the Govt. or the related statutory authorities.

3.12 As per the legal position, the Development Charges as are payable to the Govt. were not chargeable to Service Tax. It is apparent from the Demand Notices dated 02.03.2012, 06.06.2012, 21.08.2012 & 08.10.2012 raising demands on account of PDCs and these did not include any charge on account of Service tax. The complainant was shocked to receive a Demand Notice dated 3rd July, 2013 demanding Rs. 20,686 as Service Tax payable @12.36% on the PDCs of Rs. 1,67,358. The demand of Service Tax on the Peripheral Development Charges of Rs. 1,67,358 gave the impression that this amount of Rs.1,67,358 was not payable to the Govt. but was intended to be retained by the Developer. This was against the terms of the Payment Plan accompanying the allotment letter. The complainant raised this issue with the respondent vide his letter dated 15.10.2013 requiring the Developer to clarify if this amount of Rs. 1,67,358 termed as PDCs was payable to the Govt. or it was to be retained by the Developer. If this amount was payable to the Govt./Statutory Authorities as Infrastructural Development Charges, then there was no question of charging Service tax on this amount. In any case, if this amount was not fully payable to the Govt. Authorities, then it could not be charged to the complainant. The respondent was requested to share its complete details and break-up as to how much of it was payable to whom of the different persons/Authorities and when and in what manner. Over a dozen communications were mailed to the respondent, but no reply was coming forth from the respondent.

3.13 When the complainant persisted with its queries and concerns, ultimately, the respondent felt constrained to respond vide its letter dated 11.12.2013 in the following manner:

> *"Our company charge service tax on PLC & PDC (in plot case). But as per discussion with accounts deptt. for your case they said if any customer have objection for service tax on plc (in plot case) that customer have give us a indemnity bond for future if PLC will charge then that customer will pay to us with interest and any penalty charge by service tax deptt. that also he will pay. So we request to you please give us a indemnity bond to us with all above declaration."*

3.14 The reply of the respondent revealed that it had not yet charged any amount on account of Service Tax and it also had not paid any amount towards Service Tax. Service Tax was replaced by GST w.e.f. 01.07.2017 and the respondent till date has not come forward with any claim or evidence that it was ever charged and had paid any amount on account of Service Tax in respect of PDCs in respect of the plot(s) of the complainant and other allottees.

3.15 The Service Tax Act having become history and with no evidence of any demand having been fastened on the respondent in this regard, any demand on this account has to be held unlawful. It was a big fraud on the complainant, and thousands of other home & plot buyers that the respondent was forcibly collecting Service Tax in the name of Taxes payable to the Govt., but not actually depositing the same.

3.16 The respondent vide its Demand Notice dated 19.02.2014 & further reiterated vide its communication dated 16.09.2014, communicated another demand of Rs.5,61,108 on account of External Electrification Charges (EEC) + Rs.41,612 as Service Tax thereon, which was neither specified in the Agreement nor in the Payment Plan. These new demands were obviously made after the scheduled date of Handover of Possession by October, 2013 and are otherwise illegal. The last installment of PDCs was payable on 2nd February, 2013 and no demand on account of Service Tax payable was ever communicated till July, 2013.The complainant had already denied and disputed the liability on account of PDCs and the demand on account of EEC was no different, as this demand of Rs.5,61,108 on account of EEC + Rs.41,612 as Service Tax thereon was neither specified in the Agreement nor in the Payment Plan. As Service Tax of Rs.41611 was also being demanded on the amount of Rs. 5,61,108 on account of EEC charges, the complainant disputed this demand of the amount of Rs. 5,61,108 on account of EEC charges also in writing on the ground that it was obviously not payable to the Govt. authorities; and thus not payable by the complainant, as per the Payment Plan. This was another big fraudulent act and demand on the part of the respondent. As no justification was received from the side of the respondent, the complainant strongly denied his liability on the above count as undue, unwarranted and against the law and the agreement.

3.17 However, later Shri Pradeep Sachdeva, a very Sr. Executive of the Respondent Company, assured the complainant that no part of the amount demanded on account of PDCs would be retained by the Respondent and it was indeed payable to the Govt./Statutory Authorities and therefore, the complainant may pay the demand on account of PDCs without payment of the Service Tax demand, and further assured that the demand on account of Service Tax would be deleted. Acting on his assurances, the complainant deposited the demand on account of PDCs, and expected the respondent to withdraw its demand on account of EEC charges and Service Tax, as per its assurance.

3.18 The complainant although not convinced with the genuineness of the excuses put forward by the respondent as to the huge delays in delivering the possession of the flats, but the complainant being left with no alternative had no other course but to accept the extended timelines because of his helplessness. Keeping in view the fact that the complainant had already deposited about 95% of the consideration of plot which was a huge amount, he was genuinely apprehensive of such substantial amount being lost or struck in the process. Under the circumstances, the complainant was not in a position to resist much against the unreasonable & unfair conduct of the respondent and thus had no alternative but to trust respondent's promises which ultimately proved false. During the period from March 2014 to March 2016, the appellant made numerous calls to the respondent demanding the status of completion of the project, but the respondent did not respond and kept on lingering the issue.

3.19 The respondent-company had been constantly shifting the goal post. Against the due date of October, 2013 for possession, the possession for the first time was offered vide letter dated 12th June, 2019, but simultaneously additional demands were also raised along with the offer of possession. These illegal and undue demands were a mala fide and a brazen attempt on the part of the respondent to cause further undue harassment to the complainant and to further delay the already much delayed possession by raising huge fraudulent demands of undue & unlawful charges with the intent that the complainant would not be able to take possession because of his inability to pay such unlawful charges.

3.20 As these demands were totally unlawful, fictitious & fraudulent in nature, the complainant however wanted to take up the matter with the senior Executives of the Company like CMD & Directors. The executives were requested multiple times to either organize a meeting with the CMD & Directors or to communicate their contact particulars i.e. the address, Phone & Mobile Nos. with E Mail IDs, and also the date, time and place of meeting to meet, discuss and settle the whole case. Neither of the things happened. Ultimately, the complainant again visited the office of the respondent on 18.10.2019, but he could meet only lower level functionaries Mr. Krish Chaudhary and Ms. Vandana.

3.21 Without prejudice to its stand on the illegal demands, the complainant requested the Company and its functionaries not to withhold possession for imaginary and illegal demands, and requested to set off any such demand, if necessary, against the huge amount of DPI compensation & interest as had already fallen due to him for a delay of 6-7 years, as per the law and the assurances extended to him in the past. It seemed to have some effect on them and the Company's Executives assured that they will consider it. But eventually nothing happened and the complainant was forced to deposit even the most illegal and disputed charges some of which were of fraudulent nature.

3.22 Earlier in the year 2012, the respondent had made the complainant deposit a major part of the demand of Rs.4,16,151 as PDCs, without demanding any amount on account of Service Tax payable thereupon. Later in the year 2013, it started demanding an amount of Rs. 51260/- as Service Tax @12.36% thereon. Meanwhile, no change had occurred in the laws in this regard. As no Service Tax was payable on Govt./Statutory charges, the complainant challenged the chargeability of PDCs as Govt. dues. It was only in 2014 after the respondent waived its claim to Service Tax on PDCs that the complainant dropped his opposition to the chargeability of PDCs as Govt./Statutory dues.

3.23 Raising again this demand of Rs. 51260/- as Service Tax @12.36% after 5 years with the offer of possession was a breach of trust and this amounted to going back on one's word and commitment. The complainant was very much shocked and disappointed to again find that the respondent, after having once agreed way back in the year 2014 to the complainant's stand that Service Tax was not chargeable on PDCs, had again raked this issue up after 5-6 years and claimed Rs.51,516/- as Service Tax on the PDCs without giving any justification & validity for its chargeability.

3.24 The complainant/appellant studied the relevant legal provisions about charging of PDCs, EEC etc. and confronted the respondent with the illegal nature of the charges vide his letter dated 30.08.2020. In spite of the specific challenge put by the complainant, the respondent has not come forward with any evidence and even a claim to the effect that it had indeed been charged to Service Tax on the amount of Rs.4,16,151/- claimed as PDC dues and that it, indeed, had deposited any amount on this account with the Govt.

3.25 As the respondent company had not furnished any proof in this regard, the complainant made an RTI Application dated 29.08.2020, the response to which was received vide GDA's letter No. 721 dated 01.10.2020. The GDA vide its letter dated 01.10.2020 clearly stated that the Developer under a High-tech City Policy was liable to pay only the City Development Charge @ Rs.3 lakhs only per acre, and was not liable to pay any External and Internal Development Charges or External Electrification Charge. It has been clearly stated by the GDA Authorities that the GDA has not recovered any amount from the Developer as External Development Charges & Internal Development Charges. As regards External Electrification Charge, the GDA Authorities have categorically stated that the Developer has no right to charge and recover any amount on account of External Electrification Charge (EEC). As per the above GDA letter , the GDA has clarified that the Developer could not charge more than Rs.3 lakhs per acre as City Development Charge which works out to no more than Rs.120/- per sq. yard, as against the charged amount of Rs. 850/- per sq. yard. The rate of Rs.120/- per sq. yard is calculated assuming that the development process leaves only about 55% of the total area as Saleable Area. Thus it is evident that the respondent developer has excess-charged as much as Rs. 730/- per sq. yard as PDCs which is refundable to the complainant and other allottees.

3.26 When confronted with the legal position & information gathered from the GDA, the respondent quietly deleted the EXTERNAL ELECTRIFICATION CHARGES (EEC) of Rs. 5,63,028 + Rs. 41,957 as Service Tax thereon and a host of other illegal demands of smaller amounts which the complainant had vehemently opposed, as being against the terms & conditions of the Agreement. This deletion of EEC demand of Rs. 5,63,028 + Rs. 41,957 as Service Tax took as long as 6 years from 2014 to 2020 and not before the complainant was able to procure clear replies from the GDA Authorities which established the illegal and fraudulent nature of the demands made by the respondent on account of PDCs, EEC & Service Tax thereon. It was only after it was left with no escape route that it deleted some of the demands.

3.27 In the wake of such strong & incriminating evidence against it, surprisingly, the respondent company neither reduced the demand on account of PDCs nor deleted the amount of Rs. 51260/- charged as Service Tax @12.36% on the PDC amount of Rs.4,16,151/-. This was a brazen affront to the legal position and the orders/directions of the Statutory Authorities. The complainant vide his letter dated 18.07.2019 again challenged the validity and the legality of this huge demand. In its reply dated 08.08.2019 the respondent-Company has admitted that the Developer is obligated to carry out Internal as well as External Developments. The respondent-Company has further admitted that the internal development is obligated to be carried out by the Developer at its own cost as the same is already included in the Basic Sale Price & the PERIPHERAL DEVELOPMENT CHARGES already collected by the company. The complainant failed to understand how and under what clause of the agreement, the cost allegedly incurred or to be incurred on External Development Charges was additionally recoverable from the complainant & other Allottee(s).

3.28 After having very carefully studied the reply of the respondent w.r.t. the provisions of the executed Agreement/Arrangement, the complainant wrote further detailed letters dated 13.08.2019 & 09.12.2019 and supplemented the same with the highly incriminating reply from the GDA. It was only after that the respondent felt pushed into a corner without any defence that it finally deleted this demand of over Rs. 6 lakhs on account of EEC and tax thereon. The respondent is in the habit of raising undue, bogus and fraudulent charges and then withdraw the same if confronted with strong facts, and in the process cause huge harassment to the complainant & the allottees.

3.29 Along with the letter for offer of possession dated 12.06.2019, the respondent in the Statement of Account had included the following demands which had no basis in the agreement. The complainant opposed strongly through multiple letters the raising of these bogus charges, but the respondent did not listen or respond:--

i. CONVERSION CHARGES Rs.1,07,709 + GST

ii. Various Connection Charges Rs.1,14,559 + GST

iii. Club Membership Charges Rs.75,000 + GST

iv. IFMS Rs.48,959 + GST

v. Advance Maintenance Charges Rs.1,17,502 + GST

vi. External Electrification Charges Rs.5,63,028 + GST

vii. Interest & Holding Charges Rs.4,77,020 II.

It was after the complainant wrote strong letters, referred the matter to the GDA and the applicable relevant provisions, and more particularly, the RTI Application dated 29.08.2020 and the reply thereto which exposed the fraudulent nature of its demands on account of PDCs, EECs, Service Extra thereon, that the respondent felt cornered with no escape route. It was only after all this that the respondent felt constrained to delete demands on the first 6 counts.

3.30 As regards the demand of Rs.4,77,020/- on account of Interest & Holding Charges under which interest was charged @ 18% per annum, the complainant having paid all the demands well in time, there was never any demand, or even a communication, about the interest payable by the complainant. The complainant strongly objected to this demand and later the respondent vide its E-Mail communication dated 12.07.2019 intimated about the waiver of Interest & Holding Charges. Though the respondent had suo moto under a scheme waived these charges, but these were never payable by the complainant as there was never a default in payment or in taking possession of the plot as could warrant such an Interest payment or Holding Charges. There could not be a more outrageous and unfair and unlawful practice to raise the demand of Rs.4,77,020/- as there was neither any delay in making payment nor delay in taking possession.

3.31 The saddest & the most unfortunate part is that the respondent again revived the already deleted demands of Rs.1,17,502/- + GST on account of Advance Maintenance Charges and Rs.48,959/- + GST on account of IFMS without giving any reason and has forcibly recovered Rs.1,96,424/- under duress and coercion. No Maintenance Agreement having ever been signed between the respondent and the complainant, there was no question of charging even the Maintenance Charges, least of all the Advance Maintenance Charges.

3.32 In April, 2021, the complainant wrote to the respondent-Company for knowing the process & procedure to transfer his plot to a 3rd Party as per the provisions of Para 3.2(b) of the PAA. Besides imposing unreasonable conditions & Transfer Charges, the Respondent further insisted on depositing of 2 years' Advance Maintenance Charges (AMC) & Interest Free Maintenance Security (IFMS) amounting to Rs. 1,96,424. As these demands were not specified in the agreement (PAA) and the complainant having strongly opposed the levy of the undue and unwarranted charges, the respondent had felt constrained to remove these 2 demands.

3.33 Further, this demand was stated to be pertaining to another Group Company M/s Dilbird Pvt. Ltd. which appears to be concerned with the execution of the Conveyance Deeds. The complainant has no agreement or obligation to deposit these demands which have been illegally sought to be revived again at the time of proposed transfer and it is, therefore, considered as an unfair practice.

3.34 Neither Advance Maintenance Charges nor IFMS is mentioned anywhere in the Plot Allotee's Arrangement (PAA) and in agreed terms & conditions. The Respondent Company has already deleted many of disputed charges which had already caused a delay of about 7 years in handing over of possession of the subject Plot. The Respondent Company has not clarified where this new demand of Rs. 1,96,424/- on account of Dilbird Payment Maintenance + IFMS has come from when no Maintenance Agreement had been signed and, particularly when NO DUES CERTIFICATE had already been issued by the company, way back in December, 2020.

3.35 Notwithstanding the above contention, the complainant is further shocked to see that the respondent-Company is charging GST @ 18% on the IFMS, which is not only illegal but fraudulent also as IFMS is in the nature of security deposit which does not attract GST. Raising bogus demands like Advance Maintenance Charges, IFMS etc. again and again, particularly after issuing NDC and after deleting them in the NDC, amounts to causing further avoidable harassment to the allottee. Moreover, the complainant does not recognize M/s Dilbird as he has no agreement with this company and no amount is payable to the said company.

3.36 The agreement entered into between the complainant and the respondent is totally one-sided, tilted highly in favour of the respondent and does not contain the proportionate liability clause to fasten commensurate penalty/damages on the respondent for breach in discharge of his obligations. In such a situation, the complainant hardly had any option but to adhere to the dictate of the respondent as per the agreement, even when the clauses of the agreement were onerous, unfair, iniquitous and totally one-sided.

3.37 A perusal of the above said facts along with buyer agreement clearly show that the respondent has not only delayed in delivering possession of the plot but has also charged certain unreasonable amount which are against the law as well as against the terms & conditions of allotment and the agreement.

3.38 Under clause 3.2(b) of the Agreement dated 22.11.2011, the complainant was entitled to get the name of his nominee substituted in his place after paying a reasonable amount of administrative charges for the proposed transfer. The only other condition besides the unspecified administrative charges was that no demand should be outstanding against the allottee. This issue was specifically referred to the respondent company vide letter dated 4th April 2021 to which the respondent company vide its letter dated 5th April 2021 intimated the complainant that it could be endorsed in favour of other person after paying a huge amount of Rs.1,15,544/- computed @ ₹200/- per square yard, as administrative charges.

3.39 Vide further letters dated 05.04.2021, 13.04.2021 & 22.04.2021, the complainant tried to reason out with the respondent that such heavy amount of Rs.1,15,544/- @ Rs.200/- psy was unfair and against the letter and spirit of the agreement, as no such amount had been specified as

Administrative Charges in the PAA. The complainant, therefore, requested that the Administrative Charge @ Rs.200 psy should either be completely removed; or if at all necessary, it should not be more than Rs.10 psy.

3.40 The respondent instead of removing or reducing the Administrative Charge @ Rs.200/- psy, vide its letter dated 26.04.2021 specified some other documentation requirements and made a further demand of Rs.1,96,424/- on account of Advance Maintenance Charges & IFMS which was totally unwarranted. As this demand had already been consciously removed and reversed by the respondent itself, after strong protests were raised, only a few months before, it was totally wrong on the part of the respondent to have revived the demand again without any basis and reason. The respondent further specified a Transfer Application Form (TAF) to be signed by both the transferor (complainant) and the transferee wherein it had specified very unreasonable & unlawful conditions. The respondent had made the signing of the Transfer Application Form mandatory in its present form, without any change or modifications even though some of the existing contents/clauses etc. were not relevant and were highly prejudicial to the complainant. For example, the Transfer Application Form (Annex. C-17) has conditions of the kind: "It is further covenanted by me/us and my /our transferee(s)/assignee(s)/nominee(s) that the change/ substitution in name(transfer/endorsement/assignment /nomination) shall be subject to the condition that me/us and my /our transferee(s)/assignee(s)/nominee(s) have agreed to the modified terms and conditions of provisional allotment, whereby any benefit/interest accruing to me/us arising out of the erstwhile Expression of Interest till the date of endorsement stands waived of. Therefore, neither the transferor(s), assignor(s), nominator(s) nor transferee(s)/assignee(s)/ nominee(s) shall have any right to claim any interest on the money paid at the time of Registration of Expression of Interest, if any, and further this endorsement shall be subject to approval from the competent authority under the relevant provisions of the applicable laws. The terms & consideration of provisional allotment shall apply hitherto my/our said transferee/ assignee/ nominee, who shall directly be liable to pay all charges/balance amount/consideration as per your scheme/terms/condition or modified scheme/terms/conditions of the company including any statutory /transfer charges/taxes/duties/tax payable to any authorities(s) on this transfer/assignment/nomination."

3.41 The complainant once again vide further letters dated 26.04.2021, 28.04.2021 & 09.05.2021 opposed not only the imposition of further charges, but also the imposition of further unacceptable and unreasonable conditions. There were no such restrictions & conditions in the Agreement signed by the complainant with the developer. These conditions in the Transfer Application Form or in docs otherwise connected with the transfer which debar the complainant from filing cases or pursuing cases already filed or claiming any relief, benefits or interest thereunder were discriminatory, unlawful and not binding on the complainant. The transfer charges being demanded @ Rs.200/- per sq. yard as transfer fee were not only hugely excessive, but unlawful also.

3.42 The complainant resisted these conditions and illegal charges through about a dozen E-Mail communications, but the respondent was not moving. The relevant part of the last communication dated 23.06.2021 as received from the respondent Company is as under:

> *"Further to the conversation we had with reference to the below mail and as discussed with the management, this is to inform that all the terms and conditions related to transfer will remain the same as specified and communicated to you initially. We request you to kindly submit the necessary documents to proceed further with the transfer process."*

3.43 Because of the long delays and lack of any reasoned response from the respondent, the complainant entered into an Agreement for Sale dated 24.06.2021 for sale of the subject property with Smt & Shri Sanjeev Tyagi, but only after the respondent Company had requested to submit the relevant documents. To fulfill the conditions imposed by the respondent, for effecting change of name in its record, left with no alternative, the complainant under pressure & coercion of the respondent Company, was made to sign certain documents with unacceptable conditions on dotted lines and also to deposit the amounts of Rs.1,15,534/- & Rs.1,96,424/- by 2

DDs dated 24.06.2021, with the tacit assurance from the respondent that there would not be any further problem in the transfer. But all this was done under protest and without prejudice to any legal rights of the complainant to file complaint and claim all reliefs admissible under law.

3.44 Immediately after signing the Agreement for Sale dated 24.06.2021, the complainant wrote a detailed E-Mail Communication dated 25.06.2021 and with it appended a copy of the Agreement for Sale dated 24.06.2021 with the proposed Buyers. Relevant para 6 of the said email is as under:--

> *"6. Left with no choice, we had to act under coercion and had to succumb to company's illegal demands like Payment Of Transfer Charges of Rs.1,15,640 and IFMS, Advance Maintenance Charges for 2 years amounting to Rs.1,96,490 and putting my signatures on certain Transfer related documents such as Transfer Application Form, affidavits, Indemnity Bonds etc. under pressure and coercion as the Company was refusing to affect transfer without our acting on 29 27 the dictates of the company. We clarify here that we have acted under protest, and without prejudice to our any legal rights and claims and retain our right to enforce our all legal claims to Interest, Compensation, Damages, Refund of all disputed charges etc. before any Court, Commission, Authority etc. We request you once again to please review your policy and undo all illegal acts and refund all extra charges even at this belated stage. We look forward to an urgent revert from your side."*

3.45 Against the total inflated consideration of Rs.48,73,978 demanded by the respondent, the complainant had deposited the total amount of Rs.48,73,978 by November, 2020. After the respondent issued NO DEMAND CERTIFICATE dated 16.12.2020 in favour of the complainant, he vide his letters dated 03.12.2020 & 10.01.2021 requested for possession of the plot which was scheduled to be handed over by October, 2013. The respondent unfortunately made the handing over of the possession of the plot conditional to first getting it registered, depositing of Stamp Duty and other Registration charges. There was no such condition in the agreement i.e. PAA.

3.46 As the complainant had already suffered a lot because of long inexplicable delays and arbitrary refusal of possession and illegal charges, the complainant had already filed his complaint u/s 31 of the RERA Act-2016 before the UP-RERA Authority on 20th April, 2021. All this was in the knowledge of the respondent and through various communications, the complainant had made it clear that he was not prepared to forgo any of his legal rights of claiming Delayed Possession Interest, Compensation and other reliefs. There is nothing in the law or in the terms & conditions of the agreement that enabled the respondent Company to refuse possession or to restrict/prevent transfer of the subject property by way of transfer, because of the pending complaint. Further during the extremely difficult Covid-19 times and the severe financial difficulties caused, he being not in a position to arrange and deposit such heavy amount to ease his financial difficulties, the complainant felt constrained to think in terms of selling his plot by way of an Agreement for Sale, to a third party.

3.47 Immediately after signing the Agreement for Sale dated 24.06.2021, the complainant promptly sent an unattested/non-notorised copy of the Agreement with the proposed Buyers through detailed E-Mail Communication dated 25.06.2021 for information. At the end of Para 5 of Agreement dated 24.06.2021, it was clearly hand-written that "this agreement will override any other agreement signed between the parties". It is pertinent to refer to para 7 of the said agreement which reads as "All legal rights, claims, obligations and interests, including any potential interest, compensation for delay etc. for the period prior to the time of transfer will belong exclusively to the vendor, and all legal rights, claims, obligations etc for the period post the transfer will belong exclusively to the Vendee only. Any agreement, including this agreement, will become effective only after it has been duly consented and signed by both the parties and 2 witnesses, and the entire consideration has been paid to the vendor."

3.48 Although the full contents of this Communication dated 31 29 25.06.2021 are very relevant & important, but the contents of para 6 thereof are reproduced below:--

> *"6. Left with no choice, we had to act under coercion and had to succumb to company's illegal demands like Payment of Transfer Charges of Rs.1,15,640/- and IFMS, Advance Maintenance Charges for 2 years amounting to Rs.1,96,490/- and putting my signatures on certain Transfer related documents such as Transfer Application Form, affidavits, Indemnity Bonds etc. under pressure and coercion as the Company was refusing to affect transfer without our acting on the dictates of the company. We clarify here that we have acted under protest, and without prejudice to our any legal rights and claims and retain our right to enforce our all legal claims to Interest, Compensation, Damages, Refund of all disputed charges etc. before any Court, Commission, Authority etc. We request you once again to please review your policy and undo all illegal acts and refund all extra charges even at this belated stage".*

This was followed by a couple of other communications on 05.07.2021 & 23.07.2021.

3.49 However, the original signed agreement dated 24.06.2021 with the 2 DDs dated 24.06.2021 of Rs.1,15,534 & Rs.1,96,424 and all other original and other relevant papers connected with the transfer were duly handed over to the proposed Buyers for presentation to the respondent for further necessary action in connection with the transfer. It was learnt from the proposed Buyers that after they submitted all relevant documents to the respondent on 06.07.2021 as per the receipt, the respondent tried to scare them by stating that transfer would not be affected until the Vendor withdrew his complaint filed u/s 31 of the RERA Act. On being informed by the proposed Buyers, the complainant took up the issue with the respondent and its Director Shri Pradeep Sachdeva and a Senior Executive Shri Rupesh Agarwal who also telephonically confirmed that the proposed transfer/endorsement could not be effected before withdrawing the complaint u/s 31, but refused to say anything in writing.

3.50 On strong protests raised by the complainant through his multiple E-Mail communications dated 29.062021, 05.07.2021, 23.07.2021, 26.07.2021, 27.07.2021, 30.07.2021, 12.08.2021 and 22.08.2021 sometimes during this period, the 2 afore-mentioned Executives assured the complainant to reconsider their stand, but did not do anything for about 2 months. This was totally unlawful on the part of the respondent to illegally pressurize anybody to forgo his legal rights or withdraw a lawfully filed complaint before a lawful & competent authority. No amount of written and oral pleadings helped and its representative brazenly refused to say anything in writing. During this period, the proposed Buyers became restive and utterly aggressive to the extent that Shri Sanjeev Tyagi and his musclemen threatened the complainant and his close relatives with even physical assault and violence and virtually took out the pistol.

3.51 It was later learnt that the proposed Buyers were in conspiracy with the respondent Company who had egged and abetted them to adopt threatening postures and intimidating tactics to browbeat the complainant into submission to agree to the respondent Company's demand for withdrawal of the Complaint u/s 31 made against the respondent Company.

3.52 The Regulatory Authority, vide impugned order dated 24.01.2022 dismissed the complaint of the appellant.

4. The appellant has challenged the impugned order dated 24.01.2022 passed by the Regulatory Authority on the following grounds:--

A. BECAUSE the order dated 24.01.2022 passed in Complaint No. NCR145/04/73803/2021 by the UPRERA is perverse, suffers from patent illegality, irrational and contrary to the material available on record and legal position.

B. BECAUSE there was no reason for withholding possession as all necessary conditions and all demands, including even the most disputed & the fraudulent one, had already been paid and a No Dues Certificate acknowledging receipt of entire due amount of

Rs.48,73,978 in the form of Statement of Account dated 16.12.2020 (Annex. C-5B) had already been issued by the respondent.

C. BECAUSE the possession of the plot as per para 3.3 of the PAA which was scheduled to be handed over in 36 months from the date of commencement of development work on site i.e. by October, 2013 is already delayed by over 8 years and there is nothing in the law or in the Ts & Cs of the agreement that enabled the respondent Company to refuse possession or to restrict/prevent endorsement/reallotment/ transfer of the subject property, because of the pending complaint u/s 31 of the RERA Act.

D. BECAUSE the Ld. RERA grievously erred in holding on the strength of the apparently forged documents like the alleged Sale Agreement dt. 08.04.2021 {which was not signed by any witness also}, that the subject property had already been transferred by the complainant. This finding was patently false and against law, and, as the respondent never sought permission to introduce fresh evidence. It was also against the principles of natural justice to have admitted and acted upon fresh evidence which had never been exchanged with or confronted to the complainant, more particularly, when their admissibility had strongly been challenged by the complainant. Further, these forged docs were uploaded on the UPRERA portal by the R-1, only in the night hours of 28.09.2021 i.e. just hours before the final hearing on 29.09.2021, with a view to deny to the complainant a fair opportunity to rebut the same. This was against the specific direction of the Ld. RERA to make a copy available to the complainant.

E. BECAUSE the alleged Sale Agreement dt. 08.04.2021 was apparently false, forged and fabricated, as it contained exact information date, Name of Bank, DD No. 577664 & 577666 of 2 DDs dated 20.04.2021 of Bank of Baroda (Copes attached as ANNEX. A) which were prepared 12 days later. There could not be a better and more clinching evidence of the forged nature of the alleged Sale Agreement dt. 08.04.2021. It proved beyond any shadow of doubt that the respondent Company was in active collusion with the R-2 & R-3 in fraudulently fabricating & submitting the alleged Sale Agreement dt. 08.04.2021 and other connected documents with the sole objective of cheating the complainant.

F. BECAUSE the forged documents uploaded by R-1 on the UPRERA Portal only in the late night of 28.09.2021, only a few hours before the final hearing date on 29.09.2021, were very dim, light and illegible. The complainant was deliberately denied a fair opportunity to submit his Counter-Reply, which had to be submitted in utter haste on 29.09.2021, with great difficulty.

G. BECAUSE During the very brief hearing on 29.09.2021, the Ld. UP-RERA grievously erred in ignoring the strong objections of the complainant and closed the hearing by pronouncing 'order reserved' with option to file Written Arguments by 05.10.2021. Thus virtually no opportunity was allowed to the complainant to lead more evidence against such fresh/additional evidence in the form of forged documents before these were admitted by the Ld. RERA Authority, in spite of the strong protests of the appellant.

H. BECAUSE the Ld. RERA Authority acted against the established process and procedure when it admitted the forged documents despite the specific strong objections vide REJOINDER dated 28.09.2021 & Written Arguments dated 05.10.2021 on the following points i.e.: a. That the Written Reply dated 28.09.2021 was not signed by any of the authorised persons, and there was no authority by way of a Board Resolution in favour of the person signing it; b. That the Written Reply dated 28.09.2021 was neither accompanied with an affidavit nor there was any declaration and verification made towards the end that the contents and the documents submitted therewith were true etc. c. That there was no Vakalatnama also in favour of the person signing and submitting the reply;

I. BECAUSE after receiving certified Copies of certain documents submitted by the respondent along with its Written Arguments dt. 05.10.2021, it was further discovered to the shock of the complainant that the respondent had further submitted fresh evidence, for the first 56 10 time, in the form of 2 other forged documents i.e. Copy of Indemnity-cum-Undertaking dated 19.04.2021 (as ANNEX.-C) and Copy of Affidavit-cum-Undertaking dated 19.04.2021 (as ANNEX.-D) to the Written Arguments. It amounts to admitting additional evidence after the pleadings had been completed which is illegal. Thus the Ld. RERA committed a grave error in admitting additional documents which were forged also, without confronting to the complainant. It was not only against the Basic Principles of Natural Justice, but also against the Process and Rules & Regulation for admission of docs. It has not only highly prejudiced the case of the complainant, but also is another solid evidence of his favourable bias towards the Promoter;

J. BECAUSE at the end of Para 5 of Agreement for Sale dated 24.06.2021, it was clearly hand-written (interpolated) that "this agreement will override any other agreement signed between the parties". The Agreement for Sale dated 24.06.2021 having been acknowledged by the Ld. RERA Authority, though not by the respondent No. 1, it further grossly erred in holding on the basis of the forged agreement dated 08.04.2021 that the subject plot had already been transferred.

K. BECAUSE in a case involving transfer of an immovable property or rights thereof, the respondent No. 1 was duty-bound to crosscheck, verify and, if necessary, reconfirm with the TRANSFEROR if the documents on the basis of which reallotment/transfer was being sought by a TRANSFEREE person were genuine or not. In this particular case, with the Agreement dated 24.06.2021 furnished by the complainant himself already being on its record, the R-1 had utterly failed in its duties in this regard, in ignoring the Agreement 57 11 dated 24.06.2021. The R-1 acted fraudulently in concealing the Agreement dated 24.06.2021 supplied by the appellant, and instead in submitting the forged agreement dated 08.04.2021 & documents procured by it in conspiracy with the R-2 & R-3. It was a totally mala fide and an outrageous act on the part of all the 3 respondents.

L. BECAUSE the complainant had refused to succumb to the R-1's pressures of withdrawing the complaint filed u/s 31, it unlawfully withheld the process of issuing NOC to the R-2 & R-3 and was egging and abetting the Buyers to pressurize the complainant to withdraw his complaint by issuing threats to the complainant and his family members. These allegations have not been denied by R-1.

M. BECAUSE during the course of the final hearing on 29.09.2021, in the absence of any Regd. Sale Deed or endorsement or reallotment having been made in favour of the R-2 & R-3, even in the records of the Respondent Company, the Hon'ble UP-RERA Authority, had specifically asked the Counsel Shri Asit Kumar of the Respondent R-1 that if he still considered that the property had been transferred on or before 20.04.2021 or even on the date of hearing. Though he started beating about the bush, yet he did not claim before the Hon'ble Authority that the property could be deemed as having been transferred. It is further clear that no transfer had legally taken place even on the date of the hearing on 29.09.2021, even as per the R-1.

N. BECAUSE it is a matter of record that the Plot in Question has not been transferred till date to R-1 & R-2 by way of a Regd. Conveyance Deed; i. that the possession of the said Plot has also not been handed over to R-1 & R-2; 58 12 ii. that even the R-1 itself had admittedly had not issued a No Objection Certificate in favour of R-1 & R-2, for the purposes of reallotment; iii. that the R-1 itself till date to the knowledge of the complainant has not taken even the first step in the direction of transfer by endorsing the allotment in favour of the Buyers; iv. That the requisite charges and fees, Stamp Duty etc. for processing the case for transfer have not been deposited by the R-2 & R-3 even till date; v. That the relief of physical possession is the very first major relief claimed by the complainant in his complaint dt. 20.04.2021 filed before the UP-RERA Authority was much before the Agreement for Sale dated 24.06.2021.

O. BECAUSE there is no provision in section 18 of the RERA Act that if possession of the property has not been obtained that the allottee is not entitled to receive Delayed Possession Interest, Compensation etc., as has been understood and held by the Ld. RERA in the 1 st Para on Page 13 of its order dt. 24.01.2021. The Ld. RERA has further erred in not appreciating that the complainant is already in deemed possession of the subject plot in terms of the Para 3.3 of the PAA dt. 22.11.2011 with the R-1.

P. BECAUSE it is absolutely erroneous on the part of the LD. RERA to hold on page 14 that the complainant had transferred all his original rights and obligations, whereas the fact is that through Clause 7 (reproduced below) of the Agreement dt. 24.06.2021, the complainant had very much retained all his legal rights & obligations relating to Delayed Possession Interest, Compensation etc. till the date of transfer which has not yet taken place: 59 13 “All legal rights, claims, obligations and interests, including any potential interest, compensation for delay etc. for the period prior to the time of transfer will belong exclusively to the vendor, and all legal rights, claims, obligations etc for the period post the transfer bill belong exclusively to the Vendee only. Any agreement, including this agreement, will become effective only after it has been duly consented and signed by both the parties and 2 witnesses, and the entire consideration has been paid to the vendor." It is self-evident that the proposed transfer was conditional and subject to fulfillment of certain conditions, which had not been fulfilled till the date of order. Further, the R-2 & R-3 had also specifically committed themselves to support the case of the complainant for Delayed Possession Interest, Compensation etc. vide a separate commitment/ Undertaking dated 24.06.2021 on Stamp Paper which is already on record as Annex. C-21);

Q. BECAUSE by no stretch of imagination, could it ever be said that the subject plot had already been transferred on 08.04.2021 or on 24.06.2021 or even till the date of the order dated on 27.01.2022. The presumption made by the Hon’ble RERA Authority to the effect that the property had been admitted as transferred by the complainant is totally against the facts on record and against the law; and the consequent observation that the Delayed Possession Compensation cannot be awarded in such a case is totally erroneous on the face of it and needs to be rectified at the earliest.

R. BECAUSE under the Consumer Protection Act, a complainant has to be a Consumer at the time of filing a Complaint, but there is no such requirement under the RERA Act. As per Section 31 of the RERA Act, any aggrieved person, just any person, can file a Complaint. There is not even a condition of being an allottee also. Without prejudice to the complainant's stand that he still was the allottee and owner of the subject plot even on the date of the order, and even today.

S-1. BECAUSE there is no requirement of law that he must be in physical possession of the plot to be eligible for Delayed Possession Interest. He is already in deemed possession as per Para 3.3 of the Agreement dt. 22.11.2011 executed with the R-1. Thus the denial of DPI to the complainant on the ground of alleged assumed transfer is a highly mistaken and a perverse view which cannot stand legal scrutiny.

(i). BECAUSE the Issue No. 1 framed by LD. RERA was certainly not a relevant one as there is neither the requirement of law nor of the agreement signed that the developer should be a party to the agreement for sale or the same should be acceptable to it. Never an objection to this effect was raised by the developer. The complainant under the agreement and the law also is absolutely free to enter into any agreement with any 3rd person without the prior approval or the consent of the respondent R-1. His only obligation under the agreement with the respondent was that there should not be any amount outstanding against the complainant and he would deposit the administrative charges.

(ii). BECAUSE the request for endorsement of allotment in favour of the proposed buyers was made under clause 3.2(b) of the agreement dated 22.11.2011 and respondent having already issued the NO Demand Certificate in favour of the complainant, and the latter having already deposited the administrative charges of Rs.1,15,544 on 24th June 2021, the respondent was duty-bound to affect endorsement/ 61 15 reallotment /transfer of the plot in favour of the nominees of the complainant.

(iii). BECAUSE when the genuineness of the fresh/additional documents had already been disputed and challenged by the complainant and he had specifically termed these documents as forged ones, and the respondent also had not sought any permission to introduce the same, Ld. RERA was not justified in admitting them, examining their affect without first ascertaining the genuineness and admissibility, and more so when R-1 was not a party to the forged agreement dated 08.04.2021.

(iv). BECAUSE the complainant had already brought on record a whole lot of evidence in the form of correspondence between him and the respondent No. 1 from the period 4th April 2021 till the end of August 2000 as contained in ANNEXURES C-15 to C-22 that the illegal and disputed charges were paid and the unlawful and unacceptable conditions were signed under duress, coercion and under protest and without prejudice to his right to challenge the same in appropriate forum, Authority, Court of law etc. Unfortunately, all this crucial evidence was ignored and not even referred to by the LD. RERA Authority.

S-2. BECAUSE it is a matter of record that the respondent R-1 had not challenged or disputed any of the submissions made, documents submitted and even the reliefs claimed through the complaint as well as the subsequent applications. The R-1 has not even disputed the admissibility or genuineness of the agreement to sell dated 24th June 2021 with the R-2 & R-3. Under section 31 of the RERA Act, anyone aggrieved with the actions of the promoter or an agent can file a complaint and seek redressal of his grievances. the complainant being 62 16 the existing allottee had every right to file a complaint and seek delayed possession compensation for a delay of 7-8 years along with other reliefs admissible under law. T. Supreme Court Order dated 22.07.2021 in M/s Laureate Buildwell Pvt. Ltd. Vs Charanjeet Singh:

T. (i) BECAUSE the complainant further relied on the latest judgment of the Hon'ble Supreme Court dated 22.07.2021 in Civil Appeal No. 7042, by a 3-Judge Bench, in the case of M/s Laureate Buildwell Pvt. Ltd. Vs Charanjeet Singh (Appended as Annex. C-22) wherein the Hon'ble court has clearly upheld the claim for the delayed possession interest, compensation for deficiency of services etc. of even the subsequent purchasers/allottees. Here it is the case of the original allottee who was very much holding the property at the time of filing the complaint and still holds even today, as the R-1 till date has neither acknowledged the Agreement to Sell dated 24.06.2021 nor has taken any follow-up in consequence of that. No valid and lawful transfer has been affected till date.

(ii) BECAUSE in para 31 of the order, the Hon'ble Supreme Court has clearly held that the earlier 2 decisions of the Court in Raje Ram and Wing Commander Arifur Rehman, on which the respondent had relied in the last hearing on 20.09.2021, could not be considered good law and thus has over-ruled them. Acting on the ratio of this case, the Panchkula Bench of the Haryana RERA Authority, in the Complaint case No. 2945/2019 of Smt. ANITA Vs BPTP Ltd., vide its order dated 04.08.2021 (Appended as Annex. C23) reversed it earlier viewpoint of dismissing the Complaint and directed the Promoter to explain why the complaint of the allottee be 63 17 not allowed. Therefore, the lawful rights of the allottee to claims like Delayed Possession Interest etc. and deletion of other unlawful charges etc. could not be denied by any stretch of imagination.

U. BECAUSE the reliance placed by the Ld. RERA on the order of the Hon'ble NCDRC in the case of Raseed Ahmed Usmani Vs DLF Ltd. NCDRC 1055/2015 is totally misplaced and far-fetched. The facts of the 2 cases are entirely different. While in the cited case, the 11 complainants in the matter i. had already taken physical possession of their apartments long back, ii. had got executed the Regd. Conveyance DEED in their favour, iii. had already sold their flats to 3rd persons in the open market, iv. had also concealed the fact of Sale from the NCDRC.

V. BECAUSE, on the contrary, none of the 4 conditions exists in the case under appeal. It is an admitted fact that though deemed possession is with the complainant till date, and has not been handed over to anybody, there is no question of Regd. Conveyance DEED in favour of the complainant as it has been specifically stated by the R-1 that physical possession would be handed over after only the Registry is done, there is no sale, but only a conditional agreement to sell has been made which still is under process by the R-1. There is no concealment as the factum of agreement to sell dated 24.06.2021 was disclosed even to the R-1 immediately after, and also to the Ld. RERA Authority in the Application filed before it. Last but the most important, the concept of Consumer holding interest on the date of complaint is not 64 18 applicable to RERA proceedings, as any person who is not even an allottee, can also file a Complaint. In the instant case, the complainant was holder and allottee of the subject property, not only on 20.04.2021 when complaint u/s 31 was filed, but even on the date of order dated 24.01.2022 and today also, as no further step has been initiated by the R-1, in consequence of the agreement to sell dated 24.06.2021.

W. BECAUSE on the other hand, there are multiple orders of the various RERA Authorities where Delayed Possession Interest (DPI) / Compensation has been awarded to the allottees for the periods of delays in respect of the houses/flats which are still under construction. Making DPI conditional to possession would amount to incentivising withholding of possession by unscrupulous Promoters and would run counter to the very rationale of defending the legitimate interests of the allottees;

X. BECAUSE no such charges of the kind of Administrative Charges @ Rs.200 per sq. yard & Advance Maintenance Charges & IFMS of Rs.1,96,424 were specified in the PAA and no such conditions as introduced through Transfer Application Form and other docs related to endorsement/transfer etc. were there in the agreement. Further these were unreasonable, discriminatory, unlawful and arbitrary. The demand of Rs.1,15,544 as Administrative/ Transfer Charges was totally illegal and against the letter and spirit of the Agreement and the law. In any case it was highly excessive. As R-1 had refused to reconsider its demand vide its letter dt. 23.06.2021, the complainant was left with no alternative but to deposit the same under protest on 24.06.2021, which was done without prejudice to its legal rights of 65 19 challenging the same before appropriate Forum, Authority, Court etc. That it was done under duress and coercion is duly recorded in at least half a dozen E-Mail communications to R-1, starting with the one dt. 25.06.2021. The Administrative/Transfer Charges if at all must, should be restricted to Rs. 10 per sq. yard.

Y. BECAUSE with the much belated alleged Offer of Possession dated 12.06.2019, the Respondent had issued demand Notices for as much as Rs.19,19,458 which included many illegal and unwarranted charges, including Rs.1,96,424 on account of Advance Maintenance Charges for 2 years and IFMS. As these amounts had no basis in the agreement, and the GDA also in its RTI Reply dated 01.10.2020 had specifically stated that most of the amounts charged by the Respondent such as on account of EEC, PDCs, Service Tax etc. payable thereon were not payable to the GDA. On being confronted with this hugely incriminating evidence, the Respondent was left with no alternative but to reverse and remove most of the illegal demands vide in Oct., 2020.

Z. BECAUSE the amounts reversed and removed by the Respondent included the amount of Rs. 1,96,424 on account of Advance Maintenance Charges and IFMS also. It was only after this demand was reversed by R-1 that the No Demand Certificate (NDC) dated 16.12.2020 was issued by the Respondent and it clearly reflects this position.

AA. BECAUSE the contents of Para concerning MAINTENANCE CHARGES culled by Ld. RERA from the Agreement (PAA) dated 22.11.2011 and reproduced at page Nos. 9 & 10 of the Order dated 7.01.2022, are totally irrelevant to the facts of the case. In fact, most 66 20 of the arguments on which the impugned order is based, were never raised on behalf of R-1. It is an entirely new argument which has never been raised by the Respondent No. 1 either in its WS or in the arguments before the Authority. On the contrary, most of the weighty evidence, arguments and submissions put forth on behalf of the complainant have been totally ignored.

AB. FURTHER BECAUSE, without prejudice to the above, the issue of paying Maintenance Charges would arise only after the complainant had signed a Maintenance Agreement. The fact is that the Respondent R-1 or its Maintenance Agency had never forwarded a Maintenance Agreement to the complainant for his signatures. In the absence of a Maintenance Agreement, the question of paying Maintenance Charges simply did not arise.

AC. BECAUSE even otherwise, as per communication dt.10.09.2020 (ANNEX. C-9) from the Respondent Company, Regular Maintenance Charges are payable only after the Registry has been done. There was no reason for the Respondent to withhold possession for so long (i.e. after 8 years of the due date) even after all payments had already been made and all conditions for the same had also been duly satisfied.

AD. BECAUSE there was no justification for withholding possession for alleged non-payment of Advance Maintenance Charges which does not find a mention in the Agreement dated 22.11.2011 signed with the complainant. It is also not correct than any amount on account of Advance Maintenance Charges or IFMS was ever outstanding or was ever due from the complainant.

AE. BECAUSE no demand whatsoever was pending or outstanding against the complainant for 6 months till 24.06.2021, the date of 67 21 Agreement for Sale, after the NDC dated 16.12.2020 issued by the Respondent, therefore. there was no reason to withhold possession. The LD. RERA has thus wrongly recorded in the order dt. 24.01.2022 that any amount was payable by the complainant to the Respondent.

AF. BECAUSE even after making payments of all demands, including the disputed ones, and after obtaining NO DUES CERTIFICATE dated 16.12.2020 from the respondent, the respondent with the motive of denying possession and cause harassment to the complainant, vide its letter dated 05.02.2021 (Annexure C-12, at Page 135 of the Complaint) raised another unlawful condition that the possession would be handed over only after the Registry was done. As per the provisions of Para 3.3 of the PAA, the plot though was in deemed possession of the complainant, yet the respondent illegally refused to handover possession. It was totally unlawful and mala fide to have denied possession.

AG. BECAUSE, except the changed stand of the R-1 to the effect that the complainant had no locus standi to file the present complaint he having entered into an agreement for sale, none of the detailed reasons & arguments given by the LD. RERA in its order dt.24.11.2022 were denied or ever murmured even or disputed in writing or orally, on behalf of the R-1. On the contrary, the detailed reasons & arguments given on behalf of the complainant even in writing by way of Complaint, Application, Counter-Reply/Rejoinder, Written Arguments, and, of course, the brief oral arguments at the times of hearings, are conspicuous by their absence. This reflects the clear bias of the LD. RERA in favour of the R-1, and against the complainant.

AH. BECAUSE the LD. RERA Authority has ignored the huge evidence on record in the form of the complainant's application dated 02.09.2021 and multiple communications written by the complainant from April, 2021 to August, 2021 to the R-1 contained in Annexures C-18 & C-19 which conclusively prove that the payment of highly disputed charges of Rs.1,15,544 & Rs.1,96,424 to the R-1 and the signatures on the Transfer Application Form and other connected documents containing very unfair, unacceptable and illegal conditions etc. were appended involuntarily, under duress and coercion, under protest and without prejudice to legal rights of the complainant. It proves that the findings given on the 2nd issue decided by the LD. RERA are without any basis.

AI. BECAUSE none of the 3 respondents till date has denied the allegations of the complainant made through multiple E Mails that there was a criminal conspiracy hatched by the Company i.e. UPPAL CHADDA HIGHTECH DEVELOPERS PVT. LTD. in collusion with Shri Sanjeev Tyagi & Smt. Kumkum Tyagi, the proposed buyers & others, to compel the allottee Ankur Manchanda to withdraw his complaint, by hook or by crook. It was to execute this strategy that the R-2 & R-3 in collusion with the Wave Company (R1) executed a fake and forged agreement dated 08.04.2021 which was readily accepted by the R-1 and submitted before the Ld. RERA Authority without ever confirming with the complainant.

AJ. BECAUSE the right to transfer the property is an inalienable right associated with the holding or ownership of the property. The subject property as per the agreement was scheduled to be handed over to the complainant by October, 2013. If the possession of property could not be handed over to the complainant, it is the respondent No. 1 alone 69 23 who is responsible and the R-2 & R-3 who conspired with R-1 in fabricating forged docs. The respondent cannot be allowed to benefit from it's own acts of default, irregularities and breach of contract or to take advantage of its own wrongs of postponing the possession and other rights for an indefinitely long period. There has already been a delay of over 8 years.

AK. BECAUSE the view that delayed possession Interest (DPC) cannot be granted without the possession of the property is self-nugatory. It amounts to further penalising an allottee of a house for none of his faults, as in the absence of possession he will not be able to use the property and may have to bear extra burden on account of rent, payment of EMIs etc. Faced with such financial difficulties, it will not be uncommom that he feels compelled to sell the property to mitigate his financial difficulties. It suites a defaulting developer to keep on delaying it so that it has not to pay DPC. Such an interpretation defeats the very purpose of law.

AL. BECAUSE Peripheral Development Charges (PDCs) were mentioned as of the nature of Infra-structural Development Charges (IDC) which are payable to the Govt. or the related Statutory Authorities. As per the legal position, the Development Charges such as PDCs, EDCs, IDCs etc. as are payable to the Govt./ Statutory Authorities were not chargeable to the then applicable Service Tax.

AM. BECAUSE it is apparent from the Demand Notices dated 02.03.2012, 06.06.2012, 21.08.2012 & 08.10.2012 (Annexure C-2) raising demands on account of PDCs did not include any charge on account of Service tax. Further, the Demand Notice dated 3rd July, 2013 (Annexure C-2.4) demanding for the first time Rs. 20,686 as Service Tax payable @12.36% on the PDCs of Rs. 1,67,358 gave the 70 24 impression that this amount of Rs. 1,67,358 was not payable to the Govt. but was intended to be retained by the Developer. This was against the terms of the Payment Plan accompanying the allotment letter.

AO. BECAUSE in response to the complainant's letter dated 14.10.2013 (Annexure C-3.1), the respondent felt constrained to admit vide its letter dated 11.12.2013 (Annexure C-3.2) that it had neither been charged Service Tax nor had it deposited the same, in the following words: "Our company charge service tax on PLC & PDC (in plot case). But as per discussion with accounts deptt. for your case they said if any customer have objection for service tax on plc (in plot case) that customer have give us a indemnity bond for future if PLC will charge then that customer will pay to us with interest and any penalty charge by service tax deptt. that also he will pay. So we request to you please give us a indemnity bond to us with all above declaration." Here it is pertinent to mention here that the last instalment of PDCs was payable on 2nd February, 2013 and no demand on account of Service Tax payable on last instalment or any earlier instalment was ever communicated till July, 2013.

AN. BECAUSE further, the GDA in response to the complainant's RTI Application vide its letter dated 01.10.2020 clearly stated that the Developer under a High-tech City Policy was liable to pay only City Development Charge @ Rs.3 lakhs only per Acre, and was not liable to pay any External and Internal Development Charges or 71 25

External Electrification Charge or Service Tax on PDCs, for the reasons given in Para 4 of the complaint. The GDA has further clarified that the Developer could not charge more than Rs.3 lakhs per acre as City Development Charge which works out to no more than Rs.120 per sq. yard, as against the charged amount of Rs. 850 per sq. yard. This rate of Rs.120 per sq. yard is calculated assuming that the development process leaves only about 55% of the total area as Saleable Area. Thus it is self-evident that the respondent developer has excess-charged as much as Rs. 730 per sq. yard as excess amount as PDCs which is refundable to the complainant and other allottees. The total amount thus refundable to the complainant on account of excess charging of PDCs is of the order of Rs.3.65 Lakhs.

AO. BECAUSE as if the earlier harassment and financial difficulties mental agony and physical stress and strains caused by inordinate inexplicable delays were not sufficient and denial of possession despite payment of all dues, including the disputed and the fraudulent ones, was not sufficient, the R-1 thought of novel ways of further harassing the complainant and further compounding his difficulties for not succumbing to his dictates of withdrawing the complaint filed u/s 31 of the RERA Act. Acting in conspiracy with the R-2 & R-3, it embarked on a new misadventure of introducing fake and forged documents to defame and further harm the complainant and also egged and abetted the R-1 & R-2 to issue threats of physical assault and harm to the complainant and his close family members with a view to intimidate them into forced subjugation.

(i). BECAUSE even after obtaining the Part Completion Certificate dated 15.07.2017, the respondent company did not issue letter for offer of possession for 2 years which was received by the complainant for the first time in June, 2019.

(ii). BECAUSE the complainant had to undergo lots of financial difficulties because of the non-handing over of the plot during this period. No explanation has been offered by the respondent for the huge delays, more so when all the dues as per the Payment Plan had been got accelerated by the respondent. During this period, the complainant had not only to bear the interest Burden @10.5% per annum, but had also to bear rent @Rs.30,000 per month for an alternative accommodation. (Para 4.25 & 4.26 of the complaint).

(iii). BECAUSE the latter delays of 4 years & 6 months in handing over possession for the period from 15.07.2017, the date on which Part Completion Certificate was issued to the respondent by the GDA, till date are caused mainly by the criminal and fraudulent intents of the respondent of cheating the complainant by extracting the fraudulent & illegal amounts from the complainant & causing harassment as under: (Para 4.8, 4.9, 4.13, 4.17 , 4.18 etc. of the complaint.)

(iii). Firstly, by demanding Rs.5,61,108 on account of External Electrification Charges (EEC) + Rs.41,612 as Service Tax thereon, which was neither specified in the Agreement nor in the Payment Plan, and the respondent could not give any justification for the same for 6 long years despite umpteen reminders by the complainant. Ultimately, it did feel constrained to remove these 73 27 unjust charges but not before the complainant confronted the respondent with the relevant provisions in AUGUST, 2021 and then the view point of the GDA as expressly stated in GDA's reply dated 01.10.2020 to the complainant's RTI Application dated 28.08.2020; (Para 4.11, 4.12, 4.18 & 4.20 etc. of the complaint.)

(iv). By demanding Service Tax of Rs.51260 on Peripheral Development Charges of Rs. 4,16,151 which were claimed as payable to the Govt or Statutory Authorities. As no Service Tax was chargeable/payable on Statutory dues, the complainant strongly protested against this demand and the respondent in the year 2013-14 promised to delete this demand. But at the time of offer of possession in 2019, it breached the trust and again raised this demand of Rs. 4,16,151. This was not deleted in spite of the vivid clarification-reply vide point No.1,2 & 3 of letter dated 01.10.2020 (ANNEX. C-7.2) from the GDA that no Service Tax was chargeable/payable on Statutory dues. The respondent company insisted on charging the same and the had to pay just to secure possession. This was a fraudulent tax demand which was collected but not deposited with the Service Tax Deptt. This issue has been in dispute for a long time and it also contributed to the delays in handing over possession.

(v). The respondent company is further guilty of charging excess amount of Rs.3.65 lakhs as PDCs and is thus legally obliged to refund the excess amount of Rs.3.65 lakhs as PDCs plus Rs. 51,260 already recovered by it as Service Tax on PDCs, as unlawful & fraudulent.

(vi). Then by demanding various at least 5 types of connection charges amounting to Rs.1,89,559 + Service Tax which were ultimately deleted by the respondent itself. These Charges were neither as per law nor as per the terms of the Agreement. These charges alone caused a delay of 15 months; (Para 4. 16 of the complaint).

(vii). By further demanding totally unwarranted Interest and Holding Charges of Rs.4,77,020 which the respondent having failed to prove, later felt constrained to waive/remove is yet another example of greed of the R-1 to extort any money by hook or by crook. There was no reason for raising this demand at the first place. Such bogus demands are raised as a bargaining chip to make allottees concede on some other issues, in return for the waiver of such demands.

(viii). By demanding Conversion Charges of Rs.1,07,710 for alleged conversion of some imaginary Leasehold land to Freehold land which the respondent having failed to prove, felt constrained to ultimately remove these charges (Para 4.16 of the complaint).

(ix). The inordinate delays on the part of the respondent has resulted in higher liability for the complainant on account of Stamp Duty & Registration charges which have gone up considerably from less than Rs. 10000 per sq. meter in 2013 to over Rs.16,000 psm in the FY 2021-22.

(x). BECAUSE the bogus charge of Rs.4,77,020 on account of the alleged Interest & Holding Charges needs to be held as totally unwarranted and thus deserves deletion & removal, and not just waived off, as

Waiving off a demand gives the impression as 75 29 if the charges were validly levied and the respondent has waived these charges as a favour or concession to the complainant. The fact is that there was never any delay in depositing any amount or taking possession of the Plot after it was offered by the respondent. On the other hand, on both counts, there are huge delays on the part of the respondent itself. The question of arising any demand on account of Interest or Holding Charges does not arise. This bogus demand was created to use as a bargaining chip with the complainant.

AP. BECAUSE the Hon'ble RERA APPELLATE TRIBUNAL may kindly be pleased to hold the various clauses/Paras of the PAA such as Paras No. 1.4 (Conversion Charges), 1.6 (Excessive PDCs & EECs), 1.7 & 1.9 (Other Charges & Taxes Cess etc.), 1.10 (Time is Essence), 3.1, 3.2 & 3.3 (Construction & Possession & Transfers) , 10 (Right of Developer to Recover Dues), 11 (Legal Compliances by Allottees only), 12 (Events of Default & Consequences), 15 (Arrangement not assignable), 1.6, 1.10, etc. etc. as discussed in para 4.23 of the complaint as totally one-sided, discriminatory, unfair and prejudicial to even the legitimate interests of the allottees, in general, and the complainants, in particular, and thus non-binding and non-final for the complainants.

AQ. BECAUSE as per Para 1.10 of the PAA, timely payment of instalments is essence of the agreement which binds only the Allottees, and not the Developer, who has been charging penal Interest @ 18% p.a., but has not given a single penny as compensation for the huge delays of 7-8 years, a large part of it is caused by mala fide intents of cheating and defrauding the 76 30 complainant and to illegally extract money by withholding possession for a long time.

AR. BECAUSE there is no reasonable provision in the PAA in case of defaults by the Developer. On the contrary, the Developer has retained the rights to itself to impose unreasonable conditions and Charges on transfers from Allottees to other persons according to its own discretion. All these unfair, discriminatory clauses were brought into the PAA, after the complainant had deposited substantial amount of Rs.14 lakhs with the respondent and the complainant were left with no alternative as opposing them would put into great risk the amounts already deposited as a substantial part of it could be forfeited as non-refundable Earnest Money Deposit. Therefore, the Hon'ble RE Appellate Tribunal may suo moto take cognizance of 'all such clauses (paras) in the whole of agreement which are unfair and confer sole absolute discretion on the Respondent or the decision of the respondent would be final or binding, as highly discriminatory and violative of the RERA Act and also the principles of fairness and reasonability in business dealings, and direct their deletion and suitable modifications, for the reasons given in Para 4.23 of the complaint.

AS. BECAUSE the LD. RERA has also not properly dealt with the Relief of COMPENSATION to be granted by the LD. Adjudicating Officer and had usurped his jurisdiction in holding on the last page of its order that there was no justification for referring this matter to the Adjudicating Officer.

AT. BECAUSE the Ld. RERA Authority was duty-bound to refer the Compensation issue to the Ld. Adjudicating Officer, but did not refer most erroneously holding that there was no provision under RERA Act to provide compensation for mental & physical harassment. In doing so, the LD. Authority has committed an grievous error in not appreciating that the compensation had been claimed for specific reasons of long delays caused by firstly making unlawful demands and then deleting the same, and some time raising the deleted demands again, inexplicable delays in completing the project and making offers of possession, making fraudulent demands on account of EEC, Taxes, Various Connection Charges etc. Therefore, the observation of the Ld. RERA Authority that the case does not qualify to be referred to the Ld. Adjudicating Officer is totally unlawful & unwarranted and amounts to exceeding his jurisdiction on matters pertaining to the Ld. Adjudicating Officer which is also a grievous error.

5. The appellant has prayed for the following reliefs:--

(i) To set aside the order dated 24.01.2022 passed by the Ld. UPRERA at Greater NOIDA in complaint case No. NCR145/04/73803/2021 as perverse, bad in law, irrational and contrary to the material available on record and legal position, and under the circumstances, may grant all reliefs on all the issues in the complaint and the subsequent applications, except the relief of issuing directions to the respondent No.1 for making endorsement, affecting/transfer/ reallotment or issuing No Objection Certificate in favour of respondents No.2 & 3. It is prayed that till the issue of the genuineness of alleged Forged Agreement to Sell dated 08.04.2021 & other Forged documents fabricated and submitted by respondent No. 1 in conspiracy with respondent No. 2 & 3 before LD. RERA, without ever confronting the same to the appellant/complainant, is resolved and decided, no decision as to the proposed endorsement/transfer/ reallotment/NOC may kindly be taken and the prayer to that effect may be treated as withdrawn.

(ii) Direct the respondent No. 1 to hand over the physical possession of the Plot 3/338, Wave City to the complainant, complete in all 48 2 respects, without any further delay, as all payments have been made long back and the respondent company has issued No Demand Certificate in the form of Statement of Account dt. 16.12.2020 with ZERO Demand.

(iii) Direct the respondent to pay the Delayed Possession Interest for over 8 years by way of interest @ 1.5% per month, the rate at which any late payment by the complainant was chargeable by it, for the period from the due date in October 2013 till the date the physical possession of the PLOT is actually handed over (which is yet to take place).

(iv) Hold the charges of Rs. 4,16,151 on account of PDCs as excessively charged by an amount of Rs.3.65 lakhs and Rs. 51260 as Service Tax on PDCs as unlawful & fraudulent, as not payable to the Govt./Statutory Authorities and direct the respondent company to refund the excess amount of Rs.3.65 lakhs as PDCs charged and the amount of Rs. 51,260 already recovered by it as Service Tax on PDCs as unlawful & fraudulent, as Service Tax was not payable on PDCs.

(v) Direct the respondent to pay a sum of Rs.50,00,000/- as compensation to the complainant for the massive harassment, mental & physical, humiliation along with mental agony and pain over a long period of 8 years, introduction of forged docs, more for the reasons that the delay was deliberately caused by the Respondent by raising bogus and fraudulent demands with a view to cheat and defraud the complainant, along with thousands of other allottees, by trying to extract more and more of money under duress of withholding possession. (Paras 4.11, 4.13, 4.16, 4.18, 4.22, 4.25, 4.26, 4.27 etc. of the complaint).

(vi) Hold the charging of amount @ Rs.200 per sq. yard as Administrative Charges, and thus hold the recovery of Rs.1,15,544 as Administrative/ Transfer Charges and an amount of Rs.1,96,424 on account of Advance Maintenance Charges & IFMS in connection with the proposed endorsement/transfer/ reallotment of the subject plot as unlawful & against the agreement; and more so when no endorsement/transfer/reallotment has taken place till date.

(vii) As the above said 2 amounts of Rs.1,15,544 as Administrative/ Transfer Charges and an amount of Rs.1,96,424 on account of Advance Maintenance Charges & IFMS were got deposited from the complainant under duress & coercion, the Hon'ble UP-REAL ESTATE Appellate Tribunal may direct the Respondent No. 1 to refund the same to the complainant;

(viii) The Hon'ble Appellate Tribunal may kindly be pleased to hold the various clauses/Paras of the PAA such as Paras No. 1.4 (Conversion Charges), 1.6 (Excessive PDCs & EECs), 1.7 & 1.9 (Other Charges & Taxes Cess etc.), 1.10 (Time is Essence), 3.1, 3.2 & 3.3 (Construction & Possession & Transfers) , 10 (Right of Developer to Recover Dues), 11 (Legal Compliances by Allottees only), 12 (Events of Default & Consequences), 15 (Arrangement not assignable), 1.6, 1.10, etc. etc. as discussed in para 4.23 of the complaint as totally one-sided, discriminatory, unfair and prejudicial to even the legitimate interests of the allottees, in general, and the complainants, in particular, and thus non-binding and non-final for the complainants.

(ix) May impose special and exemplary heavy Cost on the respondents, particularly the R-1 for conspiring with respondents No. 2 & 3 in 50 4 fabricating and submitting false and forged docs before the RERA Authority, with the sole intent of illegally and unfairly denying the delayed possession interest of over 8 years and other reliefs and compensation which had already accrued to the complainant, and thus causing undue harassment to the appellant, further aggravating and compounding his difficulties, further increasing his already prolonged wait of 8 years.

(x) May award litigation cost of Rs. 2 lakhs as the cost of the proceeding & Litigation charges, to the complainant.

(xi) May issue any other direction and further orders as this Hon'ble Appellate Tribunal may deem fit on the facts and the circumstances of the case.

6. Respondent No. 1 filed objections to the grounds of appeal and submitted that the residential plot allottee arrangement in reference to the plot no. 338 in sector-3, in ‘Wave City (Hi-Tech Township Project) was executed between Appellant and Respondent on 22.11.2011.

6.1 An offer of allotment of plot having area 487.92 sq. yards bearing provisional plot no. 338, Sector 3 in ‘Wave City (Hi-Tech Township Project)’ was issued to the Appellant on 28.01.2012 (as annexed as Annexure C-1 page no 152-155 of the memo of appeal). therefore, in view of the acceptance of the aforesaid offer, the Appellant preferred application for allotment on 08.09.2012.

6.2 The partial completion certificate was issued to the respondent by the concerned authority 15.07.2017. Letter for offer of possession was issued to the appellant vide letter dated 12.06.2019. Thereafter the appellant requested for the waiver of the various charges imposed by the respondent no.01. Thereafter, obliging the request of the appellant the respondent waived off the charges amounting to rupees 19,19,458/- vide letter dated 12.07.2019. No dues certificate was issued to the appellant on 16.12.2020.

6.3 The plot in question was booked by the appellant. However, the same was transferred by the appellant in favour of Mr. Sanjeev and Mrs. Kumkum Tyagi vide application for transfer dated 06.07.2021. the appellant transferred the aforesaid plot in question in favour of the Mr. Sanjeev and Mrs. Kumkum Tyagi and received the sum of amounting to rupees one crore twenty lakhs against the said plot. In respect of transfer of the plot in question an agreement to sell was also executed on 08.04.2021 between the appellant and Mr. Sanjeev and Mrs. Kumkum Tyagi.

6.4 The aforesaid transferees Mr. Sanjeev and Mrs. Kumkum Tyagi also submitted an affidavit cum undertaking on 19.04.2021 with the respondent no.01. The appellant also executed an indemnity cum undertaking on 05.07.2021 in favour of the respondent no.01 whereby the appellant/indemnifier himself wished to transfer the aforesaid plot in question in favour of Mr. Sanjeev and Mrs. Kumkum Tyagi. In view of the aforesaid transfer the appellant also submitted an affidavit on 05.07.2021 and through this affidavit the appellant confirmed the aforesaid transfer in favour of Mr. Sanjeev and Mrs. Kumkum Tyagi. The appellant also confirmed that the appellant has received a sum of rupees 1,20,00,000/- from the assignees i.e. Mr. Sanjeev and Mrs. Kumkum Tyagi. Thhe appellant transferred the unit and executed the aforesaid documents on his own volition. In reference to the aforesaid transfer of the unit in question the appellant has also made several communications through emails.

6.5 By concealment of the aforesaid facts in reference to the transfer of the unit in question, the appellant filed the complaint before the Ld. Authority on 20.04.2021 seeking possession and payment of interest for delay. The appellant is no more allottee in the project of the respondent. Therefore, the complaint before the Ld. Authority and the instant appeal before the Hon’ble Tribunal is not maintainable.

6.6 In view of the aforesaid facts and circumstances the Ld. Authority has passed a well reasoned and speaking order after considering the relevant facts of the case and evidence on record. Therefore, this appeal is liable to be dismissed with exemplary cost.

7. Respondent nos.2 and 3 filed their objections to the grounds of appeal and submitted that the dispute that was raised before the Hon'ble RERA was a dispute between the Appellant and the Respondent no. 1. The Respondent No. 2 and 3 were not a party to the matter when the said complaint was filed with the RERA. The dispute that was raised by the Appellant in front of the RERA were unacceptable and illegal, the said claims and penalties sought by the Appellant were dismissed. According to the Hon'ble Supreme Court of India in the matter of Engineering and Construction Co. Ltd. Vs. M/s. Bhargavarama Constructions & Ors. CIVIL APPEAL NO. 7639 OF 2021

> *"5. We have gone through the impugned order passed by the High Court. By the impugned judgment and order, the High Court has set aside the judgment and decree passed by the trial court, which was in favour of the appellant herein - original plaintiff, solely on the ground that the application for impleadment filed by the respondent Nos. 1 and 2 - original defendants -appellants before the High Court to implead A.P. Transco has been allowed and, therefore, the judgment and decree is set aside. This is not the manner in which the High Court was required to deal with the first appeal arising out of the judgment and decree passed by the trial court. Nothing has been observed and/ or decided on merits. Even no reasoning has been given why the A.P. Transco was required to be impleaded as a party to the appeal. The High Court has not only directed to implead the A.P. Transco as party to the appeal but has also directed to implead the A.P. Transco in the original suit also. It is required to be noted that as such the suit was filed by the appellant - original plaintif and as per the settled proposition of law, the plaintiff is the dominus litis. No issue was raised before the trial court on non- joinder of parties. Therefore, as such whether in the appeal preferred by the original defendants against the judgment and decree passed*

by the trial court, such an application would be maintainable or not, that itself is a question, which was required to be first considered and decided by the High Court.

6. Even otherwise, assuming that the application to implead the A.P. Transco as a party to the appeal on an application filed by the respondent Nos. I and 2- original defendants was maintainable and was to be allowed is not discussed. There cannot be an automatic allowing of the appeal and quashing and setting aside the judgment and decree passed by the trial court without any further entering into the merits of the appeal and/ or expressing anything on merits in the appeal on an impleadment of a party in an appeal. We strongly disapprove the manner in which the High Court has disposed of the appeal. How to deal with and decide a first appeal under Section 96 and Order XL! Rule 31 of the CPC has been dealt with by this Court in a catena of decisions. As observed and held by this Court in the case of K. Karuppuraj Vs. M. Ganesan, Civil Appeal Nos.6014-60 l 5 of 2021 decided on 04.10.2021 "without framing points for determination and considering both facts and law; without proper discussion and assigning the reasons, the First Appellate Court cannot dispose of the first appeal under Section 96 CPC and that too @ without raising the points for determination as provided under Order XLI Rule 31 CPC."

7. In view of the above discussion and for the reasons stated above, the present appeal is allowed. We set aside the order passed by the High Court in CCCAMP No.246 of 2017 impleadinq the A.P. Transco as party to the appeal as well as to the original suit. Consequently, we also set aside the impugned judgment and order passed by the High Court quashing and setting aside the judgment and decree passed by the trial court. We remand the matter to the High Court to decide and dispose of the CCCAMP No. 246 of 2017 and the first appeal in accordance with law and on its own merits. While deciding the

CCCAMP No.246 of 2017 filed by the original appellants - respondent Nos. 1 and 2 herein - original defendants to implead the A.P. Transco in the appeal as well as the original suit. The High Court shall consider whether such an application in the appeal preferred by the original defendants would be maintainable or not and if so under which provision of Code of Civil Procedure it would be maintainable.

Present Appeal is Allowed accordingly with exemplary cost, which is quantified at Rs.25, 000/- to be deposited by respondent Nos. 1 and 2 herein with the State Legal Services Authority of the concerned High Court within a period of four weeks from today."

As per the judgment passed by the Hon'ble Supreme Court, mentioned above one can clearly understand the interpretations of Hon'ble Court. A new party will not be admitted at the appellate stage in a case where the party is not directly a concerned party to the matter. The dispute that was raised between the parties was related to the delay penalty and other compensations sought by the Appellant. In the said dispute Respondent No. 2 and 3 were never a concerned party, hence they are not liable or accountable to become a party at the appellate stage.

7.1 Matter before the RERA was filed after accepting the consideration. According to section 2 (d) of the Indian Contract Act –

"(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise"

7.2 The complaint filed by the Appellant before the RERA was also void ab-initio. As per the Indian Contract Act one can clearly see that if a consideration is accepted then the parties are already under a contract. In the present case a part of consideration for the said property was given to the Appellant through cheque, the said cheque was made on 01.04.2021 amounting to Rs.20,00,000/- which was cleared in the Appellant's bank account on 05.04.2021. The said transaction clearly states that the consideration was accepted by the Appellant and no objection to the same was shown by the Appellant. If the Appellant would have shown some objection he would have returned the money rather than keeping it with himself. The Appellant filed the complaint before the RERA on 20.04.2021.The Appellant filed the complaint before the RERA almost after 15 days of accepting the consideration. The Appellant has never led the RERA know about the same transaction that was made before filing the complaint before the Hon'ble RERA. If gone through the appeal filed by the Appellant one can clearly see that the Appellant has never discussed about the said transaction of Rs. 20,00,000 /- because he knew that if the Hon 'ble Tribunal knew this fact they would have never entertained the case at first. Hiding of such facts shows the intentions of the Appellant that what was his interpretations while filing the matter before the Hon'ble Tribunal. The appellant, Mr. Manchanda, has done nothing, but he has been trying to misguide the Tribunal through his false statements.

7.3 The Appellant bought the said property at Rs. 48,00,000 /- (Approx.) and sold it for Rs.1,20,00,000 /-, the Appellant has already got a premium of Rs. 72,00,000 (Approx.) for the said property still he is asking for more. The Appellant would have filed the complaint before the RERA before accepting the consideration from Respondent Nos. 2 and 3 but in our scenario his intentions were clear that first he wanted to sell the property and come into an agreement with Respondent No. 2 and 3.

7.4 The Appellant has blamed the Respondent no. 2 and 3 that they have tried to threaten the Appellant on several occasions and forced them on several points. This is nothing but a false statement and a conspiracy by the Appellant to mislead the Hon'ble Tribunal and to defame the Respondent no. 2 and 3. Had the Respondent no. 2 and 3 done such acts or threatened the Appellant in a way or other then at that time the Appellant would have filed a complaint against the Respondent no. 2 and 3. Each time the Respondent no. 2 and 3 went to the house of the Appellant the meeting was held peacefully. Mr. Mitresh Sharma who is the broker in the deal between the Appellant and the Respondent no 2 and 3 was also present in meetings that was held at the Appellant's house. The said broker is a witness that the meetings were held peacefully and no threat was made towards the Appellant or his family. The Appellant lives in a gated society if any such thing would have happened the neighbours would have known about it and it would be on the record with the society as well although, which could result in calling the cops. The Appellant is doing nothing but making false statements and accusing the Respondent no. 2 and 3 for things that they haven't done.

7.5 The Hon'ble Supreme Court in the matter of ***SGS India Ltd v. Dolphin International Ltd. CIVIL APPEAL NO. 5759 OF 2009*** held as under:--

> *"22. The onus of proof that there was deficiency in service is on the complainant. If the complainant is able to discharge its initial onus, the burden would then shift to the respondent in the complaint. The rule of evidence before the civil proceedings is that the onus would lie on the person who would fail if no evidence is led by the other side. Therefore, the initial burden of proof of deficiency in service was on the complainant, but having failed to prove that the result of the sample retained by the appellant at the time of consignment was materially dif erent than what was certified by the appellant, the burden of proof would not shift on the appellant. Thus, the Commission has erred in law to draw adverse inference against the appellant."*

7.6 The Appellant's only motive of doing so is that he wants to create a negative image of the Respondent no 2 and 3 in front of the Tribunal. The Appellant is an educated person and knows how to read and write English. The Appellant came into an agreement with the Respondent no. 2 and 3 where he himself filed an application before the Respondent no. 1 to transfer the said property from the Appellant to the Respondent no. 2 and 3. The transfer form that has to be signed by the allottee which is the Appellant clearly states the list of documents that would be required to transfer the said property to some another name. the Appellant has falsely disputed that a certain list of documents that was mentioned in the transfer document wasn't made available and wasn't signed by the Appellant himself. When the matter was filed before the RERA the Appellant filed an interim relief application asking to pass an interim order directing the Respondent no. 1 to transfer the said property in the name of the Respondent no. 2 and 3. The Appellant when was asked has also signed an affidavit stating that he has signed every necessary document and has deposited the transfer fee with the Respondent no. 1 and the Appellant was willing to transfer the said property to the Respondent no. 2 and 3. After signing the transfer document in which a proper list of document is mentioned as to what are the necessary documents required to transfer a property and on the other hand the Appellant has signed an affidavit stating that he has transferred necessary documents which were required in the said process. All these acts clearly indicate the mind-set of the Appellant as he already knew that these documents were required. After signing such documents the Appellant lost his case before the RERA and because of which he started to plan a conspiracy against all the Respondents.

7.7 The said property has already been transferred and registered in the registrar's office in the name of Respondent No.-2 & 3. RERA found it necessary to transfer the said property in the names of the Respondent no. 2 and 3. Though some of the facts were hidden purposely by the Appellant before the Regulatory Authority even then the Regulatory Authority gave a verdict against the Appellant stating that the Appellant was well known of the facts that he has to sign certain documents which were necessary for the transfer. Although the Appellant signed them in the first place but when the Appellant got to know that these documents were moving against him he cooked up a story and misled the facts because of which the Appellant is trying to misguide the Tribunal.

8. The appellant filed his rejoinder/reply to the objections of the respondents, denying the averments made by the respondents and reiterating the averments made by the appellant in the memo of appeal.

9. Heard Sri Ashok Manchanda, learned counsel for the appellant, Sri Amit Yadav, learned counsel for respondent no. 1 and Sri Suryansh Narula, learned counsel for respondent nos. 2 and 3.

10. On the basis of pleadings, records of memo of appeal and submission of learned counsels for the parties, the only question which is required to be examined by the Tribunal is that "whether the appellant after transferring his rights, taking consideration, and execution of conveyance deed in favour of respondent nos. 2 and 3, still falls in the category of allottee"?

10.1 As per pleadings and records, a residential Plot Allottee Arrangement in reference to the plot no. 338 in sector-3, in 'Wave City (Hi-Tech Township Project) was executed between Appellant and Respondent on 22.11.2011.

10.2 An offer of allotment of plot having area 487.92 sq. yards bearing provisional plot no. 338, Sector 3 in 'Wave City (Hi-Tech Township Project)' was issued to the Appellant on 28.01.2012 (as annexed as Annexure C-1 page no 152-155 of the memo of appeal). therefore, in view of the acceptance of the aforesaid offer, the Appellant preferred application for allotment on 08.09.2012.

10.3 The partial completion certificate was issued to the respondent by the concerned authority 15.07.2017. Letter for offer of possession was issued to the appellant vide letter dated 12.06.2019. Thereafter the appellant requested for the waiver of the various charges imposed by the respondent no.01 and obliging the request of the appellant the respondent waived off the charges amounting to rupees 19,19,458/- vide letter dated 12.07.2019. No dues certificate was issued to the appellant on 16.12.2020.

10.4 The plot was transferred by the appellant in favour of Mr. Sanjeev and Mrs. Kumkum Tyagi vide application for transfer dated 06.07.2021 and received the sum of amounting to rupees one crore twenty lakhs against the said plot. In respect of transfer of the plot in question an agreement to sell was also executed on 08.04.2021 between the appellant and Mr. Sanjeev and Mrs. Kumkum Tyagi and the same is also asserted by the appellant in para 5.23 of the memo of appeal.

10.5 The aforesaid transferees Mr. Sanjeev and Mrs. Kumkum Tyagi also submitted an affidavit cum undertaking on 19.04.2021 with the respondent no.01. The appellant also executed an indemnity cum undertaking on

05.07.2021 in favour of the respondent no.01 whereby the appellant/indemnifier himself wished to transfer the aforesaid plot in question in favour of Mr. Sanjeev and Mrs. Kumkum Tyagi. In view of the aforesaid transfer the appellant also submitted an affidavit on 05.07.2021 and through this affidavit the appellant confirmed the said transfer in favour of Mr. Sanjeev and Mrs. Kumkum Tyagi. The appellant also confirmed that the appellant has received a sum of rupees 1,20,00,000/- from the assignees i.e. Mr. Sanjeev and Mrs. Kumkum Tyagi. The appellant transferred the unit and executed the aforesaid documents on his own volition. In reference to the aforesaid transfer of the unit in question the appellant has also made several communications through emails.

10.6 The submission of learned counsel for respondent no. 1 is that by concealment of the fact about transfer of the unit in question, the appellant filed the complaint before the Ld. Authority on 20.04.2021 seeking possession and payment of interest for delay. The appellant is no more allottee in the project of the respondent. Therefore, the complaint before the Ld. Authority and the instant appeal before the Hon'ble Tribunal is not maintainable.

10.7 Respondent nos.2 and 3 filed their objections to the grounds of appeal and submitted that the dispute that was raised before the Hon'ble RERA was a dispute between the Appellant and the Respondent no. 1. The Respondent No. 2 and 3 were not a party to the matter, when the said complaint was filed with the RERA. The dispute that was raised by the Appellant in front of the RERA was unacceptable and illegal, the said claims and penalties sought by the Appellant were dismissed. The respondent nos. 2 and 3 placed reliance on paras 5, 6 and 7 of the judgment rendered by Hon'ble Supreme Court of India in the matter of Engineering and Construction Co. Ltd. Vs. M/s. Bhargavarama Constructions & Ors. CIVIL APPEAL NO. 7639 OF 2021 and submitted that a new party will not be admitted at the appellate stage in a case where the party is not directly a concerned party to the matter. The dispute that was raised between the parties was related to the delay penalty and other compensations sought by the Appellant. In the said dispute Respondent No. 2 and 3 were never a concerned party, hence they are not liable or accountable to become a party at the appellate stage.

10.8 The complaint filed by the Appellant before the RERA was also void ab-initio. As per the Indian Contract Act one can clearly see that if a consideration is accepted then the parties are already under a contract. In the present case a part of consideration for the said property was given to the Appellant through cheque, the said cheque was made on 01.04.2021 amounting to Rs.20,00,000/- which was cleared in the Appellant's bank account on 05.04.2021. The said transaction clearly states that the consideration was accepted by the Appellant and no objection to the same was shown by the Appellant. If the Appellant would have shown some objection he would have returned the money rather than keeping it with himself. The Appellant filed the complaint before the RERA on 20.04.2021, almost after 15 days of accepting the consideration. The Appellant has never led the RERA know about the same transaction that was made before filing the complaint before the Hon'ble RERA. If gone through the appeal filed by the Appellant one can clearly see that the Appellant has never discussed about the said transaction of Rs. 20,00,000 /- because he knew that if the Hon 'ble Tribunal knew this fact they would have never entertained the case at first. Hiding of such facts shows the intentions of the Appellant that what was his interpretations while filing the matter before the Hon'ble Tribunal. The appellant, Mr. Manchanda, has done nothing, but he has been trying to misguide the Tribunal through his false statements.

10.9 It is further submitted that Appellant bought the said property at Rs. 48,00,000 /- (Approx.) and sold it for Rs.1,20,00,000 /-, the Appellant has already got a premium of Rs. 72,00,000 (Approx.) for the said property still he is asking for more. The Appellant would have filed the complaint before the RERA before accepting the consideration from Respondent Nos. 2 and 3.

10.10 The Respondent nos. 2 and 3 vehemently stated that property has already been transferred and registered in the registrar's office in the name of Respondent No.-2 & 3. RERA found it necessary to transfer the said property in the names of the Respondent no. 2 and 3. Though some of the facts were hidden purposely by the Appellant before the Regulatory Authority even then the Regulatory Authority gave a verdict against the Appellant stating that the Appellant was well known of the facts that he has to sign certain documents which were necessary for the transfer. Although the Appellant signed them in the first place but when the Appellant got to know that these documents were moving against him he cooked up a story and misled the facts.

11. In view of the aforesaid analysis, It is evident that on the request of the appellant, the plot was transferred in favour of Mr. Sanjeev and Mrs. Kumkum Tyagi in pursuance of application dated 06.07.2021 and the appellant has received a sum of Rs. 1,20,00,000/- as consideration of the said plot.

11.1 The agreement to sale was executed between the appellant and Mr. Sanjeev Kumar and Mrs. Kumkum Tyagi on 24.06.2021 as is evident from pleadings of para 5.23 of memo of appeal. The conveyance deed has also been executed in favour of Mrs. Sanjeev Kumar and Mrs. Kumkum Tyagi. Hence, the appellant is ceased to be an allottee and the Regulatory Authority had rightly dismissed the complaint of the appellant on the said ground.

11.2 We are of the considered view that the grounds taken by the appellant to challenge the impugned dated 24.01.2022 passed by the U. P. Real Estate Regulatory Authority, Regional Office, Gautam Budh Nagar (hereinafter referred to as ‘the Regulatory Authority’) in Complaint No. NCR145/04/73803/2021 (Ankur Manchanda Vs. Uppal Chadda Hi-Tech Developers Pvt. Ltd.), are not tenable in the eyes of law and further we do not find any illegality and perversity in the impugned order dated 24.01.2022. Accordingly, **the appeal is hereby dismissed.**

12. No order as to the costs.

Dated: 07.05.2024

Shakir/Tanveer **(Sanjai Khare)** **(D.K. Arora)**