HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 903 OF 2019

Sandeep Goyal ....COMPLAINANT(S)

VERSUS

Omaxe India Pvt. Ltd ....RESPONDENT(S)

CORAM: **Rajan Gupta** **Chairman**
Dilbag Singh Sihag **Member**

Date of Hearing: 31.05.2022

Hearing: 20th

Present : - Mr. Sandeep Goyal, Complainant in person.
Mr. Munish Gupta, Counsel for respondent through video conferencing

ORDER (RAJAN GUPTA-CHAIRMAN)

1. In this complaint respondent had preferred an appeal bearing no. 111 of 2021 titled 'Omaxe India Pvt Ltd Vs Sandeep Goyal' before Hon'ble Haryana Real Estate Appellate Tribunal against order dated 21.01.2021 passed by this Authority. The appeal was decided by Hon'ble Tribunal on 13.04.2021, against which respondent then filed an appeal bearing no. RERA-APPL-40 of 2021 titled 'Omaxe India Pvt Ltd Vs Sandeep Goyal & Anr' before Hon'ble High Court of Punjab &

Haryana. Hon'ble High Court disposed of the appeal on 30.03.2022 and passed following orders:

> " The Haryana Real Estate Regulatory Authority, Panchkula, has started deciding various issues involved in a complaint vide separate orders. The Haryana Real Estate Appellate Tribunal after taking note of the various facts and judgments passed by the courts held that it would be more appropriate if the authority decides the matter by one order in a comprehensive manner. However, the Appellate Authority dismissed the appeal filed by the appellant.
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> Learned senior counsel representing the respondents has submitted that he has no objection if the order passed by the Regulatory authority as well as the Appellate Tribunal are set aside with a direction to the Haryana Real Estate Regulatory Authority, Panchkula, to re decide the matter afresh within a period of three months. He has no objection if the matter is decided comprehensively deciding all the issues.
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> In view of the aforesaid consensus arrived at, the Haryana Real Estate Regulatory Authority, Panchkula, is directed to decide the matter comprehensively within a period of three months, positively from today.
>
> Disposed of
>
> All the pending miscellaneous applications, if any, are also disposed of"

2. In compliance of orders passed by Hon'ble High Court , this Authority heard the matter finally on 31.05.2022 to decide the matter comprehensively.

3. Facts of the matter as were captured in order dated 10.12.2019 passed by this Authority are reproduced below:

> "1. The complainant's case is that he had booked a penthouse measuring 4000 sq ft in respondent's project-

Forest Spa, Faridabad by paying Rs 30 lakhs, following which an agreement was executed between the parties on 17.05.2007. Unit no. 901 in Aspen Tower was allotted to him. Total sale consideration of the apartment was Rs 2 crores (@ Rs 5,000/- per sq ft.) In terms of the said agreement, possession was supposed to be delivered by 17.05.2010. Instead of offering possession of the booked unit, the respondent sent him a letter dated 28.08.2010 whereby their unit was changed from unit no. 901 ,Aspen Tower, to unit no. 1702, Jasmine Tower with increased area measuring 6000 sq ft. The complainant alleges that the unit was unilaterally shifted by respondent without their consent. However, subsequently another agreement dated 24.09.2012was executed between the parties vide which allotment of unit no. 1702 in Jasmine Tower was confirmed for total sale consideration of Rs 3.43 crores. In terms of said agreement dated 24.09.2012, the possession was to be delivered by 24.09.2015. Complainant alleges that respondent has failed to deliver the possession of the new unit also within stipulated time. Therefore, the present complaint has been filed seeking refund of paid amount of Rs 3,14,53,500/- alongwith interest from the dates of payments.

2. Today, complainant's counsel made statement on his behalf that he wishes to withdraw the plea for relief of refund of the paid amount. Instead, he is seeking possession of the allotted unit alongwith compensation.

Accordingly, the matter is being proceeded further for granting relief of possession of the allotted unit.

3. Learned counsel for complainant argued that initially the agreement was executed for unit no. 901, Aspen Tower in year 2007, but later on the unit was shifted to Jasmine Tower without consent of the complainant for which complainant had no other option but to execute a new agreement dated 24.09.2012. Further, the payments were received by the respondent from year 2007 in respect of purchased unit. More seriously, the respondent has not even kept his promise to hand over possession within time even in terms of the subsequent agreement dated 24.09.2012. This conduct of the respondent clearly proves that he has been using the money of complainant for last 10 years, which is not justified. Accordingly, now the complainant has become entitled to get delay compensation for the period of delay in terms of subsequent agreement as well as reasonable interest on the amount paid to the respondent from year 2007 to year 2012 i.e for the period between the execution of first agreement upto the execution of revised agreement.

4. Learned Counsel for respondent stated that the offer of possession was sent to the complainant on 13.02.2018 after receiving occupation certificate on 28.10.2016, but the complainant did not come forward to take possession of the unit after paying remaining due

amount of Rs 96,31,898/- in accordance with the accounts statement attached as annexure- R/6. Further, he submits that the unit is almost ready and the remaining finishing work will be completed within 2 months upon receiving remaining due amounts from complainant.

Respondent further contended that the complainant should get compensation in accordance with the agreed terms and conditions of builder buyer agreement which as per clause 30 (e) of agreement is Rs 5 per sq ft per month. In support of his contention he referred to para 16 and para 17 of judgement dated 10.05.2019 passed by Hon'ble Supreme court in Civil appeal no. 4910-4941/2019 titled as DLF homes Panchkula Pvt Ltd vs D.S Dhanda and Appeal no. 4942-4945/2019 titled as DLF homes Panchkula Pvt Ltd & Anr. vs Sudesh Goyal.

5. After hearing both the parties, the Authority observes that the total cost of the unit is Rs 3.43 crores against which Rs 3.14 crores have already been paid by the complainant. Considering the submissions of the respondent and status of project, it can be presumed that the unit is almost complete and can be handed over to complainant, complete in all respects after receiving the outstanding amount. Admittedly however, the unit was supposed to be delivered by 24.09.2015 in terms of the revised agreement dated 24.09.2012, but the offer of possession was given by the respondent on 13.02.2018. Thus, there is delay of 3 years approximately in handing

over the possession for which the complainant is entitled to get compensated. This compensation shall be calculated in accordance with the principles laid down by this Authority in complaint case no. 113 of 2018 titled as Madhu Sareen vs B.PT.P Pvt Ltd.

6. Regarding the cited judgements of Hon'ble Supreme Court , it is observed that both the citations pertain to the Consumer Protection Act,1986 in which appeals were filed before the Hon'ble Supreme Court against the orders of the NCDRC. It is observed that when the matters are dealt with by the Civil Court or the Consumer Courts, the lis between the two litigating parties only is decided in terms of the agreement executed by the parties and the applicable provisions of relevant law. The Consumer Protection Act is meant to safeguard the interest of almost all categories of consumers including the allottees of a housing project.

The RERA Act on the other hand is a subject specific Act which has been enacted for regulating the real estate sectors for its harmonious growth and development and for protection of interests of the allottees. The objectives of the Consumer Protection Act and of the RERA Act are quite different. As the law stands at present, the allottees of a real estate project have a choice to pursue their remedies before the Consumer Forum or the RERA. If an allottee chooses the forum of RERA for redressal of his grievances, then the principles laid down in the RERA

Act and the precedents created by the authorities shall be applicable.

7. The RERA Act is applicable on two set of matters, first, those matters in which builder-buyers agreements are executed after coming into force of the RERA Act. In all such matters, without any doubt, provision of Section 18 of the RERA Act shall be applicable which inter-alia provides that in the event of delay in handing over possession interest at the prescribed rate shall be payable. The law however, is still at the stage of evolution in regard to the applicability of Section 18 of the RERA Act on the builder-buyers agreements executed prior to coming into the force of the Act. For all such situations this Authority has laid down certain principles in complaint case no. 113 of 2018-Madhu Sareen vs BPTP Ltd and complaint case no. 49 of 2018- Parkash Chand Arohi vs Pivotal Infrastructures Pvt. Ltd. Difference of views is prevailing between various members on this subject. At present the judgement given by the majority members in complaint case no. 113 of 2018 Madhu Sareen vs BPTP Ltd is applicable according to which for the period for which the delivery of possession has been delayed, compensation by way of interest @ prescribed i.e. SBI MCLR + 2% shall be payable.

For the above reasons the Authority holds that the ratio of the cited judgements is not applicable on the facts of this case.

8. The contentions of the respondent that the compensation should be awarded to the complainant in accordance with clause 30(e) of the agreement cannot be accepted. The respondents have failed to deliver possession in accordance with the earlier agreement. The complaint was forced to execute another agreement with much high super area. Since the complainant had paid heavy amount of money, he had no other option but to execute a revised agreement with increased super area thus increasing the cost of the apartment very substantially. For this reason, the pleadings of the respondent that compensation should be paid as per clause 30 (e) of the agreement cannot be accepted. The delay caused and the circumstances thereof are extraordinary.

9. The plea of the complainant's counsel for awarding interest on the payments received by respondent for the period from 17.05.2007 to 24.09.2012 is also accepted for the reason that respondent has been utilising the money of complainant since year 2007. For the entire amount received from 2007 to 2012, the complainant is entitled to get reasonable interest @ 9%.

10. The complainant is directed to calculate the amounts payable as compensation to him, first for the amounts paid between the period 17.05.2007 to 24.09.2012 @ 9%; and for the delay caused in terms of revised agreement from 24.09.2015 to 13.02.2018 @ SBI

MCLR+ 2%. He shall file the calculations atleast one week prior to the date of hearing and supply its copy in advance to the respondent. The respondent shall present his objections in respect of the calculations to be filed by complainant on the next date of hearing.

11. With these directions the matter is adjourned to **29.01.2020.**"

4. Arguments put forwarded by complainant and respondents were captured by Authority in various orders, some of the relevant orders are reproduced below:

Order Dated **01.12.2020:**

" Detailed orders in the matter were passed during the hearing dated 10.12.2019. In Para 2 of the said order it has been recorded that the counsel for the complainant made a statement that he wishes to amend the prayer for relief of refund of the paid amount, instead he is seeking possession of the unit along with delay interest. Today the complainant Shri Sandeep Goyal himself is present who reiterated that he is seeking the relief of possession along with delay interest. He also submitted his request in writing. No further dispute remains in the matter that the prayer of the complainant is for possession of the apartment along with delay interest.

2. The Authority in the said order dated 10.12.2019 had also decided that for the amount paid between the

period 17.05.2007 to 24.09.2012 interest at reasonable rate i.e.9% shall be payable by respondent. Further for the delay caused in terms of revised agreement from 24.09.2015 to 13.2.2018 i.e. from deemed date of offering possession upto the date of offer of possession shall be admissible @ SBI MCLR+2% in accordance with the principles laid down in complaint No.113-Madhu Sareen Versus BPTP Ltd. The complainant was directed to file his calculations in respect of admissible delay interest atleast one week prior to the next date of hearing and supply its copy to the respondent.

3. The respondent has filed an application dated 04.03.2020 requesting for modification of the orders dated 10.12.2019. The respondent has cited provisions of Section 18 of the RERA Act, 2016 stating that according to Section 18 interest and compensation can be awarded only for the period of delay beyond the agreed dates of possession and not from the date of respective payments. In this particular case the previous agreement entered by the complainant was for a different flat in another tower in another project for which a separate complaint was maintainable before a competent court of law. Therefore, the respondent is not liable to pay interest on the amount paid by the complainant from 17.5.2007 to 24.09.2012.

4. The Authority does not agree with the contention of the respondent. Admittedly the complainant had booked for delivery of an apartment in the year 2007. He

kept making payment till 2012. The said apartment was not delivered to him. The complainant claims that by force he was made to shift to another apartment with much larger carpet area and much more cost even though he was not interested for re-location into another apartment. The complainant also claimed that the original tower was eventually completed by the respondent but he was not offered apartment in that tower because the respondent wished to sell his apartment at much higher price to another person.

The Authority observes that the payments earlier made by the complainant were adjusted towards the consideration amount of the new apartment for which the subsequent agreement dated 24.09.2015 was executed. The respondent had retained the money of the complainant wrongfully for the period 2007 to 2012. For this period the complainant is entitled to receive interest. The arguments of the respondent and their application for review of the order dated 10.12.2019 are accordingly rejected.

5. An application dated 14.09.2020 was filed by the complainant stating therein the claimed interest in accordance with the orders dated 10.12.2019 of the Authority. The complainant has calculated the payable interest as Rs.2,13,94,225/-. The Authority prime-facie observed that some of the calculations appears to be incorrect. The interest has to be calculated separately for

the amounts paid before 2012 i.e. from the date of actual payments upto 24.9.2012 @ 9%. The second calculation has to be made on the entire amount paid, from the deemed date of possession i.e.24.09.2015 upto the date of offer of possession i.e.13.2.2018.

6. The complainant also presented some photographs of the unit supposed to have been taken in January,2020 in which the serious defects showing and the apartment has been shown not to be completed at all. Th complainant claimed that the project is not complete even now. Accordingly, 13.02.2018 i.e.the date of stated offer of possession has no meaning. Since a proper possession has not been offered even till now, the delay interest should be calculated upto the actual date of handing over of the possession after properly completing the apartment in all respects.

In response to the allegations of the complainant the respondent stated that the occupation certificate of the project was received on 28.10.2016. A proper offer of possession was made on 13.02.2018. Further there are certain amounts payable by the complainant which must be paid. The respondent claimed that it is the complainant who is at fault by not taking possession of the apartment.

The Authority observed in the hearing held on 10.12.2019 the respondent had made a statement that the unit is almost ready and remaining finishing work will be completed within two months. This statement of the

respondent has been recorded in para 4 of the said order of the Authority. Admittedly, the unit was not ready to be handed over upto early January/February,2020. The complainant claimed that the apartment is not ready now. Therefore, the offer of possession made by the respondent cannot be called a legally valid offer.

7. The Authority after having gone through the rival contention decides to appoint a Local Commissioner to give his report whether the apartment is ready in all respects for handing over its possession to the complainant. Further the Local Commissioner shall determine as to on which date the apartment could be said to have been made ready for handing over the possession. The Authority will pass appropriate orders regarding calculation of the delay interest upto that date.

8. Since the complainant has especially come from Bombay for prosecuting his case, he requested that site inspection may be got carried out on 06.12.2020.The Authority accordingly directs that the Local Commissioner will visit the site at 11.00 am on 06.12.2020. The complainant or his representative and the respondent or his representative shall remain present at the site to assist the Local Commissioner. Site photograph should be done in support of the report of the Local Commissioner.

9. The Law Associate shall get the calculations of the delay interest submitted by the complainant verified

from the Accounts Section of the Authority and place it for further adjudication on the next date of hearing. Decision on the amount claimed by the respondent to be payable by the complainant shall be taken on the next date.

10. Orders regarding appointment of the Local Commissioner be issued. With these directions, the case is adjourned to **21.01.2021.**"

Order Dated 21.01.2021:

"1. In continuation of proceedings dated 1.12.2020 the matter was further heard by the Authority at length today. Shri Manish Gupta, Advocate Ld Counsel appeared on behalf of the respondent. The complainant Shri Sandeep Goyal was present to argue his case himself.

2. Opening the arguments learned counsel for the respondent Shri Munish Gupta stated as follows:

(i) The respondent company had filed an appeal before the Hon'ble Appellate Tribunal, against the orders dated 1.12.2020 passed by the Authority to the effect that the interest for the period 17.5.2007 to 24.9.2012 and further from 24.9.2015 to 13.2.2018 is not payable by the respondent to the complainant. Objections were also raised against the orders of the Authority regarding appointment of Local Commissioner to visit the site at a

short notice. The respondent's company had contended that fresh Local Commissioner should be appointed after giving reasonable time to them.

Hon'ble Appellate Tribunal in their order dated 15.01.2021 while denying any specific relief has ordered that the pleas raised by the appellants shall be considered by the Authority and respondent will also be at liberty to raise all pleas before the Authority at appropriate stage.

(ii) Relying upon the above orders of Hon'ble Appellate Tribunal the respondent reiterates that agreement of the year 2007 had been superseded by a subsequent agreement of the year 2012, therefore, no interest is admissible in favour of complainant for the period 2007 to 2012

(iii) The respondent-promoter further reiterates that they had offered legally valid possession to the complainants on 13.2.2018. It is the complainant who did not come forward to take the possession. For this refusal to take possession the complainants are liable to pay interest as well as holding charges to the respondent company.

(iv) The report submitted by Local Commissioner, which had been appointed by the Authority on 1.12.2020, should not be taken into consideration because respondents could not be present during site visit because sufficient time was not given to the respondent company. Continuing his arguments learned counsel Shri Munish

Gupta stated that it is a usual practice that in real estate projects final finishing works are carried out after formal taking over of possession, otherwise if taking over of possession is delayed after completion of finishing works, the apartment gets damaged. According to respondent, complainant should have accepted possession in 2018 where-after respondent would have carried out finishing works. Learned counsel also presented latest photographs of the apartment showing that now it is ready and complete

3. The complainant submits as follows:

(i) The claim of the respondent that apartment was complete in 2018 is completely false. They had obtained a wrong occupation certificate in 2016 which is proved from the fact that the alleged offer of possession was made in February,2018 i.e. two years later, therefore, their occupation certificate itself was wrongly granted.

(ii) Complainant reiterates that apartment was far from complete even in January, 2020. In support of his arguments complainant again drew attention of the Authority towards photographs taken on 11th January, 2020 which have been annexed with the complaint by way of additional affidavit (pages 3-46 of the additional affidavit). Perusal of the photographs clearly reveal that a large amount of civil and finishing works were yet to be carried out. Accordingly, when the apartment was not complete and was far from habitable even in January,

2020, how could respondent's offer its legal possession in February, 2018?. Complainant states that he could not have taken possession in 2018 because apartment was not at all complete. In fact it was not complete till as late as December, 2020.

(iii) The complainant states that initially he had booked apartment of about 4000 Sq Ft. in the 'Aspen tower' of the same project in 2007 but he was forced to surrender that apartment 5 years after booking and was further forced to accept present apartment in 'Jasmine tower' in the year 2012 with a much higher cost and much more super area. The respondents had illegally retained Rs 1.3 crores of the complainant for 5 years and then was forced to accept the present apartment in Jasmine Tower. The money paid for Aspen tower apartment was later adjusted towards the present apartment without giving any benefit of interest. For such illegal retention of the money by respondent from 2007 to 2012, interest should be paid to them in accordance with Rule 15 of the RERA Rules. The complainant also demands compensation for the harassment caused to him on this account.

(iv) According to the complainant full and final payment in respect of the new apartment in Jasmine Tower had been made by March,2013. They were shocked to receive a further demand of Rs.96.31 lacs from the respondent along with the said offer of

possession in 2018. The complainant challenges demand notice given by respondents stating that respondents are illegally demanding exorbitant sums of money in total violation of the conditions of agreement. In fact it is the respondent who should be paying them interest and compensation for illegal retention of money and delay caused in handing over possession as per Section 18 of the Act.

(v) For the foregoing reasons, offer of possession given on 13.2.2018 is totally illegal and bad in law, because firstly, apartment was not ready, and secondly the offer was accompanied with highly illegal demands which could not have been accepted by the complainant.

4. Following issues emerge for deliberations:

(i) Whether the statement of account accompanying offer of possession was correct and fair?

(ii) Whether the apartment was ready for habitation when the offer of possession was made in February,2018?

(iii) On account of above factors, whether the offer of possession made in February, 2018 can be called a legally valid offer?

5. The Authority would first of all deal with whether statement of account accompanying the offer of possession in February 2018 was fair and just or not. The Authority had discussed each component of the statement

of account with both parties and came to the following conclusion:

(i) There is no dispute regarding basic cost of the apartment which admittedly is about Rs. 2.85 crores. Complainant however had booked a 6000 Sq Ft. apartment whereas in the statement, the area has been shown to have increased to 6511 Sq. ft. i.e 511 sq. ft. more than the area booked. Further, Rs.24.27 lacs are being demanded by the respondent on account of the enhanced area. The respondent has given no justification as to how and on what account this area has been increased. The respondent should have given full justification for this increase. The respondent has not submitted any justification even before the Authority. In the absence of acceptable justification, enhancement of area cannot be allowed. However, one more opportunity is given to the respondent to justify each component of the enhanced area and whether enhancement is in accordance with the plans approved by the Town & Country Planning Department. While submitting justification, the respondent shall keep in view the principles laid down by this Authority for calculation of the super area of an apartment in complaint No 607 of 2018 titled Vivek Kadyan Vs TDI Infrastructure Ltd. and complaint No 22 of 2019 titled Parmeet Singh Vs TDI Infrastructure Ltd. The said additional demands of Rs. 24.27 lakh accordingly shall be decided after further deliberations.

(ii) The respondent have demanded Rs.32.42 lakh towards interest on account of delayed remittances. As per statement of accounts of 11th March,2013, placed at page 78-79 of the complaint, full amount as was due,except the amount which was to be paid on completion of flooring and on offer of possession, had been paid by the complainants in 2013 itself. As per statement dated 11.3.2013 only Rs.98,945/- were payable which also were paid by the complainant on 20.3.2013. Accordingly nothing at all was due to be paid by complainant in 2013. Accordingly, prima facie, demand of Rs. 32.42 lakh towards interest in the year 2018 does not seem justified .

Learned counsel for the respondent Shri Munish Gupta sought time for getting instructions from his clients on this issue on the basis of which further submissions will be made before the Authority on the next date.

(iii) The respondent have also demanded Rs.6,38,000/- towards enhanced EDC. Payment of EEDC has been stayed by Hon'ble Punjab & Haryana High Court. Accordingly, this amount was not payable in February,2018 when said offer of possession was made. Accordingly, this amount is not payable at this point of time. However, the payment shall be made in accordance with the decision of Hon'ble High Court in due course of time.

(iv) Now, after deducting the amounts Rs.24.27 +Rs.32.42+ Rs.6.38, the total balance amount that remains payable out of the statement of account sent in February 2018, by the complainant works out to Rs 33.24 lakh. This amount however, is adjustable in the delay interest which has to be paid by the respondent to the complainant on account of delay caused in delivery of the apartment.

6. Next issue is, whether the apartment was ready for occupation in the year 2018?. The Authority refers to photographs placed before it by complainant ,which were taken on 11th January,2020, as well as the report of the Local Commissioner dated 11.12.2020. Several photographs of area outside the apartment have been annexed by the Local Commissioner. Photographs of inside the apartment could not be taken because respondent did not participate in the process of site visit by the Local Commissioner. Those photographs reveal that several civil and finishing works were yet to be carried out in the apartment on the respective dates. Photographs of January, 2020 reveal that even plastering and flooring works in several portions of the apartment were yet to be carried out. The cumulative effect of all the documents placed before the Authority is that the apartment does not appear to be habitable even in January,2020. Accordingly, valid offer of possession could not have been made in February,2018. The latest photographs today submitted however do indicate that

now apartment appears to be ready and complete for handing over.

7. At this stage, the Authority would express its views regarding the concept of ' valid offer of possession'. It is necessary to clarify this concept because after valid and lawful offer of possession liability of promoter for delayed offer of possession comes to an end, and liability of allottee for paying holding charges as per agreement commences. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The Authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession of an apartment must have following components:

(i) Firstly, the apartment after its completion should have received occupation certificate from the department concerned certifying that all basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm water drainage, electricity supply, roads and street lighting.

(ii) Secondly, the apartment should be in habitable condition. The test of habitability is that the allottee should be able to live in the apartment within 30 days of the offer of possession after carrying out basic cleaning

works and getting electricity, water and sewer connections etc from the relevant authorities. In a habitable apartment all the common facilities like lifts, stairs, lobbies, etc should be functional or capable of being made functional within 30 days after completing prescribed formalities.The Authority is further of the view that minor defects like little gaps in the windows or minor cracks in some of the tiles, or chipping plaster or chipping paint at some places or improper functioning of drawers of kitchen or cupboards etc. are minor defects which do not rendr an apartment uninhabitable. Such minor defects can be rectified later at the cost of the developers. The allottees should accept possession of an apartment with such minor defects under protest. This Authority will award suitable relief or compensation for rectification of minor defects after taking over of possession under protest. However, if the apartment is not habitable at all because the plastering work is yet to be done, flooring works is yet to be done, common services like lift etc. are non-operational, infrastructural facilities are non-operational then the apartment shall be deemed as uninhabitable and offer of possession of an uninhabitable apartment will not be considered a legally valid offer of possession.

(iii) Thirdly, the offer of possession should not be accompanied by unreasonable additional demands. In several cases additional demands are made and sent along with the offer of possession. Such additional

demands could be of minor nature or they could be significant and unreasonable which puts heavy burden upon the allottees. The Authority is of the view that if additional demands are of minor nature, the allottees should accept possession under protest. The disputes in respect of minor amounts, however, can be resolved by this Authority. The offer of possession accompanied with minor additional demands accordingly will be termed legal and justified.

However, if the offer of possession is accompanied with a huge additional demands beyond the scope of provisions of the agreement, the allottees cannot be forced to accept such an offer. An offer accompanied with unreasonable demands beyond the scope of provisions of agreement should be termed an invalid offer of possession. Huge unreasonable demands itself would make an offer unsustainable in the eyes of law.

8. Applying above principles on facts of this case, the offer of possession of February,2018 does not appear legal and valid offer of possession for the reasons that, firstly, the apartment was not habitable even two years after the said offer was made in February,2018. Photographs taken in Janauary 2020 and the report of the local commissioner are sufficient evidence to prove that fact. Possession of an uninhabitable apartment is not a valid offer. Secondly, the offer was accompanied with demands amounting to Rs 96,31,896/- which as per

discussion recorded in para 7 above cannot be called justified demands. The complainant could not be expected to accept possession of an uninhabitable apartment accompanied with unreasonable demand of Rs 96,31,896/- .

Accordingly, the Authority is of the view that offer of possession of February,2018 is unsustainable in the eyes of law and the same deserves to be quashed.

9. The consequence of quashing the said offer of possession of 2018 are that the respondent now has to make a fresh offer of possession accompanied with statement of accounts deleting all illegal demands and including therein interest payable to the complainants for delay caused in offering possession in accordance with the principles laid down in complainant No.113 of 2018 titled Madhu Sareen Versus BPTP Ltd.

10. The complainant shall submit calculations of interest admissible to him for the period 2007 to 2012 and from 2015 to till date separately on Excel Sheets. The interest should be calculated for each amount paid separately from the dates of payment upto the date of revised agreement in the case of payments made between 2007 to 2012, and for the entire amount from the due date of possession in 2015 upto 28th February,2021. The complainant shall send a copy of the calculations to the

respondent well before the next date of hearing for arguments.

9. Learned counsel for the respondent seeks time to seek instructions from his clients regarding the component of interest included in the demands accompanying the offer of possession issued in February, 2018. Respondent is directed to pay his part of the cost of appointment of Local Commissioner.

10. The matter is now adjourned to **30.03.2021** for final arguments on the lines recorded above."

Order Dated 05.05.2022:

"1. When the matter had come up for hearing on 9.12.2021, Authority had observed as follows:-

" This matter was last heard on hearing dated 06.10.2021 when following orders were passed:

" Learned counsel for the respondent had previously apprised the Authority that Hon'ble High Court of Punjab and Haryana in RERA-APPL-40 of 2021 titled M/s Omaxe India Pvt. Ltd. Vs Sandeep Goyal and another had stayed the proceedings in the present complaint . Respondent was, therefore, directed to place a copy of the stay order on record. However, respondent has not filed the same till date.

2. Shri Munish Gupta, Learned Counsel for respondent read out order dated 19.5.2021 passed by

Hon'ble High Court. He also sent copy of the same by e-mail.

3. Hon'ble High Court has ordered as follows:

" For arguments, to come up on 28.06.2021.

Till then, proceedings before Haryana Real Estate Regulatory Authority Panchkula, may continue, but final order in the matter may not be passed.""

2. This matter has been finally disposed of by Hon'ble High Court vide their orders dated 31.3.2022 as is reproduced below:

" The Haryana Real Estate Regulatory Authority, Panchkula, has started deciding various issues involved in a complaint vide separate orders. The Haryana Real Estate Appellate Tribunal after taking note of the various facts and judgments passed by the courts held that it would be more appropriate if the authority decides the matter by one order in a comprehensive manner. However, the Appellate Authority dismissed the appeal filed by the appellant.

Learned senior counsel representing the respondents has submitted that he has no objection if the order passed by the Regulatory authority as well as the Appellate Tribunal are set aside with a direction to the Haryana Real Estate Regulatory Authority, Panchkula, to re decide the

matter afresh within a period of three months. He has no objection if the matter is decided comprehensively deciding all the issues.

In view of the aforesaid consensus arrived at, the Haryana Real Estate Regulatory Authority, Panchkula, is directed to decide the matter comprehensively within a period of three months, positively from today.

Disposed of

All the pending miscellaneous applications, if any, are also disposed of"

3. This matter was listed for hearing before this authority today. Complainant Sh. Sandeep Goyal who was personally present submitted an application dated 25.4.2022 submitting as follows:-

i) That Hon'ble High Court has directed this Authority to finally decide the matter within a period of three months w.e.f. 31.3.2022.

ii) Complainant has made calculation of interest payable by defendant-company amounting to Rs. 2,97,06,505 calculated upto 30.4.2022. Further interest works out to Rs.3,01,23,269/- if calculated upto 31.5.2022. Basis of this calculation have also been annexed with the letter.

iii) That respondent-company should be instructed not to demand maintenance charges till the date of handing over of property.

iv) Respondent-company may be instructed not to charge service tax or GST as the same were not applicable when the apartments was booked.

v) Respondent-company be asked to carry out complete measurement of apartment before handing over.

4. Law Associate is directed to send a copy of letter received from complainant to respondent-company.

5. An e-mail dated 04.05.2022 has been received from Sh. Munish Gupta, learned counsel for respondent requesting for adjournment because he is in personal difficulty. The complainant is present in person in the court today. He stated that he has especially come to attend court today from Mumbai. The respondent did not care to inform him in advance and complainant has been put to great inconvenience. The complainant reiterated his request that the matter must be decided by Authority within time frame stipulated by Hon'ble High Court. Complainant requested that while calculations of interest payable to him by respondent may be finalised on next date of hearing, in the meantime, respondent-company should be asked to fully finish the apartment and handover its possession to him at the earliest because

complainant has been suffering and is waiting for delivery of possession of apartment since 2015.

6. Authority has gone through facts and circumstances of the matter. It observes and orders as follows:-

i) Authority has to decide the matter within 3 months from passing of order by Hon'ble High Court on 31.3.2022. On the request made by learned counsel for respondent, matter is adjourned to 31.5.2022. On the next date, matter shall be heard finally. No further opportunity will be granted. Let both parties,if they so consider appropriate, may submit their written arguments one week before next date of hearing and send a copy to opposite side. Authority will not adjourn the case any further and will finally decide on 31.5.2022. Both parties must put up their oral arguments or alternatively submit written arguments one week before the next date.

ii) Several issues have been discussed during last 18 of this complaint. Both parties must address each of those issues in their written/oral arguments, whereafter Authority will give its final verdict.

iii) Whatever supporting evidence both the parties wish to bring in support of their averments, a copy thereof must be exchanged one week before next date of hearing. It is reiterated that no further opportunity will be granted to any of the parties.

iv) The complainant has asked for handing over of possession after properly measuring super area of apartment. Respondents are directed to fully finish the apartment in accordance with terms of agreement. Detailed measurement of carpet area of apartment and each of components of the super area should be prepared by respondents well before next date of hearing and copy thereof sent to the complainant. Final decision in regard to super area for which complainant is being charged will also be taken on the next date of hearing.

v) If complainant wishes to measure the apartment himself, respondents shall facilitate entry of the complainant into the apartment and other areas of the building. Complainant is free to take his own team for measurement of the apartment. Complainant must give a notice of atleast 7 days to respondents intimating the date and time when such visit will take place.

7. Adjourned to **31.05.2022**"

5. Today, Sh. Munish Gupta learned counsel appeared on behalf of respondents, and complainant Sh. Sandeep Goyal was present in person. Both parties argued their case at length. Since both parties had submitted all their arguments in writing as well as orally in numerous earlier hearings, they did not state anything new today. Essentially, they reiterated their earlier arguments.

6. Sh. Munish Gupta, learned counsel reiterated his arguments that, first of all, interest for the period 2007 to 2012 in respect of Rs.1.35 crores paid by complainant on account of earlier booking of unit No. 901 in Aspen Tower, Forest Spa, Faridabad, cannot be allowed. The interest for the period 2007 to 2012 on paid amount of Rs 1.35 Crore is not admissible because of subsequent agreement dated 24.9.2012 was executed between parties vide which another apartment No. 1702 in Jasmine Tower was allotted in which the amount paid in respect of the apartment in Aspen Tower was duly accounted for and adjusted. Sh. Munish Gupta argued that previous agreement got subsumed into the new agreement. The new agreement of 2012 was executed by complainant voluntarily and with free will therefore previous agreement of 2007 became infructuous and unenforceable. He reiterated that no interest for the period 2007 to 2012 in respect of amount paid can be allowed.

7. Learned counsel Sh. Gupta further argued that a valid offer of possession was made to the complainant on 13.2.2018 after receiving occupation certificate dated 28.10.2016 for the project from Town & Country Planning Department. According to him it is the complainant who defaulted by not accepting the possession nor paying due amount as demanded by respondents i.e. Rs. Rs 96,31,898/-. He

argued that complainant should have accepted the offer of possession in 2018 and also paid due amount. By not doing so, it is the complainant who should be called a defaulter and not respondents.

8. On the other hand Sh. Sandeep Goyal complainant argued that initially he was allotted apartment No. 901 in Aspen Tower, for which a Builder-Buyer Agreement was executed on 17.05.2007. He had paid due consideration amount of Rs. 1.35 crores in time and as per demands raised by respondent. Sh. Goyal argued that rather than offering possession of booked apartment, respondents forcibly and whimsically cancelled allotment of his apartment in Aspen Tower under the pretext that said tower is not being constructed. Instead, he was forced to take allotment of another apartment No. 1702, in Jasmine Tower with higher cost and higher super area. Having paid huge amount of Rs. 1.35 crores, complainant had no other choice but to accept revised allotment. He believed the statement and reasons given by respondent that allotted apartment No. 901 in Aspen Tower was not being constructed. Complainant argued that actually said Tower was constructed. However, respondents used their dominant position and forced the complainant to accept re-allotment of apartment in another Tower with higher super area and with higher cost. Sh. Goyal alleges that fact of the matter is that even originally allotted apartment was

constructed by respondents. Respondents wanted to make undue profit from sale of his allotted apartment in open market, for which reason allotment of original apartment was cancelled and another apartment was allotted much against his wishes and desires. Sh.Goyal argued that he deserves to be duly compensated for illegal retention of money by respondent for the period 2007 to 2012.

9. Regarding validity of offer of possession of new apartment in 2018, rebutting arguments of respondents, complainant Sh. Sandeep Goyal argued that respondents are claiming that they had offered possession in the year 2018 after obtaining occupation certificate. Sh. Goyal argued that he could not have accepted the offer of possession of the apartment in the year 2018 for the reasons that, firstly, the apartment was not at all ready, as is proved from the photographs taken in the year 2020. It was not even ready in the year 2020. Further, respondents refused inspection of the apartment to Local Commissioner appointed by Authority on 06.12.2020. In fact, report of the Local Commissioner submitted in respect of exteriors of apartment adequately prove that, apartment was not at all ready and habitable even at the time of inspection by local commissioner on 06.12.2020.

Another reason why complainant could not have taken possession was because he had made payment of full consideration

amount of Rs. 3.14 Crore in the year 2013 itself. In 2018, respondents sent him a statement of accounts incorporating therein an interest amount of Rs. 32.42 lacs. Further, respondents without giving any justification demanded Rs.24.27 lacs towards enhanced super area which was absolutely unjustified. Sh. Goyal argued that because, firstly the apartment was not ready, and secondly, highly exorbitant demands had been made by respondents, therefore, he was not in a position to take possession as it was wrongfully offered by respondent.

10. Complainant Sh. Goyal vehemently argued that this matter has been going on since 2019. Respondents are indulging in delaying tactics, and they are filing frivolous appeals. Since much delay has already been caused, he should be given possession of his apartment immediately and interest calculated upto date as per Rules should be awarded to him. Respondents have been protracting the matter without any justification or reason.

11. Authority has gone through rival contentions. It has examined its earlier findings given during various hearings, which are reproduced in this final order. Authority has once again verified the facts and evidence submitted by both parties. Authority observes and orders as follows:-

i) First question that needs to be settled is whether complainant is entitled to interest on Rs.1.35 crores paid by him between 2007 and 2012 in respect of booking of apartment No. 901, Aspen Tower. Authority observes that a valid Builder-Buyer Agreement was executed between parties on 17.5.2007. Between 2007-2012, the complainant paid a total amount of Rs. 1.35 crores. The case of complainant is that his unit in Aspen Tower was changed unilaterally without his consent with a motive to gain wrongful profit by respondents. This act of respondent is unethical and usage of their dominant position. On the other hand case of respondent is that unit from Aspen Tower to Jasmine Tower was changed with mutual consent of both parties and consideration amount paid in respect of unit in Aspen Tower was duly adjusted towards consideration amount in respect of unit in Jasmine Tower, therefore no interest can be allowed to complainant in respect of earlier booking in Aspen Tower.

Respondents in their reply, at page 51, have placed Annexure R-3, which is a letter written by respondents to complainant dated 28.8.2010 stating that " ...we are pleased

to inform that we have changed from unit No. 901, Aspen Tower to unit No. 1702, Jasmine Tower (6000 sq.ft.) @ 4750/- per sq.ft. in our project Omaxe Forest Spa, Surajkund, Faridabad....".

Respondents have further placed on record a letter dated 7th June, 2012, page 53 of the reply, addressed to the complainant, stating that "....we are pleased to inform that due to some changes in the layout plan your allotment has been changed from flat No.901 9th floor Aspen Tower to flat No. 1702 PH 7th floor, Jasmine Tower in Forest Spa, Faridabad..."

ii) Authority observes that it is quite clear from aforesaid two letters written by respondent to complainant that allotment of apartment of complainant from Aspen tower to Jasmine tower was changed without his consent. In the letter dated 7th June, 2012, it has been stated that changes have been caused due to change in the layout plan. However, at no place, consent of complainant was asked for or recorded. Further, in the absence of rebuttal, Authority is inclined to agree with complainant that the Aspen Tower in which original allotment was made,

eventually was completed by respondent. Authority, therefore, concludes that original allotment was cancelled/ changed unilaterally by the respondents without obtaining consent of the complainant. Further, respondents used their dominant position. After having paid such a huge amount of money, complainant had no other option but to agree to relocation in another tower. In the Builder-Buyer Agreement of 2012, it is nowhere recorded that any compensation was given to the complainant in respect of Rs.1.35 crores paid by him between the years 2007-2012.

Authority, therefore, reiterates its view that respondents have used their dominant position, and have indulged in unfair trade practices, for which complainant deserves to be awarded interest on entire amount paid from the date of making respective payments upto the date of execution of the second Builder-Buyer Agreement.

For this period, the interest amount has been got worked out from Accounts department as shown in the table below.

S. No	Paid amount (in Rs)	Period	Rate of Interest	Amount of Interest (in Rs)
1.	30,00,000/-	12.02.2007 to 23.09.2012	9%	15,17,178/-
2.	40,00,000/-	25.05.2007 to 23.09.2012	9%	19,22,301/-

Interest admissible to complainant for the period from 2007 to 2012 has been calculated on Rs 70,00,000/- because although till 2012 complainant has paid a total amount of Rs 1.35 Crore to the respondent however only first two payments i.e Rs 30 Lakh & Rs 40 Lakh were made towards booking of Unit no. 901 Aspen Tower whereas the last payment of Rs 65,00,000/- made on 15.05.2012 was for booking towards unit no. 1702 Jasmine Tower. Therefore, said payment has not been included for calculation of interest.

Accordingly, Authority orders that the respondents shall pay Rs. 34,39,479/- as interest to the complainant on the amount received between 2007 to 2012.

iii) The next question is in regard to second builder-buyer agreement dated 24.9.2012 executed in respect of unit No. 1702, Jasmine Tower (6000 sq.ft.) As per builder-buyer agreement, possession of the unit was to be delivered within 3 years which comes to 24.09.2015. It is undisputed and admitted that offer of possession was given to complainant on 13.2.2018. There is no doubt that a delay of two years and four months has been caused. As per provisions of Section 18 of the RERA Act, complainant is entitled to interest on the entire amount paid i.e. Rs.3.14 crores from due date of offer of possession i.e. 24.09.2015 upto the date when respondents sent an offer of possession on 13.2.2018. Interest for this period at the rate provided in Rule 15 of RERA Rules, 2017, which is SBI MCLR +2% on the date of passing of this order (@ 9.5%), comes to Rs. 65,96,751/- . It is clarified that this interest has been calculated after deducting Rs 24,54,173/- from Rs 3.14 Crore on account of EDC, Service tax and HVAT.

Respondents shall pay this amount also to the complainant as interest for the period of delay in offering possession from 24.09.2015 to 13.02.2018.

iv) Next question is whether offer of possession made in February 2018 was a lawful and valid offer of possession, and whether complainant should have accepted such an offer.

The case of the complainant is that he could not have accepted the offer of possession of February 2018 for the reasons that firstly, allotted apartment was not at all ready and habitable. It was not ready and habitable even in the year 2020 and for that matter, on 06.12.2020 when local commissioner appointed by Authority had visited to the site for inspection of the apartment. Complainant argues that apartment still needs to be worked upon to make it habitable.

Second reason given by the complainant for not taking possession is that the offer of possession in February 2018 was accompanied with huge demand for payment of Rs. 96.31 lacs. Complainant argues that as per statement of

accounts dated 11.3.2013 annexed with the complainant as Annexure C-18, page 78, against total agreed consideration of Rs.3.43 crores, complainant had already paid Rs.3.13 crores in 2013 itself. Remaining amount of Rs. 30 lacs was to be paid at the time of handing over of possession. The demand of Rs 96.31 lakhs was comprised of interest amounting to Rs. 32.42 lacs, which was totally unjustified and arbitrary which complainant could not have accepted. Further, respondents without giving any justification unilaterally claimed that super area of apartment has increased from 6000 to 6511 sq.ft. Additional demand of Rs.24.27 lacs on account of claimed enhanced super area was also totally unjustified and without assigning any reasons. Further, respondents demanded Rs. 6,36,000/- towards enhanced EDC which also could not have been claimed by respondents because enhanced EDC had been stayed by Hon'ble High Court in the year 2016. In nutshell the complainant could not have accepted and did no accept the offer of possession because apartment was not ready at all, and secondly, highly exorbitant and unjustified demands had been made by the respondents.

v) The Authority is inclined to agree with the contentions of the complainant that the offer of possession made in February 2018 was not a legal and valid offer and complainant was fully justified in declining the same.

The criteria of as to what should be called a lawful offer of possession, this Authority had laid the principles for it in its orders dated 21.01.2021. The said criteria laid down by Authority has been quoted at page 15 of this order, which for ready reference is being quoted again as under:-

> "7. At this stage, the Authority would express its views regarding the concept of ' valid offer of possession'. It is necessary to clarify this concept because after valid and lawful offer of possession liability of promoter for delayed offer of possession comes to an end, and liability of allottee for paying holding charges as per agreement commences. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The Authority after detailed consideration of the matter has arrived at

the conclusion that a valid offer of possession of an apartment must have following components:

(i) Firstly, the apartment after its completion should have received occupation certificate from the department concerned certifying that all basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm water drainage, electricity supply, roads and street lighting.

(ii) Secondly, the apartment should be in habitable condition. The test of habitability is that the allottee should be able to live in the apartment within 30 days of the offer of possession after carrying out basic cleaning works and getting electricity, water and sewer connections etc from the relevant authorities. In a habitable apartment all the common facilities like lifts, stairs, lobbies, etc should be functional or capable of being made functional within 30 days after completing prescribed formalities.The Authority is further of the view that minor defects like little gaps in the windows or minor cracks in some of the tiles, or chipping plaster or chipping paint at some places or improper functioning of drawers of kitchen or cupboards etc. are minor defects which do not rendr an apartment uninhabitable. Such minor

defects can be rectified later at the cost of the developers. The allottees should accept possession of an apartment with such minor defects under protest. This Authority will award suitable relief or compensation for rectification of minor defects after taking over of possession under protest. However, if the apartment is not habitable at all because the plastering work is yet to be done, flooring works is yet to be done, common services like lift etc. are non-operational, infrastructural facilities are non-operational then the apartment shall be deemed as uninhabitable and offer of possession of an uninhabitable apartment will not be considered a legally valid offer of possession.

(iii) Thirdly, the offer of possession should not be accompanied by unreasonable additional demands. In several cases additional demands are made and sent along with the offer of possession. Such additional demands could be of minor nature or they could be significant and unreasonable which puts heavy burden upon the allottees. The Authority is of the view that if additional demands are of minor nature, the allottees should accept possession under protest. The disputes in respect of minor amounts, however, can be resolved by this Authority. The offer of possession accompanied with minor additional demands accordingly will be termed legal and justified.

However, if the offer of possession is accompanied with a huge additional demands beyond the scope of provisions of the agreement, the allottees cannot be forced to accept such an offer. An offer accompanied with unreasonable demands beyond the scope of provisions of agreement should be termed an invalid offer of possession. Huge unreasonable demands itself would make an offer unsustainable in the eyes of law."

vi) Authority agrees that after having made payments of full consideration of Rs.3.14 crores complainant could not have accepted demand for payment of additional amount of Rs.96.31 lacs. Respondents despite taking several opportunities have not been able to place any justification before the Authority as to on what basis had they demanded additional interest of Rs 32.24 lakhs and had decided to increase super area by 511 sq. ft. Authority would consider that respondents have admitted that these demands were illegal land unjustified because despite repeated opportunities they have not given any justification for the same. Secondly, they have unilaterally raised the demand in respect of increase in super area from 6000 sq.ft. to 6511

sq.ft. Respondents ought to have given some justification for such demands. No justification has been placed before Authority in this regard. Directions had been given to respondents to calculate super area in accordance with principles laid in Complaint no. 607 of 2018 titled Vivek Kadyan Vs TDI , but respondents have miserably failed to do so. Even demand made on account of enhanced EDC was unjustified because such recovery had been stayed by Hon'ble High Court in the year 2013 itself. For these reasons, complainant was justified in refusing to take possession of the unit in 2018.

For the above reasons offer of possession made in 2018 cannot be called a lawful offer of possession. Therefore, complainant is entitled to delay interest for the entire period till a lawful and valid offer of possession is made.

vii) Authority has passed several orders to support its findings that the apartment was not ready and habitable in 2018 as well as in 2020. Findings of Authority have been cited at pages 2 to 33 of this order.

viii) Respondent had filed appeals before Hon'ble Appellate Tribunal and before Hon'ble High Court on technical grounds without challenging substance of findings of the Authority. Proven fact, however, remains that upto 06.12.2020 when local commissioner visited the apartment, it was neither complete nor habitable. Authority, therefore, has no hesitation in concluding that since a lawful offer of possession had not been made till then, complainant is entitled to delay interest as per Rule 15 of RERA Rules, 2017 upto the date of inspection of apartment by local commissioner. Therefore, for the period February 2018 upto the date of visit of local commissioner i.e 06.12.2020, interest as per Rule 15 of RERA Rules works out to Rs. 77,51,560/-. This interest is being worked out on the amount of Rs. 3.14 crores paid by complainant by the year 2013. It is clarified that this interest has been calculated after deducting Rs 24,54,173/- from Rs 3.14 Crore on account of EDC, Service tax and HVAT. The respondents shall pay this interest also to the complainant.

ix) Authority further orders that respondents had filed an appeal bearing No. RERA-APPL 40 of 2021 before the

Hon'ble High Court in which the Hon'ble High Court vide its order dated 19.05.2021 had granted stay order. The said matter, was disposed of by Hon'ble High Court vide its order dated 31.3.2022. The Authority considers it fair and just that complainant is entitled to get interest towards pendente-lite on the entire paid amount of Rs.3.14 crores for the period 07.12.2020 to 31.03.2022 which works out to Rs. 36,22,930/- as per provisions of Rule 15 of HRERA Rules 2017. It is clarified that this interest has been calculated after deducting Rs 24,54,173/- from Rs 3.14 Crore on account of EDC, Service tax and HVAT.

It is reiterated that delay interest mentioned in aforesaid paragraphs payable by respondent to complainant has been calculated on Rs 2,89,99,327/- .Said amount has been worked out after deducting charges of taxes paid by complainant on account of HVAT amounting to Rs 3,27,112/- , Service tax amounting to Rs 6,87,061/- and External development Charges amounting to Rs 14,40,000/- from total amount of Rs 3,14,53,500/-. These amounts have been gathered from the statement of accounts dated 13.02.2018 annexed at page 112 of the complaint file and

Demand letter dated 05.02.2018 annexed at page 106 of reply . Since the complainant has failed to attach sufficient receipts of payments, Authority has relied upon the best available evidence which is the statement of account dated 13.02.2018 issued by respondent to calculate admissible interest.

x) Authority hereby disposes of this matter with the directions that within 45 days of passing this order,respondents shall complete balance construction/ finishing work of the apartment and make fresh offer of possession to the complainant to take possession. Along with offer of possession a statement of accounts shall be sent incorporating therein the total amount of interest of Rs.2,14,10,720/- payable to the complainant in accordance with this order. A summary of payable interest as ordered in forgoing paragraph is given in the table below:

S.no	Paid Amount (in Rs)	Period	Interest accrued (in Rs)
1.	30,00,000/-	12.02.2007 to 23.09.2012	15,17,178/-
2.	40,00,000/-	25.05.2007 to 23.09.2012	19,22,301/-
3.	2,89,99,327/-	24.09.2015 to 13.02.2018	65,96,751/-
4.	2,89,99,327/-	14.02.2018 to 06.12.2020	77,51,560/-
5.	2,89,99,327/-	07.12.2020 to 31.03.2022	36,22,930/-
		Total:	2,14,10,720/-

xi) It is further ordered that if respondent fails to offer possession of apartment in accordance with this order then respondent will be further liable to pay delay interest to the complainant on the amount paid by him plus the total amount of interest that is admissible to complainant mentioned in above table i.e Rs 2,89,99,327/- + Rs 2,14,10,720/- = Rs 5,04,10,047/-.

Balance consideration amount payable by complainant will remain payable which should be reflected in the statement of Accounts.

xii) Since a lawful offer of possession is yet to be made, respondents shall not charge any holding charges or maintenance charges from the complainant.

xiii) Authority further orders that respondents shall communicate to the complainant, precise super area of the apartment calculated in accordance with principles laid down by this Authority in complaint No. 607 of 2018 titled Vivek Kadyan Vs TDI and Complaint no. 22 of 2019 Parmeet Singh Vs TDI Infrastructure Ltd. If the complainant feels satisfied with the revised calculation of super area submitted by respondents he shall accept such offer of possession. If he does not feel satisfied, he may accept offer of possession under protest and he will be at liberty to approach this Authority with a fresh complaint for redressal of his grievance.

Disposed of.

.....
RAJAN GUPTA
[CHAIRMAN]

.....
DILBAG SINGH SIHAG
[MEMBER]