BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 649 of 2021
Date of Decision: 20.01.2023

M/s Sobha Limited, R/o Sarjapur-Marathahalli Outer Ring Road, Devarbisanahalli, Bellandur Post, Bangalore-560103.

Appellant

Versus

Chander Shekhar Sachdeva, House No. 186, Vaishali, Pitampura, Delhi-110088.

Respondent

CORAM:

Shri Inderjeet Mehta **Member (Judicial)**
Shri Anil Kumar Gupta **Member (Technical)**

Argued by: Shri Manish Tiwari, Advocate with Shri Karanvir Hooda and Shri Prashant Dixit, Advocate, Ld. counsel for the appellant.

Shri Sukesh Kumar Jindal, Advocate, Ld. counsel for the respondent.

O R D E R:

ANIL KUMAR GUPTA, MEMBER (TECHNICAL):

The present appeal has been preferred under Section 44(2) of the Real Estate (Regulation and Development) Act 2016 (further called as, 'the Act') by the appellant-promoter against impugned order dated 16.09.2021 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Ld.

Authority') whereby the Complaint No. 3004 of 2019 filed by the respondent-allottee was disposed of with the following directions:

> *"i. The respondent is directed to pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 22.05.2016 till 01.02.2019 i.e. expiry of 2 months from the date of offer of possession (01.12.2018). The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.*
>
> *ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.*
>
> *iii. The rate of interest chargeable from the complainant/allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delay possession charges as per section 2(za) of the Act.*
>
> *iv. The respondent shall not charge anything from the complainant which is not the part of the unit buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of unit buyer's agreement as per law*

settled by hon'ble Supreme Court in Civil Appeal No. 3864-3889/2020 decided on 14.12.2020."

2. As per the averments in the complaint, it was pleaded that the allotment letter dated 09.11.2012 was issued and Plot/Unit No. B-103 having saleable built up area measuring 7330.89 sq. ft. constructed upon plot admeasuring 500 sq. yards was allotted to the respondent-allottee. The Unit Buyer's Agreement (hereinafter called the 'Agreement') was executed between the respondent-allottee and his brother Amit Sachdeva, however, in terms of the internal family arrangement, the respondent-allottee requested the appellant to delete the name of the brother and execute the sale deed in favour of the respondent-allottee alone, which was agreed by the appellant and accordingly, the respondent-allottee became the sole allottee of the plot/unit. The respondent-allottee had paid an amount of Rs. 7,71,19,789/- towards the total sale consideration i.e. Rs. 7,53,38,566/-.

3. It was further pleaded that the appellant has received more money than was agreed between the parties as per the payment schedule and failed to hand over the possession of the plot within time agreed in the agreement.

4. It was further pleaded that the respondent-allottee had repeatedly been seeking updates on the development of the

project and to the issuance of the occupancy certificate. However, the queries of the respondent-allottee were never replied to. It was further pleaded that as per the agreement dated 22.11.2012, the appellant as per clause IV point 1 was obliged and liable to give possession of said unit within 42 months from execution of agreement i.e. on or before May 2015. The appellant has not made any communication regarding any unforeseen circumstances during the period of 42 months and even subsequent to the expiry of 42 months and as such the grace period of six months is of no avail to the appellant as there was no unforeseen and unplanned project realities due to which the appellant could have delayed the project.

5. It was further pleaded that in a letter dated 05.06.2017 sent by the respondent-allottee, the appellant has responded by way of email dated 22.06.2017 and a letter dated 05.07.2017 and surprisingly the contents of both the replies are different.

6. It was further pleaded that the appellant at no stage informed the respondent-allottee of the status and development of the project but kept on demanding payments in the grab of development which was never carried out. The respondent-allottee in order to meet demands raised by the appellant also

had secured a loan and has paid huge amounts in interest (i.e. Rs. 2,53,63,303/-) till august 2018 to the bank.

7. It was further pleaded that on the bare perusal of various clauses of the agreement, it represents that the terms and conditions are unilateral and arbitrary wherein the appellant has an upper hand in the entire transaction. As per the terms and conditions, the appellant had the authority to impose an exorbitant rate of interest on the respondent-allottee to the tune of 18% on delayed payments and whereas, the appellant was only liable to pay a meager amount in case of delayed possession to the tune of Rs. 5/- per sq. ft. per month for the period of delay.

8. It was further pleaded that there has been delay of more than two years in delivery of possession of the unit. With the aforesaid pleadings, the respondent-allottee filed a complaint before the ld. Authority seeking the following relief:-

> *"(i) To direct the respondent to pay delayed interest amount @ 12% p.a. on compounded rate on the amount already paid by the complainant to the respondent from the committed date of delivery of the unit till the actual date of handover the unit to the complainant.*
>
> *(ii) To pass any such other older(s) as his authority may deem fit and proper in the interest of justice."*

9. The complaint was resisted by the appellant on the grounds of jurisdiction of the authority and on some other technical grounds.

10. It was further pleaded that the Act is not enacted to protect the interest of investor. The Act has not defined the term consumer, therefore, the definition of "consumer" as provided under the consumer protection act, 1986 has to be referred for adjudication of the present appeal. The respondent-allottee is an investor and not a consumer. Nowhere in the present complaint the respondent has pleaded as to how the respondent-allottee is a consumer as defined in the consumer protection act, 1986 qua the appellant. The respondent-allottee is director of Golden Sparrow Developers Pvt. Ltd., a company which deals in the sales and purchase of properties and also works as a broker/real estate agent for other real estate companies, which can be ascertained from its MOA and AOA. The respondent-allottee is also the broker for the unit in question, which can be ascertained from the booking application form and letter dated 10.11.2012 requesting the adjustment of commission. Therefore, the regulatory authority has no jurisdiction to entertain the present complaint as the respondent-allottee has not come to the regulatory authority with clean hands and has concealed the material fact that he has invested in the unit for earning

profits, therefore is relatable to commercial purpose and the respondent-allottee not being a consumer within the meaning of section 2(1)(d) of the consumer protection act, 1986.

11. It was further pleaded that after obtaining the occupation certificate dated 27.06.2017, the appellant, issued the letter of offer of possession dated 16.08.2017 for the said unit and requested the respondent-allottee to make the balance payments. However, the respondent-allottee vide request letter dated 11.09.2018 along with affidavits, indemnity bond and a new booking application form, applied for the deletion of the name of his brother Amit Sachdeva, who was the co-allottee, and vide request letter dated 06.10.2018, requested for the execution of a new unit buyer agreement in his name. At the request of the respondent-allottee, the name of Amit Sachdeva was deleted, and a new unit buyer agreement was executed in the name of the respondent-allottee on 05.11.2018. The respondent-allottee, without any objection, demur or dispute, made the payments of dues after which, vide unit handover letter dated 01.12.2018, the respondent-allottee, once again without any objection, demur or dispute, took over the satisfactory, vacant and peaceful physical possession. The respondent-allottee also certified that the unit has been completed in all respects as per the agreement and also accepted the possession of the said unit.

Having already taken the possession of the unit the respondent-allottee is not covered, anymore, under the definition of an "allottee" as provided under section 2(d) of the said Act, and therefore this regulatory authority has no jurisdiction whatsoever to entertain such complaint and such complaint is liable to be rejected.

12. It was further pleaded that the respondent-allottee has been a defaulter, duly admitted in his letter dated 16.11.2016, having deliberately failed to make the payment of various instalments within the time prescribed which resulted in outstanding dues and delay payment charges. That on the request of the respondent-allottee and as a goodwill gesture, the appellant waived off the interest amount of Rs. 4,72,742/. There are also holding charges of Rs. 10,99,634/- which have not been paid by the respondent-allottee. However, now that the respondent-allottee has filed the present complaint. The appellant reserves its rights to recover that interest and holding charges from the respondent-allottee.

13. It was further pleaded that after receiving the letter of offer of possession dated 16.08.2017, the respondent-allottee, without any objection, demur or dispute, made the payments and took the peaceful and vacant possession and have now filed the present complaint on false and frivolous grounds.

14. It was further pleaded that from the date of booking till the filing of the present complaint, the respondent-allottee has never ever raised any issue whatsoever and has now concocted a false story and raised false and frivolous issues and has filed the present complaint on false, frivolous, and concocted grounds. This conduct of the respondent-allottee clearly indicates that the respondent-allottee is a mere speculator having invested with a view to earn quick profit and due to slowdown in the market conditions, the respondent-allottee on false, frivolous and concocted grounds has filed the present complaint.

15. All other pleas taken by the respondent-allottee were controverted and the appellant sought dismissal of the complaint being without any merits.

16. We have heard Shri Munish Tiwari, Advocate, Ld. counsel for the appellant and Shri Sukesh Kumar Jindal, Advocate, ld. counsel for the respondent and have carefully gone through the record of the case.

17. Ld. counsel for the appellant contended that the statement of objects and reasons as well as the preamble of the said Act clearly state that the Act is enacted for effective consumer protection and to protect the interest of consumers in the real estate sector. The Act has not defined the term

consumer, therefore, the definition of "consumer" as provided under the consumer protection Act, 1986 has to be referred for adjudication of the present appeal. He contended that the respondent-allottee is a director of Golden Sparrow Developers Pvt. Ltd., a company which deals in the sale and purchase of the properties and also works as a broker/real estate agent for other real estate companies. He further contended that the respondent-allottee has also invested in various other properties in India with various developers and has also filed various cases before various forums and one such case is complaint No. 1015/2019 titled "Chander Shekhar Sachdeva vs Experion Developers Pvt. Ltd." which is pending before the ld. Authority. He contended that since the respondent is not a genuine consumer therefore the provisions of the Act do not apply in this case.

18. It was further contended that the agreement between the parties was executed on 22.11.2012 in the joint name of the respondent-allottee along with his brother Amit Sachdeva, however, on the request of the respondent-allottee to delete the name of his brother, the name of his brother Amit Sachdeva was deleted and a new agreement dated 05.11.2018 was executed.

19. After obtaining the Occupation Certificate dated 27.06.2017, the appellant issued a letter of offer of possession

dated 16.08.2017 and requested the respondent-allottee to make the balance payment. The respondent-allottee was duly communicated the receipt of Occupation certificate vide appellant's letter dated 05.07.2017.

20. It was further contended that the respondent-allottee has been a defaulter, duly admitted in his letter dated 16.11.2016, having deliberately failed to make the payment of various installments within the time prescribed, which resulted in outstanding dues and delay payment charges.

21. It was further contended that on the request of the respondent –allottee and as a goodwill gesture, the appellant waived off the interest amount of Rs. 4,72,742/-. There are also holding charges of Rs. 10,99,634/- which have not been paid by the respondent-allottee. However, now that the respondent-allottee has filed the present complaint, the appellant is entitled to recover/adjust that interest and holding charges from the respondent-allottee. In addition to the above, there are still dues of Rs. 1,70,823/-, duly reflected in the Statement of Account, which the appellant is entitled to recover/adjust. It is clear from the above that after receiving the letter of offer of possession dated 16.08.2017, the respondent-allottee, without any objection, demur or dispute, made the payments on 18.08.2017 and thereafter took the

peaceful and vacant possession and thereafter filed the complaint on false and frivolous grounds.

22. It was further contended that the ld. Authority has wrongly held that the construction of the unit in question was not completed by November 2016 or that the OC was not applied by November 2016 or that the appellant is not entitled to the grace period of 6 months or that the New Unit Buyer Agreement dated 05.11.2018 does not supersede the Old Unit Buyer Agreement dated 22.11.2012 or that the due date of possession was 22.05.2016 or that the Respondent came to know about the OC on 01.12.2018 or that the possession was offered on 01.12.2018 or that the respondent-allottee is entitled to delay possession interest from the due date of possession 22.05.2016 till the actual handover of possession on 01.12.2018 and an additional period of 2 months thereafter. The ld. Authority failed to appreciate that in terms of Clause-IV of the Old Unit Buyer Agreement dated 22.11.2012, the proposed estimated time of 42+6=48 months from the date of the Unit Buyer Agreement (22.11.2012), which comes to 22.11.2016, was only for completing the construction of the Unit and not for handing over the possession, as alleged. Also in terms of Clause-IV, it was only after completion of construction by the due date of 22.11.2016, that the Appellant was required to make an

application for the Occupation Certificate and the delay by statutory authorities to issue the OC shall not be constructed as delay, in any manner. It is also pertinent to mention here that in terms of Clause-IV, the construction of the Unit was completed on the due date of 22.11.2016 and hence there is no question of any delay whatsoever. It is also pertinent to mention that after completing the construction by 22.11.2016, within 4 working days of the due date i.e. 22.11.2016, which is a reasonable period of time expected to prepare the documentation of work for the Application for grant of OC, the appellant applied the occupation certificate on 28.11.2016. In the meantime, the appellant sent the last payment request dated 19.05.2017 to the respondent-allottee so that the respondent-allottee has sufficient time, before the occupation certificate, to raise funds and take possession immediately on the receipt of the occupation certificate. It is also pertinent to mention here that the occupation certificate was issued on 27.06.2017(the receipt of which was duly communicated to the respondent vide letter dated 05.07.2017 i.e. within a week of obtaining the OC) and vide email dated 6.08.2017, the possession was offered to the respondent-allottee.

23. It was further contended that without prejudice to the above, such proposed estimated time of 48 months is applicable only subject to force majeure and the respondent-

allottee having complied with all the terms and conditions and not being in default of any of the terms and conditions of the agreement, including but not limited to the payment of installments. In case of any default/delay in payment, the complainant is not entitled to any compensation whatsoever. This was also provided in Clause-IV(1), (2) and (6) of the Old Unit Buyer Agreement dated 22.11.2012. However, the respondent has been a defaulter, duly admitted in his letter dated 16.11.2016, having deliberately failed to make the payment of various installments within the time prescribed, which resulted in outstanding dues and delay payment charges as reflected in various payment request, reminders, notices and the statement of account.

24. It was further contended that further without prejudice to the above, the Ld. Authority also failed to appreciate that projects, such as one in question, are huge projects and involve putting in place huge infrastructure and is depended only timely payment by all the allottees. Such huge projects do take some reasonable time for completion and timelines are not absolute. This position is fortified from the fact that the parties, having envisaged that there could be some further delay after expiry of the proposed estimated time for completion of construction of the Unit and handing over the possession, agreed to a specific condition that in case, the

appellant fails to complete the construction of the Unit or offer of possession of the apartment by the proposed estimated time, it shall be liable to pay delay compensation @ Rs.5/- per sq. feet. per month of the super area of the said apartment for the period of delay beyond the proposed estimated time or such extended periods as permitted under the Apartment Buyer Agreement. Such a clause would not have been agreed to by the respondent had the parties not envisaged time for completion of the construction of the Unit or offer of possession beyond the proposed estimated time. The parties thus specifically envisaged a situation where time for completion of the construction of the Unit or offer of possession may be extended beyond the proposed estimated time and remedy thereon is also specifically provided in the self- contained document (Apartment Buyer Agreement), which the respondents signed and executed with open eyes and after understanding all the terms and conditions. This was also provided in clause IV(1) of the old Apartment Buyer Agreement dated 22.11.2012.

25. It was further contended that without prejudice to the above, the Ld. Authority also failed to appreciate that the old Unit Buyer Agreement dated 22.11.2012 was subsequently superseded by the New Unit Buyer Agreement dated 05.11.2018. It is pertinent to mention here that as the

appellant had already completed the construction of the Unit and obtained the occupation certificate dated 27.06.2017 (the receipt of which was duly communicated to the respondent vide letter dated 05.07.2017 i.e. within a week of obtaining the OC) and had also issued the letter of offer of possession dated 16.08.2017 for the said Unit, which is admittedly, prior to the execution of the New Unit Buyer Agreement dated 05.11.2018, therefore, Clause-IV of the New Unit Buyer Agreement dated 05.11.2018 categorically states that the Unit's construction is complete and the appellant has already offered offer of possession and any delay by statutory authority to issue the Occupation Certificate shall not be construed as delay, in any manner. Clause XIV(7) further states that the New Unit Buyer Agreement dated 05.11.2018 supersedes the Old Unit Buyer Agreement dated 22.11.2012. In view of the above, there is no question of any delay possession charges as the Unit was already offered for possession on 16.08.2017, which is admittedly, prior to the execution of the New Unit Buyer Agreement dated 05.11.2018, which admittedly supersedes the Old Unit Buyer Agreement dated 22.11.2012.

26. With these submissions, it was contended that the impugned order dated 16.09.2021 may be aside and the appeal is allowed.

27. Per contra, the ld counsel for the respondent contended that as per agreement dated 22.11.2012, the appellant was to handover the possession of the said unit within 42 months from the execution of the agreement that is on or before May 2015. He contended that the appellant is not entitled for grace period as no force majeure event or any other event beyond the control of the appellant happened during the said 42 months or even thereafter and neither the appellant has made any communication of any such event which were beyond its control.

28. He contended that the said offer of possession dated 19.05.2017 as relied upon by the appellant is only a demand letter and is prior to the issue of the Occupation Certificate, which was issued on 27.06.2017. He contended that respondent vide letter dated 05.06.2017 sought Completion Certificate, Occupation certificate, Approved Sanction Plan, NOCs from fire department and some more information required for payment of final demand raised by the appellant. He contended that the respondent issued a letter dated 05.06.2017 stating therein that offer of possession which was delivered to respondent through email on 19.05.2017 is not proper. He contended that the last letter dated 16.08.2017 issued by the appellant is also not a valid offer of possession. He contended that in fact the appellant has never offered a

valid offer of possession and ultimately the respondent has taken the possession after the signing of the new agreement dated 05.11.2018.

29. He further contended that the impugned order of the ld. Authority is just and fair and there is no merit in the appeal filed by the appellant and the same may be dismissed.

30. We have duly considered the aforesaid contentions of the parties.

31. The agreement between the appellant and the respondent-allottee along with his brother Mr. Amit Sachdeva for the Plot/Unit No. B-103, Block – B at Sobha "International City", Sector 106,108 and 109, Gurugram, having saleable built up area measuring 7330.89 sq. ft. constructed upon a plot admeasuring 500 sq. yards was executed on 22.11.2012. As per statement of account dated nil attached with the complaint, the respondent allottee has already paid an amount of Rs.7,71,19,788/- against the total consideration of Rs.7,72,90,611/-. The Clause No. IV. (1.) of the agreement regarding the period of delivery of possession is reproduced as below:

> *"Subject to timely payments by the Buyer(s), the company shall make its all efforts to complete construction/development of the Unit within on or before [42] months from the date of signing of this*

agreement, subject to further grace period of [6] months to complete the construction of the allotted Unit, Force Majeure events, restraints or restrictions from any courts/statutory authorities etc., circumstances which is beyond the control of the company. In case of delay in possession of the Unit beyond the agreed period including the grace period and subject to the Force Majeure and other circumstances as stipulated, the Company shall pay to the Buyer compensation at the rate of Rs.[5/-] per sq. ft. on the salable built-up area of the Unit per month for the period of delay. Apart from the said compensation the company shall not be liable to pay any other compensation/damages for the period of delay in offering possession."

32. The agreement was executed on 22.11.2012, the 42 months of delivery of possession period comes out to be 22.05.2016. The said clause provides a grace period of 6 months to complete the construction of the allotted unit. The grace period of 6 months is for the completion of the unit and is not dependent on any event and is independent of any contingency. The said clause provides for a further period on account of force majeure, restraints or restrictions from any courts/statutory authorities, circumstances which are beyond the control of the appellant etc. The appellant is not seeking any relief against the provision of force majeure or other events mentioned therein. The appellant in our considered view is certainly entitled for six months grace period provided

in the said clause of the contract as the grace period is for completing the construction and is independent of any eventuality or any other contingencies. Thus, the due date of delivery of possession with 6 months of grace period comes out to be on or before 22.11.2016.

33. The appellants applied for occupation certificate on 28.11.2016. The Appellant issued letters dated 11.05.2017 and 19.05.2017 asking for a payment of Rs.70,70,832/- payable by 12.06.2017 on account of handover of the unit. The respondent allottee treating the letter dated 19.05.2017 as an offer of possession sought copy of completion certificate, occupation certificate, proposal/letter of Intent, Approved Sanctioned Plans/ Approved Plan, NOCs etc and sought some more information from the appellants through letter dated 05.06.2017. The said letter dated 05.06.2017 of the respondent allottee was replied by the appellant through email dated 20.06.2017. The occupation certificate was issued by the District Town Planner for the said unit on 27.06.2017. The appellants also replied the said letter dated 05.06.2017 vide its letter dated 05.07.2017 and supplied the copy of the occupation certificate along with some other documents and provided information as sought by the respondent through the said letter dated 05.06.2017. The appellant vide its email dated 16.08.2017 clarified to the respondent for treating its

final payment request letter as an offer possession and also intimated that the possession can be taken within 90 days from the date of final demand letter. The respondent made a payment of Rs.61,03,246/- on 11.08.2017. The respondent vide letter dated 11.09.2018, another letter of the same date 11.09.2018 and 06.10.2018 submitted documents, affidavits and indemnity bond etc. requesting the appellant to delete the name of Mr. Amit Sachdeva from the allotment of the said unit and treat respondent allottee Mr. Chandra Shekar Sachdeva as the sole allottee for the said unit. Therefore, on the request of the respondent the name of Mr. Amit Sachdeva was deleted from the allotment of the said unit and another agreement on 05.11.2018 was executed between the appellant and the respondent allottee. The possession was taken over by the respondent allottee on 01.12.2018. From the correspondence brought on record it is quite clear that the respondent allottee vide his own letter date 05.06.2017 has treated the letter dated 19.05.2017, final demand letter, of the appellant as offer of possession. The Occupation Certificate dated 27.06.2017 as requested by the respondent vide his letter dated 05.06.2017 was supplied by the appellant on 05.07.2017. As per section 19(10) of the Act, the allottee is duty bound to occupy the unit with in two months of the issue of the Occupation Certificate. In addition to the above the

appellant has made very clear vide its letter dated 16.08.2017 that the final demand letter dated 19.05.2017 may be treated as offer of possession and physical possession may be taken within 90 days from the date of final demand of payment letter. Thus, we are of the opinion that by the act and conduct of the parties and the correspondence exchanged between them, the respondent allottee should have taken possession of the unit within two months i.e. from 05.07.2017 vide which the appellant supplied the copy of Occupation Certificate dated 27.06.2017 i.e. upto 04.09.2017. The delay after 04.09.2017 is on account of respondent allottees' own reasons and for the delay from 11.09.2018 till occupation on 01.12.2018 is on account of the fact that the respondent wanted to delete the name of his brother co-allottee from the allotment of the said unit.

34. We do not find any merit in the contention of the appellant that in the new agreement dated 05.11.2018, there is a specific stipulation that the unit's construction is complete and the appellant has already offered possession and any delay by statutory authority in issue occupation certificate shall not be construed as delay in any manner and also the new agreement supersedes the old agreement. The respondent allottee has asked for execution of new agreement dated 05.11.2018 only for deletion of the name of his brother as co-

allottee and paid charges for such change. The respondent allottee wanted the execution of the new agreement as an out-come of the family settlement. The appellant found an opportunity and took advantage of the situation and inserted one sided clauses only to its benefit. We are of the view that the rights created to the respondent allottee against already executed agreement cannot be waived by signing new agreements as while signing new agreement the respondent allottee was under pressure and the appellant being in dominant position having received the whole of consideration got executed the new agreement from the respondent allottee which forfeits whole of his already accrued rights without getting anything in the bargain. Such type of one sided clauses heavily loaded in favor of dominant party having executed under duress has no value in the eyes of law and we are not inclined give any benefit to the appellant on account of such clauses.

35. No other issue was pressed before us.

36. In view of the aforesaid discussions, the appeal filed by the appellant is partly allowed and the impugned order is modified to the extent that the appellant shall pay delay possession interest w.e.f. 22.11.2016, the due date of delivery of possession, till 04.09.2017 i.e. two months after the copy of the occupation certificate was supplied to the respondent

allottee instead of the delay possession interest as per the impugned order for the period from 22.05.2016 till 01.02.2019.

37. The amount of Rs.1,84,59,473/- deposited by the appellant-promoter with this Tribunal as pre-deposit to comply with the provisions of proviso to Section 43(5) of the Act, along with interest accrued thereon, be sent to the Ld. Authority for disbursement to the respondent-allottee as per the aforesaid observations, excess amount may be remitted to the appellant, subject to tax liability, if any, as per law and rules.

38. No order as to costs.

39. Copy of this judgment be communicated to both the parties/learned counsel for the parties and the learned Haryana Real Estate Regulatory Authority, Gurugram.

40. File be consigned to the record.

Announced:
January 20,2023

Inderjeet Mehta
Member (Judicial)
Haryana Real Estate Appellate Tribunal
Chandigarh

Anil Kumar Gupta
Member (Technical)

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