BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**5587 of 2019**
Date of filing complaint	:	**26.11.2019**
First date of hearing	:	**24.01.2020**
Date of decision	:	**27.05.2022**

	Shri Robin Kumar **R/O:** - H. No.- 1653/FF, Sector - 46, Gurugram, Haryana-122003	**Complainant**
	Versus	
	M/s BPTP Limited **Regd. Office at:** - M-11, Middle Circle, Connaught Circus, New Delhi -110001	**Respondent**

CORAM:	
Dr. K.K. Khandelwal	**Chairman**
Shri Vijay Kumar Goyal	**Member**
APPEARANCE:	
Sh. G.S. Jarodia	Advocate for the complainant
Sh. Venket Rao	Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation

of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.no.	Heads	Information
1.	Project name and location	'Park Generations', Sector 37-D, Gurugram, Haryana.
2.	Project area	43.558 acres
3.	Nature of the project	Group Housing Complex
4.	a) DTCP license no.	83 of 2008 dated 05.04.2008
	b) License valid up to	04.04.2025
	c) Name of the licensee	Super Belts Pvt. Ltd. and 4 others.
	d) DTCP license no.	94 of 2011 dated 24.10.2011
	e) License valid up to	23.10.2019
	f) Name of the licensee	Countrywide Promoters Pvt. Ltd. and 6 others.
5.	a) RERA registered/not registered	**Registered**
	b) Registration certificate no.	Registered for present tower T-4 (marketing name T-15 as per the respondent's affidavit dated 05.03.2021)

		vide registration no. 07 of 2018 dated 03.01.2018 valid up to 30.11.2018 (Valid up to 30.04.2018 for towers T-16,17, and 19) **(Valid up to 30.11.2018 for towers T-14, 15 and 18)**
	c) Extension no.	93 of 2018 dated 12.06.2019 valid up to 31.08.2019
6.	Unit no.	502, 5th floor, tower-T4 (annexure R-6 on page no. 92 of reply)
7.	Unit admeasuring	1470 sq. ft. (annexure R-6 on page no. 92 of reply)
8.	Revised unit area (as per offer of possession)	1520 sq. ft. (vide statement of accounts on page no. 177 of reply)
9.	Date of execution of the flat buyer's agreement	07.12.2012 (annexure R-6 on page no. 84 of reply)
10.	Payment plan	Construction linked payment plan (annexure 4 on page no. 24 of complaint)
11.	Total consideration	Rs. 77,26,473.06/- (vide statement of accounts on page no. 177 of reply)
12.	Total amount paid by the complainant	Rs. 65,88,329.45/- (vide statement of accounts on page no. 177 of reply)
13.	Possession clause	**3. Possession** 3.1: Subject to force majeure, as defined in clause 10 and further subject to the purchaser(s)

		having complied with all its obligations under the terms and conditions of this Agreement and the Purchaser(s) not being in default under any part of this Agreement including but not limited to the timely payment of each and every instalment of the total sale consideration including DC, Stamp Duty and other charges and also subject to the Purchaser(s) having complied with all the formalities or documentation as prescribed by the seller/confirming Party, **the seller/confirming party proposes to hand over the physical possession of the said unit to the purchaser(s) within as period of 36 months from the date of execution of Flat Buyers Agreement ("Committed Period").** The purchaser(s) further agrees and understands that the seller/confirming party shall additionally be entitled to a period of 180 days (Grace Period) after the expiry of the said commitment period to allow for finishing work and filing and pursuing the Occupancy Certificate etc. from DTCP under the Act in respect of the project "Park Generations"

		(Emphasis supplied).
14.	Due date of delivery of possession	07.12.2015
15.	Occupation certificate	20.09.2019 (annexure R-18 on page no. 172 of reply)
16.	Offer of possession	15.10.2019 (annexure R-19 on page no. 174 of reply)
17.	Grace period utilization	Grace period is not allowed in the present complaint.
	Note: - The respondent has filed an affidavit (nomenclature) which states that the sanctioned name for T15 (marketing name) is T-4, for which the OC has been granted on 20.09.2019.	

B. Facts of the complaint

3. That the complainant booked a unit in a project namely 'BPTP Park Generations' situated at sector 37 D, Gurugram for which a payment of Rs. 5,00,000/- was done by him on 11.11.201 and an allotment letter for unit no. bearing T4-502, 5th floor in tower- T4 was issued to him on 04.01.2013.

4. That the respondent in the offer of possession forcibly imposed a cost escalation charge of Rs. 5,45,269.60/- which was totally illegal, arbitrary, unjustified and unacceptable as per cost indexation. Also, no explanation was given for it in possession letter. The cost escalation, if any, due to excess time elapsed in completion of the project/flat, is not due to default in payment by the complainant. Rather, it is the respondent who itself is to be blamed.

5. That subsequently in the offer letter of possession, it was found that the respondent has unilaterally increased area from 1470 sq. ft. to 1520 sq. ft. which is unjustified, illegal and without any explanation and how this area has increased. Hence, this has caused a further cost escalation of the unit. The respondent has increased the balcony of 4th and 6th floor which is an obstacle for a park view and for which complainant has paid a PLC charge.
6. That the respondent vide the offer of possession letter has also demanded, an advance payment of maintenance charges from 13.02.2020 to 11.02.2021. It is noteworthy that the maintenance charges are to be paid monthly as per the Haryana Apartment Owners Act and hence, the demand for the annual charges is illegal.
7. That the respondent has charged interest on delayed payments @ 18% compound interest as per clause 2.11 of the flat buyer's agreement and delay penalty for the respondent is Rs. 5 per sq. ft. as per clause 3.3 of the flat buyer's agreement which is totally arbitrary and one sided.
8. That as the delivery of the unit was due in December 2015, which was prior to coming into force of GST Act 2016 i.e., 1.07.2017, it is submitted that complainant is not liable to incur additional burden of GST due to the delay caused by the respondent.

C. Relief sought by the complainant.

The complainant has sought following reliefs:

(i) Direct the respondent to pay interest for delay of every month @18% p.a. and handover possession of the subject unit.

(ii)Cost escalation charge demanded by the developer in the office letter be declare illegal and be order to be excluded.

(iii) Increase area charge demanded by the developer in the office letter be declare illegal and be order to be excluded.

(iv) Demand of goods and services tax also be declared illegal and be ordered to be excluded.

(v)Demanded letter dated 15.10.2019 by invoice number INV1920/H099728 by which advance payment of maintenance charges for a year maintenance 13.02.2020 to 11.02.2021 has been demanded be declared illegal and developer be restrained from making demand of it

D. Reply by the respondent.

9. That the complainant itself is a defaulter under section 19 (6), 19 (7) and 19 (10) of the Real Estate (Regulation and Development) Act, 2016 and not in compliance of these sections. The complainant cannot seek any relief under the provision of the Act of 2016 or rules frame thereunder. The allotment of unit has already been terminated on the ground of non-payment of outstanding amount to the respondent.

10. That upon completion of construction and upon getting/securing occupancy certificate from the competent authority, the respondent has issued the offer of possession letter cum final notice on 15.10.2019. The delay in completion of project, if any, do not give any entitlement to the complainant to hold the due payments and sough refund of the unit where construction is complete, and OC has been granted by the competent authority.

11. That the complainant has approached this hon'ble authority for redressal of the alleged grievances with unclean hands, i.e., by not disclosing material facts pertaining to the case at hand and, by distorting and/or misrepresenting the actual factual situation with regard to several aspects. It is further submitted that the hon'ble apex court in plethora of decisions has laid down strictly, that a party approaching the court for any relief, must come with clean hands, without concealment and/or misrepresentation of material facts, as the same amounts to fraud not only against the respondent but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication. The respondent has contented on the following grounds: -

- That the complainant has concealed from this hon'ble authority that vide offer of possession dated 15.10.2019, the respondent has, as a goodwill gesture, provided compensation amounting to Rs. 2,95,740/- to him.

- That the complainant has concealed from this authority that with the motive to encourage the complainant to make payment of the dues within the stipulated time, the respondent also gave additional incentive in the form of timely payment discount to him and in fact, till date, the complainant has availed TPD of Rs. 177,363.82/-. The complainant was given an inaugural discount of Rs. 1,89,850/-. Thus, the net BSP charged from the complainant is less than the original amount of the unit.
- The respondent being a customer centric organization vide demand letters as well as numerous emails has kept updated and informed the complainant about the milestone achieved and progress in the developmental aspects of the project. The respondent vide various emails has shared photographs of the project in question. The respondent has always acted bonafidely towards its customers including the complainant, and thus, has always maintained a transparency with regard project progress. In addition to updating the complainant, the respondent on numerous occasions, on each and every issue/s and/or query/s upraised in respect of the unit in question has always provided steady and efficient assistance. However, notwithstanding the several efforts made by the respondent to attend to the queries of the complainant

to the complete satisfaction, he erroneously proceeded to file the present vexatious complaint before this authority against the respondent.

12. That from the above, it is very well established, that the complainant has approached this authority with unclean hands by distorting/ concealing/ misrepresenting the relevant facts pertaining to the case at hand. It is further submitted that the sole intention of the complainant is to unjustly enrich himself at the expense of the respondent by filing this frivolous complaint which is nothing but gross abuse of the due process of law and the present complaint warrants dismissal without any further adjudication.

13. That agreements that were executed prior to implementation of the Act of 2016 and rules shall be binding on the parties and cannot be reopened. Thus, both the parties being signatory to a duly documented FBA executed by the complainant out of his own free will and without any undue influence or coercion are bound by the terms and conditions so agreed between them.

14. That the construction of the project is complete and post receipt of OC, the respondent has offered possession to the complainant. Hence, it is humbly submitted that refund at this stage would not be a feasible and would cause great harm to the respondent developer.

15. That the relief(s) sought by the complainant are unjustified, baseless and beyond the scope/ambit of the agreement duly executed between the parties, which forms a basis for the subsisting relationship between the parties. The complainant entered into the said agreement with the respondent with open eyes and is bound by the same. The complainant while entering into the agreement has accepted and is bound by each and every clause of the said agreement.
16. The detailed relief claimed by the complainant goes beyond the jurisdiction of this authority under the Real Estate (Regulation and Development) Act, 2016 and therefore, the present complaint is not maintainable qua the reliefs claimed by the complainant.
17. That having agreed to the above, at the stage of entering into the agreement, and raising vague allegations and seeking baseless reliefs beyond the ambit of the agreement, the complainant is blowing hot and cold at the same time which is not permissible under law as the same is in violation of the 'Doctrine of Aprobate & Reprobate". Therefore, in light of the settled law, the reliefs sought by the complainant in the complaint under reply cannot be granted by this authority.
18. The parties had agreed under the flat buyer's agreement to attempt at amicably settling the matter and if the matter is not settled amicably, to refer the matter for arbitration. Admittedly, the complainant has raised dispute but did not take any steps to invoke arbitration.

19. That the complainant duly executed FBA on 07.12.2012 wherein the complainant agreed. that subject to force majeure, the possession of the flat to the complainant will be handed over within 36 months from the date of the execution of the FBA along with a further grace period of 180 days. The remedy in case of delay in offering possession of the unit was also agreed to between the parties as also extension of time for offering possession of the floor. It is pertinent to point out that the said understanding had been achieved between the parties at the stage of entering into the transaction in as much as similar clauses, being clause no. 18 (proposed timelines for possession), clause 19 (penalty for delay in offering possession), clause 42 (force majeure) had been agreed upon between the parties under the Application Form also.

20. That the project "Park Generations" had been marred with serious defaults in timely payment of instalments by majority of customers, due to which, on the one hand, the respondent has to encourage additional incentives like TPD while on the other hand, delays in payment caused major setback to the development works. Hence, the proposed timelines for possession stood diluted.

21. That the possession of the unit in question had been delayed on account of reasons beyond the control of the respondent. It is submitted that the construction was affected on account of the NGT order prohibiting construction (structural) activity of any kind in the entire NCR by any person, private

or government authority. It was submitted that vide its order, NGT placed sudden ban on the entry of diesel trucks more than ten years old and said that no vehicle from outside or within Delhi would be permitted to transport any construction material. Since the construction activity was suddenly stopped, after the lifting of the ban it took some time for mobilization of the work by various agencies employed with the respondent.

22. That the construction has been completed and the occupation certificate for the same has been received where after, the respondent has already offered possession to the complainant. However, the complainant, being an investor does not wish to take possession as the real estate market is down and there are no sales in secondary market, thus has initiated the present frivolous litigation.

23. Copies of all the relevant do have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Observations of the authority

24. Since, common issues with regard to super area, cost escalation, STP charges, electrification charges, taxes viz GST and Vat etc, advance maintenance charges, car parking charges, holding charges, club membership charges, PLC, development location charges and utility connection charges, EDC/IDC charges, fire fighting/power backup charges were

involved in this case and others pending against the respondent in this project as well as in other projects developed by the respondent, so vide order dated 06.07.2021and 17.08.2021, a committee headed by Sh. Manik Sonawane IAS (retired), Sh. Laxmi Kant Saini CA and Sh. R.K. Singh CTP (retired) was constituted and was asked to submit its report on the above mentioned issues. The representatives of the allottees were also associated with the committee. A report was submitted and the same along with annexures was uploaded on the website of the authority. Both the parties were directed to file objections to that report if any. Though the respondent sought time to file the objections but, did not opt for the same despite time given in this regard. The executive summary of the committee report and the recommendations so made in respect of the project in question i.e. 'Park Generation' are as under:

a) **Super area**: The respondent has increased the super area of the unit from 1470 sq. ft. to 1521 sq. ft. at the time of offer of possession in the Park Generation project, whereas the covered area of the unit remains the same.

Recommendations:

i) The inclusion of an area under the pool balancing tank as a common area is not justified. Hence, the area under the pool balancing tank, measuring 432.48 sq. ft. (Park

Generation), may be excluded from the category of common areas.

ii) The area under the feature wall elevation measuring 12054 sq. ft. (Park Generation) may be excluded from the common areas being an architectural feature.

iii) Consequent to exclusion of the above-mentioned components from the list of the common areas, the additional common areas will decrease from 26300 sq. ft. to 13813 sq. ft (Park Generation). Accordingly, the saleable area/specific area factor (731573/580001.38) will reduce from 1.2829 to 1.2613 (Park Generation).

b) **Cost escalation:** The committee considers the estimated cost of construction as certified by the chartered accountant and thereafter applies various indexation and demands a cost escalation of Rs. 588 per sq. ft.

Recommendation: After analysis of various factors as detailed in the committee report, the committee is of the view that an escalation cost of Rs. 374.76 per sq. feet is to be allowed instead of Rs. 588 demanded by the developer.

c) **Annual Maintenance Charges:** This charge should be taken on a monthly/quarterly basis rather than annual basis.

Recommendation: After deliberation, it was agreed upon that the developer will recover maintenance charges quarterly, instead of annually.

d) **GST/VAT/Service Tax:** The GST came into force in the year 2017, therefore, it is a fresh tax. The possession of the flat was supposed to be delivered before the implementation of GST. Therefore, the tax which has come into existence after the deemed date of delivery should not be levied being unjustified. The main questions which arose for the consideration of the committee were:

i. Whether the respondent is justified in demanding GST, VAT and service tax?

ii. If applicable, what is the rate of HVAT, GST and service tax to be charged to customers?

Recommendation: After analysis of various factors as detailed in the committee report, the committee is view that the following taxation to be allowed:

i. Haryana Value Added Tax: The promoter is entitled to charge VAT from the allottee for the period up to 30.06.2017 as per the rate specified in the below table:

Period	Scheme	Effective Rate of Tax	Whether recoverable from Customer
Up to 31.03.2014	Haryana Alternative Tax Compliance Scheme	1.05 %	Yes
From 01.04.2014	Normal Scheme	4.51%	Yes

to 30.06.2017			

i. Service Tax: The service tax rate to be charged from the customer

Service tax Rates/Date	Basic Rates of Service Tax	Education Cess	Secondary & Higher Education Cess	Swatch Bharat Cess	Krishi Kalyan	Total Tax Rate	Abatement %	Effective Tax Rate
01 July 2010 to 31st March 2012	10%	2%	1%			10.30%		10.30%
1st April 2012 to 31st May 2015	12%	2%	1%			12.36%	75%*/70%	3.71%
1st June 2015 to 14th Nov 2015	14%					14%	75%*/70%	4.20%
15th Nov 2015 to 31st May 2016	14%			0.5%		14.50%	75%*/70%	4.35%
1st June 2016 to 30th June 2017	14%			0.5%	0.5%	15%	70%	4.50%

ii. Project Specific GST to be refunded:

Particulars	Park Generation
HVAT (after 31.03.2014) (A)	4.51%
Service Tax (B)	4.50%

Pre-GST Rate (C =A+B)	9.01%
GST Rate (D)	12.00%
Incremental Rate E= (D-C)	2.99%
Less: Anti-Profiteering benefit passed if any till March 2019 (F)	2.46%
Amount to be refunded Only if greater than (E- F) (G)	0.53%

F. Jurisdiction of the authority

The respondent has raised an objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

> ***Section 11(4)(a)***
>
> *Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> ***Section 34-Functions of the Authority:***
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent.

F. I Objection regarding untimely payments done by the complainant.

25. The respondent has contended that the complainant has made defaults in making payments as a result thereof, it had to issue reminder letters dated 21.11.2019, 10.01.2020, 19.02.2020 and 16.04.2020. Clause 11.1 of the buyer's

agreement wherein it is stated that timely payment of instalment is the essence of the transaction, and the relevant clause is reproduced below:

> *"11. TIMELY PAYMENT IS THE ESSENCE OF THIS AGREEMENT, TERMINATION, AND FORFEITURE"*
>
> *11.1 (a) (i) Timely Payments of each instalment of the total sale consideration i.e., basic sale price and other charges as stated herein is the essence of this transaction /agreement. In case payment of any instalment as demanded by the Seller/Confirming party is delayed on any account whatsoever or partial payment of the instalment is made, then the Purchaser (s) shall pay interest on the amount due @ 18% p.a. compounded quarterly. However, if the Purchaser(s) fails to make complete payment of any of the instalments with interest within 3 months from the due date if the outstanding amount, the seller/confirming party may at its sole discretion forfeit the amount of Earnest money, interest accrued (weather paid or not) om all delayed payments till the date of termination and any other amount of non -refundable nature including brokerage charges paid by the Seller/Confirming Party to the broker in case the booking is done through a broker and in such an event the Allotment shall stand cancelled and the Purchaser(s) shall be left with no right, lien or interest on the said Flat and the Seller/ Confirming Party shall have the right to sell the said flat to any other person*
> *(a) (ii) The Seller/ Confirming Party shall also be entitled to terminate/ cancel the allotment in the event of default of any of the terms and conditions of this application/agreement."*

26. At the outset, it is relevant to comment on the said clause of the agreement i.e., *"11. TIMELY PAYMENT IS THE ESSENCE OF AGREEMENT, TERMINATION, AND FORFEITURE"* wherein the payments to be made by the complainant had been subjected to all kinds of terms and conditions. The drafting of this clause

and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottee that even a single default by the allottee in making timely payment as per the payment plan may result in termination of the said agreement and forfeiture of the earnest money. Moreover, the authority has observed that despite complainant being in default in making timely payments, the respondent has not exercised his discretion to terminate the buyer's agreement. The attention of authority was also drawn towards clause 11.3 of the flat buyer's agreement whereby the complainant shall be liable to pay the outstanding dues together with interest @ 18% p.a. compounded quarterly or such higher rate as may be mentioned in the notice for the period of delay in making payments. In fact, the respondent has charged delay payment interest as per clause 11.3 of the buyer's agreement and has not terminated the agreement in terms of clause 11.1 of the buyer's agreement. In other words, the respondent has already charged penalized interest from the complainant on account of delay in making payments as per the payment schedule. However, after the enactment of the Act of 2016, the position has changed. Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate

i.e., 9.50% by the respondent which is the same as is being granted to the complainant in case of delay possession charges.

F. II Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.

27. The other contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** decided on 06.12.2017 which provides as under:

> *"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of*

RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

28. Further, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

29. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself.

Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F. III Objection regarding complainant is in breach of agreement for non-invocation of arbitration.

30. The respondent has raised an objection for not invoking arbitration proceedings as per the provisions of flat buyer's agreement which contains a provision regarding initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated w.r.t arbitration in the buyer's agreement:

> *"33. Dispute Resolution by Arbitration*
> *All or any disputes arising out of or touching upon or in relation to the terms of this Agreement including the interpretation and validity of the terms thereof and the respective rights and obligations of the Parties shall be settled amicably by mutual discussion failing which the same shall be settled through arbitration. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/modifications thereto for the time being force. The arbitration proceedings shall be held at an appropriate location in New Delhi by a*

Sole Arbitrator who shall be appointed by the Managing Director of the seller and whose decision shall be final and binding upon the parties. The Purchaser(s) hereby confirms that he shall have no objection to this appointment of the Sole Arbitrator by the Managing Director of the Seller, even if the person so appointed, as a Sole Arbitrator, is an employee or advocate of the Seller/Confirming Party or is otherwise connected to the Seller/ Confirming Party and the Purchaser(s) confirms that notwithstanding such relationship/connection, the Purchaser(s) shall have no doubts as to the independence or impartially of the said Sole Arbitrator. The Courts at New Delhi and Delhi high Court at New Delhi alone shall have the jurisdiction."

31. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, and followed in case of ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017*** wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in

derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore, by applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.

32. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the hon'ble Supreme Court **in case titled as *M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017*** **decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view.

33. Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainant is well within his right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act,1986 and Act of 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

G. Findings on the relief sought by the complainant.

Relief sought by the complainant:

i. Direct the respondent to pay interest for delay of every month @18% p.a. and handover possession of the subject unit.

ii. Cost escalation charge demanded by the developer in the office letter be declare illegal and be order to be excluded.

iii. Increase area charge demanded by the developer in the office letter be declare illegal and be order to be excluded.

iv. Demand of goods and services tax also be declared illegal and be ordered to be excluded.

v. Demanded letter dated 15.10.2019 by invoice number INV1920/H099728 by which advance payment of maintenance charges for a year maintenance 13.02.2020 to 11.02.2021 has been demanded be declared illegal and developer be restrained from making demand of it

34. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

> *"Section 18: - Return of amount and compensation*

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building,

—

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

35. Clause 3.1 of the flat buyer's agreement provides for handing over of possession and is reproduced below:

"3.1 Subject to Force Majeure, as defined in clause 10 and further subject to the purchaser(s) having complied with all its obligations under the terms and conditions of this Agreement and the Purchaser(s) not being in default under any part of this Agreement including but not limited to the timely payment of each and every instalment of the total sale consideration including DC, Stamp Duty and other charges and also subject to the Purchaser(s) having complied with all formalities or documentation as prescribed by the Seller/Confirming Party, the Seller/Confirming Party proposes to hand over the physical possession of the said unit to the purchaser(s) within a period of 36 months from the date of execution of the Flat Buyers Agreement (Commitment Period).The Purchaser(s) further agrees and understands that the Seller/Confirming Party shall additionally be entitled to a period of 180 days (Grace Period) after the expiry of the said commitment period to allow for finishing work and filing and pursuing the Occupancy Certificate etc from DTCP under the Act in respect of the Project "Park Generations".

36. At the inception it is relevant to comment on the pre-set possession clause of the flat buyer's agreement wherein the possession has been subjected to numerous terms and conditions, force majeure circumstances and numerous

terms and conditions. The drafting of this clause is not only vague but so heavily loaded in favour of the promoters that even a single default by the allottee in fulfilling obligations, formalities and documentations etc. as prescribed by the promoters may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoters are just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

37. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within period of 36 months from the date of execution of agreement. In the present complaint, the date of execution of agreement is 07.12.2012. Therefore, the due date of handing over possession comes out to be 07.12.2015. It is further provided in agreement that promoter shall be entitled additionally to a grace period of 180 days for finishing work and filing and obtaining the occupancy certificate etc. from DTCP. As a matter of fact, from the perusal of occupation certificate dated 20.09.2019 it is evident from the OC, that the promoter

applied for occupation certificate only on 28.06.2019 which is later than 180 days from the due date of possession i.e., 07.12.2015. The clause clearly implies that the grace period was meant for filing and obtaining occupation certificate, therefore as the promoter applied for the occupation certificate much later than the statutory period of 180 days, he does not fulfil the criteria for grant of the grace period., As per the settled law, one cannot be allowed to take advantage of his own wrongs. Accordingly, this grace period of 180 days cannot be allowed to the promoter. Relevant clause regarding grace period is reproduced below: -

> "Clause3.1 *.....The Purchaser(s) agrees and understands that the Seller/Confirming Party shall additionally be entitled to a grace period of 180 days, after expiry of the said commitment period to allow for finishing work and filing and obtaining the Occupation Certificate etc. from DTCP under the Act in respect of the project 'Park Generations'*

38. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate of interest on amount already paid by him however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

39. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

40. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 27.05.2022 is 7.50%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.50%.

41. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.
Explanation. —For the purpose of this clause—
the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.
the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

42. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.50% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.

43. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of 3.1 of the flat buyer's agreement executed between the parties on 07.12.2012, the possession of the subject unit was to be delivered within 36 months from the date of execution of agreement i.e., 07.12.2015. Therefore, the due date of handing over possession is 07.12.2015. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 07.12.2015. The occupation certificate has been received by

the respondent on 20.09.2019 and the possession of the subject unit was offered to the complainant on 15.10.2019. The authority is of the considered view that there is delay on the part of the respondent to offer possession of the allotted unit to the complainant as per the terms and conditions of the flat buyer's agreement dated 07.12.2012 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the flat buyer's agreement to hand over the possession within the stipulated period.

44. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 20.09.2019. The respondent offered the possession of the unit in question to the complainant only on 15.10.2019. So, it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession, practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay

possession charges shall be payable from the due date of possession i.e., 07.12.2015 till the expiry of 2 months from the date of offer of possession (15.10.2019) which comes out to be 15.12.2019.

45. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession at prescribed rate of interest i.e., 9.50% p.a. w.e.f. 07.12.2015 till 15.12.2019 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19 (10) of the Act.

G.II Increase in super area

46. It is contended that that the respondent has increased the super area of the subject unit vide letter of offer of possession dated 15.10.2019 without giving any formal intimation to, or by taking any written consent from the allottees. The said fact has not been denied by the respondent in its reply. The authority observes that the said increase in the area has been as per clause 6 of the buyer's agreement. The relevant clause from the agreement is reproduced as under: -

> ***"5 ALTERATIONS IN PLANS, DESIGN AND SPECIFICATION AND RESULTANT CHANGES IN AMOUNTS PAYABLE***
>
> *The seller/confirming party is in the process of developing residential blocks in the park generation in accordance with the approved layout plan for the colony. However, if any changes, alterations, modifications in the tentative building plans and/or tentative drawings are necessitated during the*

construction of the units or as may be required by any statuary authority(s), or otherwise, the same will be effected suitably, to which the purchaser(s) shall raise no objection and hereby gives his unconditional consent..

47. On perusal of record , the super area of unit was 1470 sq. ft. as per the flat buyer's agreement and it was increased by 50 sq. ft. vide letter of offer of possession, resulting in total super area of 1520 sq. ft. The said committee in this regard has made following recommendations while submitting report

"The above site report was discussed in the meeting of the Committee held on 08.09.2021 and after detailed deliberation, the Committee makes the following recommendations:

(i). The *inclusion of area under pool balancing tank as common area is not justified. Hence, the area under pool balancing tank, measuring 432.48 sq.ft. (Park Generation) and 684.28 sq. ft. (Spacio) may be excluded from the category of common areas.*

(ii). The area under feature wall elevation measuring 12054 sq. ft. (Park Generation) and 6665.04 sq. ft. (Park Spacio) may be excluded from the common areas being an architectural feature.

(iii). Consequent upon exclusion of the above mentioned components from the list of the common areas, the additional common areas will decrease from 45713.29 sq. ft. to 38363.97 sq. ft (Park Spacio) and from 26300 sq.ft. to 13813.48 sq. ft. (Park Generation). ***Accordingly, saleable area/specific area factor (997049.14/772618.28) will reduce from 1.30 to 1.2905 (Park Spacio)*** *and from 1.2829 to 1.2613 (731573/580001.38, Park Generation). In the instant cases, the super area of the apartment measuring 1865 sq. ft. will reduce to 1851.50 sq. ft. (1434.7 x 1.2905) in park spacio and the super area of the apartment measuring 1521 sq. ft. will reduce to 1496.70 sq. ft. (1186.06x1.2613) in park Generation. Accordingly, the respondent company be directed to pass on this benefits to the remaining complainants/allottees.*

viii. The area under the remaining components of the common area mentioned in the Annexure-6(park generation) and Annexure-7 (park spacio) may be allowed to be included in

the super area in terms of the enabling clause 2.4 of the agreements."

48. In the instant case, the authority holds that the super area (saleable area) of the flat in this project has been increased and as found by the committee, the saleable area/specific area factor stands reduced from 1.2829 to 1.2613. Accordingly, the super area of the unit be revised and reduced by the respondent and shall pass on this benefit to the complainant/allottee(s) as per the recommendations of the committee.

G.III Cost escalation

49. The complainant has pleaded that the respondent also imposed escalation cost Rs. 5,45,269/- after increase in super area from 1470 to 1520 sq. ft. without increasing the carpet area. The respondent in this regard took a plea that cost escalation was duly agreed to the complainants at the time of booking and the same was incorporated in the FBA. The undertaking to pay the above mentioned charges was comprehensively set out in the FBA. In this context, following clause of the FBA is noteworthy:

12.12" The Purchaser(s) understands and agrees that the sale consideration of the Unit comprises of the cost of construction rates applicable on the date of booking, amongst other components The Purchaser(s) further recognizes that due to variation in cost of construction i.e. cost of materials, labour and project management cost,

the actual cost of the Unit may experience escalation, and may thus vary The final cost of construction shall be calculated at the stage of completion of the project. should the variance be equal to or less than 5%, of the cost of construction ascertained at the time of booking, the same shall be absorbed entirely by the Seller/Confirming Party. However, should the cost of construction, upon completion of the project, vary more than 5%, then the difference in the cost shall be charged or refunded to the Purchaser(s), as the case may be, as per actual calculation made by the Seller/Confirming Party."

50. The authority has gone through the report of the committee and observes that as per the calculation of the estimated cost of construction for the years 2010-11 to 2013-14 and the actual expenditure of the years 2010 to 2014, the escalation cost comes down to 374.76 per sq. ft. from the demanded cost of Rs. 588 per sq. ft. No objections to the report have been raised by either of the party. Even the committee while recommending decrease in escalation charge has gone through booking form, builder buyer agreement and the issues raised by the promoter to justify increase in cost. The authority concurs with the findings of the committee and allows passing of benefit of decrease in escalation cost of the allotted units from Rs. 588 per sq. ft to 374.76 per sq. ft. to the allottees of the project. The relevant recommendations of the committee are reproduced below:

*"**Conclusion:***
In view of the above discussion, the committee is of the view that escalation cost of Rs. 374.76 per sq. feet is to be allowed instead of Rs. 588 demanded by the developer."

51. The authority concurs with the recommendations of the committee and holds that the escalation cost can be charged only upto Rs. 374.76 per sq. ft. instead of Rs. 588 per sq. ft. as demanded by the developers.

G.IV Advance maintenance charges

52. The issue with respect to the advance maintenance charges was also referred to the committee and who after due deliberations and hearing the affected parties, submitted a report to the authority wherein it was observed as under:

*"**D. Annual Maintenance Charges**: After deliberation, it was agreed upon that the respondent will recover maintenance charges quarterly, instead of annually."*

53. The authority is of view that the respondent is right in demanding advance maintenance charges at the rates prescribed in the builder buyer's agreement at the time of offer of possession. However, as agreed by the respondent before the said committee, the respondent shall recover maintenance charges quarterly instead of annually. The demand raised in this regard by the respondent is ordered to be modified accordingly.

G.V GST

54. The allottee has also challenged the authority of the respondent builder to raise demand by way of goods and

services tax. It is pleaded by the complainant that while issuing offer of possession, the respondent had raised a demand of Rs.1,23,200/- under the head GST which is illegal and is not liable to repeat to be paid by him.

55. Though the version of respondent is otherwise, but this issue was also referred to the committee and who after due deliberations and hearing the affected parties, submitted a report to the authority wherein it was observed that in case of late delivery by the promoter, only the difference between post GST and pre-GST should be borne by the promoter. The promoter is entitled to charge from the allottee the applicable combined rate of VAT and service tax. The relevant extract of the report representing the amount to be refunded is as follows:

Particulars	Spacio	Park Generation	Astire Garden	Terra	Amstoria	Other Project
HVAT (after 31.03.2014) (A)	4.51%	4.51%	4.51%	4.51%	4.51%	4.51%
Service Tax (B)	4.50%	4.50%	4.50%	4.50%	4.50%	4.50%
Pre-GST Rate(C =A+B)	9.01%	9.01%	9.01%	9.01%	9.01%	9.01%
GST Rate (D)	12.00%	12.00%	12.00%	12.00%	12.00%	12.00%
Incremental	2.99%	2.99%	2.99%	2.99%	2.99%	2.99%

Rate E= (D-C)						
Less: Anti-Profiteering benefit passed if any till March 2019 (F)	2.63%	2.46%	0.00%	2.58%	0.00%	0.00%
Amount to be refund Only if greater than (E- F) (G)	**0.36%**	**0.53%**	**2.99%**	**0.41%**	**2.99%**	**2.99%**

56. The authority has also perused the judgement dated 04.09.2018 in complaint no. 49/2018, titled as ***Parkash Chand Arohi Vs. M/s Pivotal Infrastructure Pvt. Ltd.*** passed by the Haryana Real Estate Regulatory Authority, Panchkula wherein it has been observed that the possession of the flat in term of buyer's agreement was required to be delivered on 1.10.2013 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainant cannot be burdened to discharge a liability which had accrued solely due to respondent's own fault in delivering timely possession of the flat. The relevant portion of the judgement is reproduced below:

> *"8. The complainant has then argued that the respondent's demand for GST/VAT charges is unjustified for two reason: (i) the GST liability has accrued because of respondent's own failure to handover the possession on*

time and (ii) the actual VAT rate is 1.05% instead of 4% being claimed by the respondent. The authority on this point will observe that the possession of the flat in term of buyer's agreement was required to be delivered on 1.10.2013 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainant cannot be burdened to discharge a liability which had accrued solely due to respondent's own fault in delivering timely possession of the flat. Regarding VAT, the Authority would advise that the respondent shall consult a service tax expert and will convey to the complainant the amount which he is liable to pay as per the actual rate of VAT fixed by the Government for the period extending upto the deemed date of offer of possession i.e., 10.10.2013."

57. In appeal no. 21 of 2019 titled as M/s Pivotal Infrastructure Pvt. Ltd. Vs. Prakash Chand Arohi, Haryana Real Estate Appellate Tribunal, Chandigarh has upheld the Parkash Chand Arohi Vs. M/s Pivotal Infrastructure Pvt. Ltd. (supra). The relevant para is reproduced below:

"93. This fact is not disputed that the GST has become applicable w.e.f. 01.07.2017. As per the first Flat Buyer's Agreement dated 14.02.2011, the deemed date of possession comes to 13.08.2014 and as per the second agreement dated 29.03.2013 the deemed date of possession comes to 28.09.2016. So, taking the deemed date of possession of both the agreements, GST has not become applicable by that date. No doubt, in Clauses 4.12 and 5.1.2 the respondent/allottee has agreed to pay all the Government rates, tax on land, municipal property taxes and other taxes levied or leviable now or in future by Government, municipal authority or any other government authority. But this liability shall be confined only up to the deemed date of possession. The delay in delivery of possession is the default on the part of the appellant/promoter and the possession was offered on 08.12.2017 by that time the GST had become applicable. But it is settled principle of law that a person cannot take the benefit of his own wrong/default. ***So, the appellant/promoter was not entitled to charge GST from the respondent/allottee as the liability of GST had not***

become due up to the deemed date of possession of both the agreements."

58. In this present case, the due date of possession was prior to the date of coming into force of GST i.e. 01.07.2017. In view of the above, the authority is of the view that the respondent/promoter is not entitled to charge GST from the complainant/allottee as the liability of GST had not become due up to the due date of possession as per the flat buyer's agreements. The authority concurs with the findings of the committee on this issue and holds that the difference between post GST and pre-GST shall be borne by the promoter. The promoter is entitled to charge from the allottees the applicable combined rate of VAT and service tax as detailed in para 55 of this order.

H. Directions of the authority

59. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

i. The respondent is directed to pay interest at the prescribed rate of 9.50% p.a. for every month of delay from the due date of possession i.e., 07.12.2015 till the date of offer of possession i.e., 15.10.2019 + 2 months i.e., 15.12.2019 to the complainant as per section 19(10) of the Act.

ii. The arrears of such interest accrued from 07.12.2015 till 15.12.2019 shall be paid by the promoter to the allottee within a period of 90 days from date of this order as per rule 16(2) of the rules.

iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.50% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

v. **Increase in area:** The authority holds that the super area (saleable area) of the flat in this project has been increased and as found by the committee, the saleable area/specific area factor stands reduced from 1.2829 to 1.2613. Accordingly, the super area of the unit be revised and reduced by the respondent and shall pass on this benefit to the complainant/allottee(s) as per the recommendations of the committee.

vi. **Cost escalation:** The authority is of the view that escalation cost can be charged only up to Rs. 374.76 per sq. ft. instead of Rs. 588 per sq. ft. as demanded by the developer.

vii. **Advance maintenance charge:** The authority is of the view that the respondent is right in demanding advance

maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, as agreed by the respondent before the said committee, the respondent shall recover maintenance charges quarterly instead of annually. The demand raised in this regard by the respondent is ordered to be modified accordingly.

viii. **GST charges:** The due date of possession is prior to the date of coming into force of GST i.e. 01.07.2017. The authority is of the view that the respondent/promoter was not entitled to charge GST from the complainant/allottee as the liability of GST had not become due up to the due date of possession as per the flat buyer's agreements as has been held by Haryana Real Estate Appellate Tribunal, Chandigarh in appeal bearing no. 21 of 2019 titled as ***M/s Pivotal Infrastructure Pvt. Ltd. Vs. Prakash Chand Arohi***. Also, the authority concurs with the findings of the committee on this issue and holds that the difference between post GST and pre-GST shall be borne by the promoter. The promoter is entitled to charge from the allottee the applicable combined rate of VAT and service tax as detailed in para 55 of this order.

ix. The respondent shall not charge anything from the complainant which is not the part of the agreement. However, holding charges shall also not be charged by the promoter at any point of time even after being part

of agreement as per law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12.2020.

60. Complaint stands disposed of.

61. File be consigned to registry.

V.J-

(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 27.05.2022