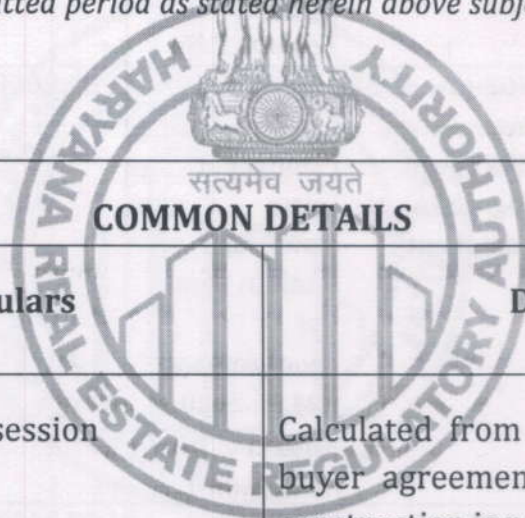


**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Order reserved on: 12.01.2023

Date of pronouncement: 07.04.2023

NAME OF THE BUILDER		ADTV COMMUNICATION PVT. LTD.
PROJECT NAME		AEZ ALOHA
S. No.	Case No.	Case title
1.	CR/1175/2021	B R Singh V/s ADTV Communications Pvt. Ltd.
2.	CR/1183/2021	Raman Chhabra V/s ADTV Communications Pvt. Ltd.
3.	CR/1260/2021	Rohit Khanna V/s ADTV Communications Pvt. Ltd.& anr.
4.	CR/1485/2021	Vinod Sawhney V/s ADTV Communications Pvt. Ltd.
5.	CR/1492/2021	Rajeev Mehtani V/s ADTV Communications Pvt. Ltd.
6.	CR/1519/2021	Abhishek Gupta V/s ADTV Communications Pvt. Ltd.
7.	CR/1525/2021	Krishan Kumar Singh V/s ADTV Communications Pvt. Ltd.
8.	CR/1546/2021	Ashok Kumar Garg V/s ADTV Communications Pvt. Ltd.
9.	CR/1551/2021	Sushma Rani Khera V/s ADTV Communications Pvt. Ltd.
10.	CR/1565/2021	Sameer Dutt V/s ADTV Communications Pvt. Ltd.
11.	CR/1640/2021	Shiv Kumar Bhatia V/s ADTV Communications Pvt. Ltd.
12.	CR/1645/2021	Rajiv Bhatia V/s ADTV Communications Pvt. Ltd.
13.	CR/1649/2021	Yogesh Kumar V/s ADTV Communications Pvt. Ltd.
14.	CR/1683/2021	Dr. Santosh Gupta V/s ADTV Communications Pvt. Ltd.
15.	CR/1691/2021	Siddhartha Gogia V/s ADTV Communications Pvt. Ltd.
16.	CR/1712/2021	Suresh Kapasia V/s ADTV Communications Pvt. Ltd.

Project Name and Location		"AEZ ALOHA" Sector-57, Gurugram.
Clause 10		
<p><i>"The possession of the said premises is likely to be delivered by the Company to the Allottee within 36 months from the date of the start of the construction of the tower in which the said flat is located or from the execution of this agreement whichever is later, subject to force majeure circumstances, & on receipt of all payments punctually as per agreed terms and on receipt of complete payment of the basic sale price and other charges due and payable up to the date of possession according to the Payment Plan applicable to the Allottee. The company will pay penalty to its customers @ Rs 5/- per sq.ft. per month for handing over the flat beyond the committed period as stated herein above subject to punctual payment of installment the allottee."</i></p> <p style="text-align: right;">(Emphasis supplied)</p>		
 सत्यमेव जयते COMMON DETAILS		
S. N.	Particulars	Details
a.	Due date of Possession	Calculated from date of execution of buyer agreement as date of start of construction is not available in the files
b.	Occupation certificate	Not obtained
c.	DTCP license details	34 of 1996 in favour of SM Towers Pvt. Ltd. dated 21.03.1996 valid up to 20.03.2015
d.	RERA registration	Not registered

4. The unit related details of each complaint are as under:



S. no	Complaint no. & DOF	Unit no. and area measuring	Date of execution of agreement	Due date of possession	Handing over-taking over	Basic sale Price (BSP)/ Amount paid by the complainants. (AP)
			of complainant - NOT KNOWN			
6.	CR/1519/2021 Dated 24.03.2021	503-tower D5 measuring 2244 sq. ft. [pg. 58 of complaint]	10.10.2005 [pg. 56 of complaint]	10.10.2008	17.10.2013 [pg. 84 of complaint]	BSP: ₹34,96,720/- AP: ₹33,21,884/-
7.	CR/1525/2021 Dated 24.03.2021	1001-tower B4 measuring 2910 sq. ft. [pg. 61 of complaint]	31.10.2005 [pg. 59 of complaint] date of transfer of unit in name of complainant 17.06.2011 [pg. 83 of complaint]	17.06.2011	28.03.2015 [pg. 110 of complaint]	BSP: ₹56,38,000/- AP: ₹53,63,469/-
8.	CR/1546/2021 Dated 24.03.2021	801- tower B5 measuring 2910 sq. ft. [pg. 62 of complaint]	30.05.2006 [pg. 59 of complaint] date of transfer of unit in name of complainant 16.03.2011 [pg. 84 of complaint]	16.03.2011	02.01.2016 [pg. 104 of complaint]	BSP: ₹53,47,000/- AP: ₹57,51,435/-
9.	CR/1551/2021 Dated 24.03.2021	101-tower D5 measuring 2231 sq. ft. [pg. 59 of complaint]	27.02.2006 [pg. 57 of complaint] date of transfer of unit in name	27.02.2009	16.09.2014 [pg. 92 of complaint]	BSP: ₹45,83,125/- AP: ₹38,19,309/-



S. no	Complaint no. & DOF	Unit no. and area measuring	Date of execution of agreement	Due date of possession	Handing over-taking over	Basic sale Price (BSP)/ Amount paid by the complainants. (AP)
			of complainant 10.11.2010 [pg. 87 of complaint]			
14.	CR/1683/2021 Dated 12.04.2021	801-tower D5 measuring 2231 sq. ft. [pg. 60A of complaint]	04.05.2006 [pg. 59 of complaint]	04.05.2009	15.07.2013 [pg. 85 of complaint]	BSP: ₹44,15,800/- AP: ₹41,95,010/-
15.	CR/1691/2021 Dated 12.04.2021	501-tower D5 measuring 2231 sq. ft. [pg. 61 of complaint]	14.10.2005 [pg. 56 of complaint] date of transfer of unit in name of complainant 27.11.2010 [pg. 83 of complaint]	27.11.2010	01.07.2013 [pg. 95 of complaint]	BSP: ₹48,82,079/- AP: ₹46,37,975/-
16.	CR/1712/2021 Dated 12.04.2021	601-tower B3 measuring 2910 sq. ft. [pg. 64 of complaint]	27.06.2006 [pg. 62 of complaint] date of transfer of unit in name of complainant 09.04.2012 [pg. 91 of complaint]	09.04.2012	06.08.2013	BSP: ₹53,20,000/- AP: ₹50,29,000/-
17.	CR/2195/2021 Dated 22.04.2021	1001-Tower B3 measuring 2910 sq. ft. [pg. 62 of complaint]	06.05.2006 [pg. 60 of complaint]	06.05.2009	29.08.2013 [pg. 99 of complaint]	BSP: ₹83,41,390/- AP: ₹79,24,321/-

CR/1175/2021 B R Singh V/s ADTV Communications Pvt. Ltd. are being taken into consideration for determining the rights of the allottee(s).

A. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -
- a. That in October 2006, Mrs Uma Gupta booked an apartment unit in an upcoming high rise residential project named "ALOHA" in Sector - 57, Gurugram, launched in 2005 by company called M/s S.M. Towers Pvt. Ltd.
 - b. That it is pertinent to mention here that M/s S.M. Towers Pvt. Ltd. along with several other group companies was merged into transferee company called AEZ Infratech Pvt. Ltd. on 4th Feb 2008 by Hon'ble High Court of Delhi. This was through company petition no. 73/2007 with co-application 73/2007 in the matter of scheme of amalgamation and demerger.
 - c. That it is brought to the kind notice of Hon'ble Court, that this company name "AEZ Infratech Pvt. Ltd." was further changed to "ADTV Communications Pvt." through office of registrar of companies, New Delhi with effect from 12th Sept. 2016.
 - d. That therefore in my complaint all claims from the respondent i.e. builder/promoter of aloha project are on - M/s ADTV Communications Pvt. Ltd. (formerly known as AEZ Infratech private Limited) having it's registered office at 8-B, Basement Floor, Jangpura, Main Mathura Road , New Delhi - 110014 and on Mr. Sanjeev Aeren, promoter/beneficiary r/o Aeren Estate Church Road, Near Birdsong Cottage, Sector D, Vasant Kunj, South West Delhi, New Delhi.

Taking Over” wherein it mentioned that the complainant had no further claims, disputes etc.

- i. That it may kindly be noted that out of the above final payment of ₹ 15,66,540/- made by the complainant, out of which amount of ₹ 7,64,225/- was unjustly charged under the head “Revised Area”. The respondent at the time of handing over possession declared that the super area of the said unit had increased by 11% i.e., from 2910 sq. feet to 3230 sq. feet. For this fictitious increase of 320 sq. feet, the respondent claimed ₹ 7,64,225/-. This absurd and sudden increase in super area declared by the respondent was not backed by any proof or approval.
- j. That further, it is humbly submitted to the Hon’ble Court that there have been gross anomalies by the builder M/s ADTV Communication Pvt. Ltd. in this project called Aloha. It even failed to secure an occupation certificate/completion certificate from DTCP (Directorate of Town & Country Planning), Haryana till date which is a basic requirement on grounds multiple gross violations.
- k. That through the “Aloha” residential apartment project brochure, the promoters had offered a Hawaiian lifestyle with finest architecture and finish along with top class amenities like - Bar-be-que, multi-cuisine restaurants, gym. with latest equipment etc. What has actually been delivered to the buyers is in sharp contrast to it. As such the promoter has failed to fulfil these promises specified in the brochure and has tried to befool and dodge people into investing in this project with clear malafide intention.

- Service tax

10. The present complaint has been filed on 16.03.2021 and the reply on behalf of the respondent has not been received till date. As the notice could not be served on the registered address of the respondent, the counsel for the complainant on hearing dated 10.05.2022, requested the authority to issue a public notice against the respondent for its appearance on the next date of hearing. Accordingly, the requisite notice was issued in the newspaper "Dainik Jagran" (Hindi) and "The Tribune" (English) on 26.05.2022. Despite proper service of notice the respondent failed to file the written reply and neither appeared before the authority. Accordingly, the respondent is proceeded ex-parte and the defence of the respondent is struck off.
11. Copies of all the relevant documents 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.

C. Jurisdiction of the authority

12. The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D. I Territorial jurisdiction

13. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project

thereafter, the unit was transferred in name of the complainant on 24.07.2014. As per clause 10 of the buyer's agreement, the possession of the subject unit was to be offered till 24.07.2014. And accordingly, the subject unit was handed over to the complainant well in time i.e., on 24.07.2014.

17. Although, the possession of the subject unit was handed over to the complainant on 24.07.2014 i.e., before coming into force of the Act. But thereafter the RWA association has approached CM Window, Gurugram and also to DTP, Gurugram in the year 2015 for intervening in the matter as the respondent offered the possession without obtaining OC with an increase in super area without any prior intimation or justification for the increase. Furthermore, in June 2020 the RWA approached Joint Commissioner IV, MCG also for revising property tax owing to wrong calculations. Therefore, it can be said that the complainants remained vigilant of their rights and approached the departments since 2015 to avail their rights.
18. In order to avoid any dispute regarding limitation of the said complaints the authority hereby opines that since in the present matters it can be seen that there is recurring cause of action therefore, limitation if any, would accrue to the complainants w.e.f. June 2020 when the complainant last filed before Joint Commissioner IV, MCG for revising property tax. The present complaint seeking refund of miscellaneous charges under different heads was filed on 16.03.2021 i.e., within three years w.e.f. June 2020.

E.I. Direct the respondent to get OC from the competent authority.

21. Since, the respondent has already handed over the possession to the allottees without obtaining OC from the competent authority. The respondent is obligated to obtain the OC from the competent authority accordingly the respondent is directed to get the OC from the competent authority after finishing all the pre-requisite for its application.

E.II. Direct the respondent to execute the conveyance deed in favour of the complainant.

22. The respondent is under obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainants. Accordingly, the respondent is directed to execute the conveyance deed in favour of the complainants after receiving all pre-requisite from the competent authorities, if any.

E.III. Direct the respondent to pay delay possession charges at prescribed rate of interest.

23. In the present complaint, the complainants are seeking delayed 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."

24. Clause 10 of the flat buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

"10 SCHEDULE FOR POSSESSION OF THE SAID PREMISES:

26. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, 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.

27. 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.
28. 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., **31.03.2023** is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
29. 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:



and before the coming into force of the Act, the subsequent allottee shall be entitled to delayed possession charges w.e.f. the date of entering into the shoes of original allottee i.e. nomination letter or date of endorsement on the builder buyer's agreement, whichever is earlier. Accordingly, the allottee is entitled for delay possession charges w.e.f. the date of transfer letter i.e., 24.07.2014. It is a very interesting situation where allottee on one side is demanding completion of all requisite infrastructure and amenities and then offer physical possession in the name of legally valid physical possession whereas he has already taken over the physical possession on 26.07.2014 as confirmed by the counsel for the complainants although offer was for fit-out possession. The allottee is certainly entitled for delayed possession charges under proviso to section 18 (1) of the Act but only up to the date on which he has taken physical possession and allottee is enjoying the fruit of the property for which he has invested with the promoter. Although the promoter has given physical possession and allottee has accepted physical possession on the basis of offer for fit-out possession which may not be the legally valid offer of possession without obtaining occupation certificate. Both the promoter and the allottee have acted not as per the spirit of law but as per their own convenience. The promoter is liable for action for offering physical possession without obtaining OC and allottee cannot be allowed to take benefit of delay possession charges beyond the time he has taken physical possession. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with

12.	CR/1645/2021	Not entitled for DPC as the due date of possession according to the BBA comes out to be 25.03.2016 and the handover was made to the complainant on 18.03.2016 i.e., prior to due date of possession	
13.	CR/1649/2021	10.11.2010	30.09.2013
14.	CR/1683/2021	04.05.2009	15.07.2013
15.	CR/1691/2021	27.11.2010	01.07.2013
16.	CR/1712/2021	09.04.2012	06.08.2013
17.	CR/2195/2021	06.05.2009	29.08.2013
18.	CR/2751/2021	Not entitled for DPC since the complainant is second subsequent allottee who came in existence in 2017 i.e., after the handover was taken by the subsequent allottee in the year 2016.	
19.	CR/3502/2021	Not entitled for DPC as the due date of possession according to the BBA comes out to be 14.08.2021 and the handover was made to the complainant on 15.09.2018 i.e., prior to due date of possession	

E.IV. Direct the respondent to refund to the amount charged for increase in super area along with interest.

34. Considering the above-mentioned facts, the authority observes that the respondent at the time of offer of possession had increased the super area of the flat from 2910 sq. ft. to 3230 sq. ft. without any prior intimation and justification. In other words, the area of the said unit has been increased by almost 11%. However, the respondent has mentioned in the BBA that the area is tentative, and no specific increase or decrease is mentioned. In view of the above, the authority holds that the demand for extra payment on account of increase in the super area by the promoter from the complainants is legal being as per provisions of the agreement but subject to condition that before raising such demand, details have to be given to the allottee and without justification of increase in super area, any demand raised is quashed. Also, this remain subject to the conditions that the flats and other components of the super area on the project have been constructed in accordance with the plans approved by the competent

prescribed in the agreement or where the AMC has been demanded for more than a year.

37. The authority is of the view that the respondent has demanded an amount of ₹ 48,450/- towards advance maintenance charges. In the present complaint the respondent has charged the AMC for 6 months accordingly the complainant is liable to pay the charges.

- **Maintenance security**

38. This issue has already been dealt by the authority in complaint bearing no. **CR/4031/2019 titled as Varun Gupta Vs. Emaar MGF Land Limited wherein** it is held that the promoter may be allowed to collect a reasonable amount from the allottees under the head "IFMS". However, the authority directs that the promoter must always keep the amount collected under this head in a separate bank account and shall maintain that account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFMS amount and the interest accrued thereon, the promoter must provide details to the allottee. It is further clarified that out of this IFMS/IBMS, no amount can be spent by the promoter for the expenditure it is liable to incur to discharge its liability and obligations as per the provisions of section 14 of the Act.

39. The aforesaid findings of the authority are completely applicable in the present matters as clause 21(b) of the BBA clearly mentions the amount of ₹ 1,45,500/- to be paid as a maintenance security @ ₹ 50/- per sq. ft. of the super area and as per the letter dated 22.01.2014 issued by the respondent, the complainant is liable to pay ₹ 1,45,500/- only. Accordingly, the respondent is right in demanding the maintenance



summary of dues annexed with the buyer's agreement. While deciding the issue of club membership charges in **CR/3203/2020 titled as Vijay Kumar Jadhav Vs. M/s BPTP Limited and anr.** decided on 26.04.2022, the authority has observed as under:

"79. The authority concurs with the recommendation made by the committee and holds that the club membership charges (CMC) shall be optional. The respondent shall refund the CMC if any request is received from the allottee. Provided that if an allottee opts out to avail this facility and later approaches the respondent for membership of the club, then he shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of flat buyer's agreement that limits CMC to Rs.1,00,000/-."

45. In view of the above, the authority holds that the club membership charges (CMC) shall be optional. The respondent shall refund the CMC if any request is received from the complainants-allottee. Provided that if they opt out to avail this facility and later approaches the respondent for membership of the club, then they shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of buyer's agreement that limits CMC to Rs.40,000/-.

- **Administrative charges.**

46. This issue has already been dealt by the authority in complaint bearing no. **CR/4031/2019 titled as Varun Gupta Vs. Emaar MGF Land Limited wherein** it is held that the administrative registration of property at the registration office is mandatory for execution of the conveyance (sale) deed between the developers (seller) and the homebuyer (purchaser). Besides the stamp duty, homebuyers also pay for execution of the conveyance/sale deed. This amount, which is given to developers in the name of registration charges, is significant and the amount can be as steep as ₹ 25,000 to ₹ 80,000. In a circular issued on 02.04.2018, the DTP's office fixed the registration charges per flat at ₹ 15,000 in furtherance to several

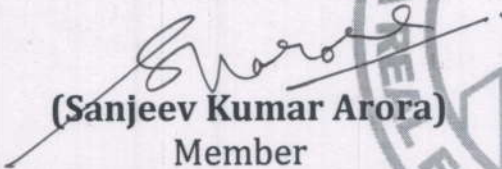
adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the authority

50. 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. **Increase in sale area after execution of buyer's agreement-** the authority holds that the demand for extra payment on account of increase in the super area by the promoter from the complainants is legal being as per provisions of the agreement but subject to condition that before raising such demand, details have to be given to the allottee and without justification of increase in super area, any demand raised is quashed. Also, this remain subject to the conditions that the flats and other components of the super area on the project have been constructed in accordance with the plans approved by the competent authorities. Accordingly, on supply of above details and justification of increase in super area in terms of approval by competent authority the complainant is liable to pay for increase in the area of the subject unit.
- ii. **Club membership charges-** The respondent shall refund the CMC if any request is received from the complainants-allottee. Provided that if they opt out to avail this facility and later approaches the respondent for membership of the club, then they shall pay the club membership charges as may be decided by the respondent and shall not invoke the

- ix. **Firefighting charges-** The complainants are liable to pay the firefighting charges as firefighting system is installed at the project site and in respect of the same, NOC has been granted by the concerned competent authority.
- x. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
51. This decision shall mutatis mutandis apply to cases mentioned in para 4 of this order.
52. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
53. Files be consigned to registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.04.2023


(Vijay Kumar Goyal)

Member

HARERA
GURUGRAM