BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of decision: 30.05.2023

NAME OF THE BUILDER		RAHEJA DEVELOPERS LIMITED.	
PROJECT NAME		"RAHEJA ATHARVA"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/4146/2022	Mr. Arun Kumar Singh and Mrs. Navneeta Singh V/S Raheja Developers Limited	Shri Pallavi Parmar Advocate and Shri Garvit Gupta Advocate
2.	CR/4506/2022	Mrs. Ravi Kiran V/S Raheja Developers Limited	Shri Munish Malik Advocate and Shri Garvit Gupta Advocate
3.	CR/5355/2022	Mr. Amit Mahajan V/S Raheja Developers Limited	Shri Satyender Kumar Goyal Advocate and Shri Garvit Gupta Advocate

CORAM:
Shri Ashok Sangwan **Member**

ORDER

1. This order shall dispose of all the 3 complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "*Raheja Atharva*" (group housing project) being developed by the same respondent/promoter i.e., M/s Raheja Developers Limited. The terms and conditions of the agreement to sell and allotment letter against the allotment of unit in the upcoming project of the respondent/builder and fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, delayed possession charges along with interest and other.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	**Raheja Developers Limited at "Raheja Atharva" situated in Sector- 109, Gurugram.**
Possession Clause: - **4.2 Possession Time and Compensation** *That the company shall endeavor to give possession of the apartments to the allottee(s)* ***within*** *thirty-six (36) months in case of tower* ***and thirty (30) months in case of 'Independent Floor' from the date of the execution of the Agreement to sell*** *and after providing of necessary infrastructure in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the company. The company on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form & Agreement To sell. In the event of his failure to take over and /or occupy and use the unit provisionally and/or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay....."*	

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Allotment letter	Date of execution of agreement to sell	Due date of possession	Total Consideration / Total Amount paid by the complainants in Rs.
1.	CR/4146/2022 Mr. Arun Kumar Singh and Mrs. Navneeta Singh V/S Raheja Developers Limited Date of Filing of complaint 23.06.2022	Reply received on 10.03.2023	H-303, 3rd floor, tower-H [Page no. 21 of the complaint]	16.09.2008 [Page no. 45 of the complaint]	16.09.2008 [Page no. 20 of the complaint]	16.09.2011 **[Note:** 36 months form the date of agreement to sell i.e., 16.09.2008**]**	TSC: - 62,58,772/- AP: 52,57,474/- (As per customer ledger dated 24.06.2021 at page no. 46 of complaint)
2.	CR/4506/2022 Mrs. Ravi Kiran V/S Raheja Developers Limited. Date of Filing of complaint 11.07.2022	Reply received on 10.03.2023	IF 1 - 01, ground floor, block IF-1 [Page no.19 of the complaint]	02.03.2010 [Page no. 16 of the complaint]	02.03.2010 [Page no. 18 of the complaint]	**02.09.2012** **[Note:** 30 months form the date of agreement to sell i.e., 02.03.2010**]**	TSC: - 96,79,050/- AP: - 86,20,869/- (As per customer ledger dated 13.12.2013 at page no. 72 of complaint)
3.	CR/5355/2022 Mr. Amit Mahajan V/S	Reply received on 10.03.2023	IF9 - 02, first floor, block IF-9	11.03.2010 [Page no. 21 of the complaint]	11.03.2010 [Page no. 23 of the complaint]	**11.09.2012** [Note: 30 months form the date of agreement	TSC: - 66,41,481/- AP: - 58,52,012/-

	Raheja Developers Limited Date of Filing of complaint 25.07.2022		[Page no. 24 of the complaint]			to sell i.e., 11.03.2010]	(As per customer ledger dated 18.04.2020 at page no. 59 of complaint)

The complainants in the above complaints have sought the following reliefs:

1. Direct the respondent to pay possession along with delayed possession charges at the prescribed rate of interest from the due date of possession till actual handing over of possession.
2. Direct the respondent to award the cost of litigation.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	**Full form**
TSC	Total Sale consideration
AP	Amount paid by the allottee(s)

4. The aforesaid complaints were filed against the promoter on account of violation of the agreement to sell and allotment letter against the allotment of units in the upcoming project of the respondent/builder and for not handing over the possession by the due date, seeking award of delayed possession charges.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of ~~both~~ all above the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/4146/2022, titled as Mr. Arun Kumar Singh and Mrs. Navneeta***

Singh V/S Raheja Developers Limited are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

A. Project and unit related details

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

CR/4146/2022, titled as Mr. Arun Kumar Singh and Mrs. Navneeta Singh V/S Raheja Developers Limited

S.No.	Heads	Information
1.	Project name and location	"Raheja's Atharva", Sector 109, Gurugram
2.	Project area	14.812 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	257 of 2007 dated 07.11.2007 valid up to 06.11.2017
5.	Name of licensee	Brisk Construction Pvt. ltd and 3 others
6.	RERA Registered/ not registered	Registered vide no. 90 of 2017 dated 28.08.2017
7.	RERA registration valid up to	27.02.2023 5 Years from the date of revised Environment Clearance + 6 months grace period in view of Covid- 19
8.	Unit no.	H-303, 3rd floor, tower- H [Page no. 21 of the complaint]
9.	Unit measuring	1640 sq. ft.

		[Page no. 21 of the complaint]
10.	Date of allotment letter	16.09.2008 [Page no. 45 of the complaint]
11.	Date of execution of flat buyer agreement	16.09.2008 [Page no. 20 of the complaint]
12.	Possession clause	**4.2 Possession Time and Compensation** *That the Seller shall sincerely endeavor to give possession of the plot to the purchaser* ***within*** *thirty-six (36) months* ***from the date of the execution of the Agreement to sell*** *and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the company. The company on obtaining certificate for occupation and used by the competent authorities shall hand over the apartments to the Allottees(s) for his/her occupation and use and subject to the allottee(S) having complied with all the terms and conditions of this flat buyer's agreement. In the event of his failure to take over possession of the plot, provisionally and /or finally allotted*

		within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be lie at his/her risk and cost the purchaser shall be liable to pay compensation @ Rs.5/- per sq. ft. of the plot area per month holding charges for the entire period of such delay.....".
13.	Due date of possession	**16.09.2011** **[Note:** 36 months form the date of agreement to sell i.e., 16.09.2008**]**
14.	Payment plan	Installment Payment Plan [as per payment plan at page no. 40 of the complaint]
15.	Basic sale consideration as per BBA at page no. 40 of the complaint	Rs.50,86,360 /-
16.	Total sale consideration as per customer ledger dated 24.06.2021 at page no. 46 of complaint	Rs. 62,58,772/-
17.	Total amount paid by the complainants as per customer ledger dated 24.06.2021 at page no. 46 of complaint	Rs. 52,57,474/-
18.	Occupation certificate /Completion certificate	Not received
19.	Offer of possession	Not offered

20.	Delay in handing over possession till date of this order i.e., 30.05.2023	11 years 8 months and 14 days

B. Facts of the complaint

8. The complainants have made the following submissions in the complaint: -

a. That the complainants, believing upon the representation and advertisement given by the promoter company in good faith decided to invest in the project and to have house of their own. That on 06.12.2007, they booked a flat with the respondent in project- "Atharva" at Dwarka Expressway/NCR, Gurugram, Haryana for which the total cost was Rs.50,86360/- @ Rs.2664/- per sq. ft. for super area of 1640 sq. ft.

b. That allotment of the unit was done vide an allotment letter dated 16.09.2008 and unit no. H-303 was allotted to them along with one car parking space with a super area of 1640 sq. ft. The super area was changed to 1804 sq. ft. later on without informing or taking consent of the complainants or without actual increase in the carpet area.

c. That a builder buyer's agreement dated 16.09.2008 was signed between the parties wherein vide clause 4.2 of article 4, the respondent committed for offer of possession on or before 16.09.2011 (i.e., 3 years from signing of the buyer's agreement). The detailed payment plan has been set out in payment schedule at the end of the buyer's agreement.

d. That on the bare perusal of the customer ledger dated 24.06.2021, the total payable sale consideration including other charges raised by developer was Rs.50,86360/- @ Rs.2664/- per sq. ft. They have paid till date total amount of Rs.52,57,474/-which is more than amount indicated as the purchase cost as per payment of buyer's agreement.

e. That the complainants have been most diligent in complying with the terms of the buyer's agreement and has been making regular payments towards the payment of the instalments as and when raised by the respondents with respect to the stages of construction. The due date for the delivery of the possession was 16.09.2011. But to the utter surprise and dismay by them no possession has been delivered to them.

f. That the complainants vide letter/mails dated 28.03.2016 and 21.08.2017, requested for clarity on increase of 1640 sq. ft. in the super built up area without increase in carpet area from the respondent and made various phone calls, however, till date nothing has been informed by them.

g. That in the year 2014, a demand notice was raised mentioning completion of the final floor slab. It is clearly evident from the stated demand of year 2014, that the project was incomplete even after 6 years of buyer's agreement and period of approximately 7 years from the date of booking whereby 95% of the unit payment was made within 31 months of signing agreement.

h. That on the complaints' subsequent visit on 23.08.2017 and several others, unethical demand in the name of other miscellaneous charges were raised by respondents whereas no demand letter and/or offer of possession was given by them. The additional charges were increased due to alleged increase in super area without actually increase in super area, water and electricity installation charges and additional EDC and IDC charges etc. The complainants made stipulated 99 % payment i.e., Rs. 50,86,360/- as on 12.05.2015 as per the buyer's agreement.

i. That instead of receiving the offer of possession complainants received a copy of demand letter dated 20.11.2014 on 18.01.2018. Needless to mention that super built up area is indicated 1640 sq. ft. after receipt of occupancy certificate.

j. That vide email dated 27.11.2019, respondent promised to prepare and make the flat ready by 10.12.2019, which deadline was never adhered to. It also shows that the flat was not ready till December 2019 and the occupancy certificate was shame. Further, vide email 23.01.2020 and 03.02.2020, though respondent company had allegedly stated that offer of possession was given on basis of occupancy certificate in the year 2014 but without completing the installation of AC in the dwelling unit which made it to be incomplete unit and liable for unfair trade practice. Also, through email dated 07.03.2020, respondent company promised to install the air conditioner within 20 to 25 days which had not been done till date.

k. That vide the statement of account dated 24.06.2021, the respondent had demanded Rs.10,42,964/- towards the additional cost wherein the total cost as indicated in the buyer's agreement was Rs.50,86360/- in the year 2007-2008, however Rs.52,57474/- stood paid by the complainants as per the statement of account dated 21.06.2021. Respondent/promoter has arbitrarily increased the super built up area to 1804 sq. ft. wherein the built-up area is still 1640 sq. ft. as indicated in the buyer's agreement, hence the promoter cannot charge for the Super built up area in the residential unit in terms of the rules of 2017.

l. That it would not be wrong to assert that the unit is yet not ready for the possession which in turn is causing a great hardship to the complainants and their family. That during this delayed period of almost 11 years in handing over possession, the complainant has suffered a huge monetary loss on account of interest on their money for making timely payment to it. Not only that the respondent has levied monthly maintenance charges of Rs.4000/- for many years without actually handing over the possession. The complainants are so much stressed out and are not in a position to afford to wait for any more time his money to be held up like this and paying even more money towards future payments.

m. That the Resident Welfare society of that apartments held a meeting with the DC to apprise him about the problems being faced by the residents which were not taken care of by the respondent/promoter.

n. That the respondent sent an email dated 15.04.2022 serving the termination notice dated 14.04.2022 upon the complainants while allegedly cancelling his allotment and reserving their right to transfer allotment in name of any third party.

C. Relief sought by the complainants: -

9. The complainants have sought following relief(s)

a. Direct the respondent to pay possession along with delayed possession charges at the prescribed rate of interest from the due date of possession till actual handing over of possession.

10. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

11. The respondent contested the complaint on the following grounds: -

I. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The agreement to sell was executed between the parties prior to the enactment of the Act, 2016 and the provisions laid down in the said Act cannot be enforced retrospectively. Although the provisions of the Act, 2016 are not applicable to the facts of the present case in hand yet without prejudice and in order to avoid complications later on, the respondent has registered the project with the authority under the provisions of the Act of 2016, vide registration no. 32 of 2017 dated 04.08.2017.

II. That the respondent is traversing and dealing with only those allegations, contentions and/or submissions that are material and relevant for the purpose of adjudication of present dispute. It is further submitted that save and except what would appear from the records and what is expressly admitted herein, the remaining allegations, contentions and/or submissions shall be deemed to have been denied and disputed by the respondent.

III. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e., clause 14.2 of the buyer's agreement.

IV. That the complainant has not approached this authority with clean hands and has intentionally suppressed and concealed the material facts in the present complaint. The complaint has been filed by it maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:

- That the respondent/builder is a reputed real estate company having immense goodwill, comprised of law abiding and peace-loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered several prestigious projects such as 'Raheja Atlantis' 'Raheja Atharva', and 'Raheja Vedanta' and in most of these projects large number of families have already shifted after having taken possession and resident welfare associations have been formed which are

taking care of the day to day needs of the allottees of the respective projects.

- That the project is one of the most Iconic Skyscraper in the making, a passionately designed and executed project having many firsts and is the tallest building in Haryana with highest infinity pool and club in India. The scale of the project required a very in-depth scientific study and analysis, be it earthquake, fire, wind tunneling facade solutions, landscape management, traffic management, environment sustainability, services optimization for customer comfort and public heath as well, luxury and iconic elements that together make it a dream project for customers and the developer alike. The world's best consultants and contractors were brought together such as Thorton Tamasetti (USA) who are credited with dispensing world's best structure such as Petronas Towers (Malaysia), Taipei 101(Taiwan), Kingdom Tower Jeddah (world' tallest under construction building in Saudi Arabia and Arabtec makers of Burj Khalifa, Dubai (presently tallest in the world), Emirates palace Abu Dhabi etc.
- That compatible quality infrastructure (external) was required to be able to sustain internal infrastructure and facilities for such an iconic project requiring facilities and service for over 4000 residents and 1200 Cars which cannot be offered for possession without integration of external infrastructure for basic human life be it availability and continuity of services in terms of clean

water, continued fail safe quality electricity, fire safety, movement of fire tenders, lifts, waste and sewerage processing and disposal, traffic management etc. Keeping every aspect in mind this iconic complex was conceived as a mixture of tallest high-rise towers & low-rise apartment blocks with a bonafide hope and belief that having realized all the statutory changes and license, the government will construct and complete its part of roads and basic infrastructure facilities on time. Every customer including the complainant was well aware and was made well cautious that the respondent cannot develop external infrastructure as land acquisition for roads, sewerage, water, and electricity supply is beyond the control of it.

- That the complainant is real estate investor who had booked the unit in question with a view to earn quick profit in a short period. However, it appears that its calculations have gone wrong on account of severe slump in the real estate market, and they are now raising untenable and illegal pleas on highly flimsy and baseless grounds. Such malafide tactics of the complainant cannot be allowed to succeed.
- That the complainant signed and executed the agreement to sell for unit C-233 and the complainant agreed to be bound by the terms contained therein.
- That the respondent raised payment demands from the complainant in accordance with the mutually agreed terms and

conditions of allotment as well as of the payment plan and the complainant made the payment of the earnest money and part-amount of the total sale consideration and is bound to pay the remaining amount towards the total sale consideration of the unit along with applicable registration charges, stamp duty, service tax as well as other charges payable at the applicable stage.

- Despite the respondent fulfilling all its obligations as per the provisions laid down by law, the government agencies have failed miserably to provide essential basic infrastructure facilities such as roads, sewerage line, water and electricity supply in the sector where the said project is being developed. The development of roads, sewerage, laying down of water and electricity supply lines has to be undertaken by the concerned governmental authorities and is not within the power and control of the respondent. The respondent cannot be held liable on account of non-performance by the concerned governmental authorities. The respondent company has even paid all the requisite amounts including the external development charges (EDC) to the concerned authorities. However, yet, necessary infrastructure facilities like 60 meter sector roads including 24 meter wide road connectivity, water and sewage which were supposed to be developed by HUDA parallelly have not been developed. There is no infrastructure activities/development in the surrounding area of the project-in-question. Not even a

single sector road or services have been put in place by HUDA/GMDA/HSVP till date.

- That the time period for calculating the due date of possession shall start only when the necessary infrastructure facilities will be provided by the government authorities and the same was known to the complainant from the vert inception. Non-availability of the infrastructure facilities is beyond the control of the respondent and the same also falls within the ambit of the definition of 'Force Majure' condition as stipulated in clause 4.4 of the agreement to sell.
- That the respondent had also filed RTI application for seeking information about the status of basic services such as road, sewerage, water, and electricity. Thereafter, the respondent received reply from HSVP wherein it is clearly stated that no external infrastructure facilities have been laid down by the concerned governmental agencies. The respondent can't be blamed in any manner on account of inaction of government authorities.
- That furthermore two High Tension (HT) cables lines were passing through the project site which were clearly shown and visible in the zoning plan dated 06.06.2011. The respondent was required to get these HT lines removed and relocate such HT Lines for the blocks/floors falling under such HT Lines. The respondent proposed the plan of shifting the overhead HT wires

to underground and submitted building plan to DTCP, Haryana for approval, which was approved by the DTCP, Haryana. It is pertinent to mention that such HT Lines have been put underground in the revised Zoning Plan. The fact that two 66 KV HT lines were passing over the project land was intimated to all the allottees as well as the complainant. The Respondent had requested to M/s KEI Industries Ltd for shifting of the 66 KV S/C Gurgaon to Manesar Line from overhead to underground Revanta Project Gurgaon vide letter dated 01.10.2013. The HVPNL took more than one year in giving the approvals and commissioning of shifting of both the 66KV HT Lines. It was certified by HVPNL Manesar that the work of construction for laying of 66 KV S/C & D/C 1200 Sq. mm. XLPE Cable (Aluminium) of 66 KV S/C Gurgaon – Manesar line and 66 KV D/C Badshahpur – Manesar line has been converted into 66 KV underground power cable in the land of the respondent/promoter project which was executed successfully by M/s KEI Industries Ltd has been completed successfully and 66 KV D/C Badshahpur – Manesar Line was commissioned on 29.03.2015.

- That respondent got the overhead wires shifted underground at its own cost and only after adopting all necessary processes and procedures and handed over the same to the HVPNL and the same was brought to the notice of District Town Planner vide letter dated 28.10.2014 requesting to apprise DGTCP, Haryana for the same. That as multiple government and regulatory

agencies and their clearances were in involved/required and frequent shut down of HT supplies was involved, it took considerable time/efforts, investment and resources which falls within the ambit of the force majeure condition. The respondent has done its level best to ensure that the complex is constructed in the best interest and safety of the prospective buyer's.

- That GMDA, office of Engineer-VI, Gurugram vide letter dated 03.12.2019 has intimated to the respondent company that the land of sector dividing road 77/78 has not been acquired and sewer line has not been laid. The respondent/promoter wrote on several occasions to the Gurugram Metropolitan development Authority (GMDA) to expedite the provisioning of the infrastructure facilities at the said project site so that possession can be handed over to the allottees. However, the authorities have paid no heed to or request till date.
- That the construction of the tower in which the plot allotted to the complainant is located is 80% complete and the respondent shall hand over the possession of the same to the complainant after its completion subject to the complainants making the payment of the due installments amount and on availability of infrastructure facilities such as sector road and laying providing basic external infrastructure such as water, sewer, electricity etc. as per terms of the application and agreement to sell. The photographs showing the current status of the construction of the tower in which the unit allotted to the complaint is located. It

is submitted that due to the above-mentioned conditions which were beyond the reasonable control of the respondent, the development of the township in question has not been completed and the respondent cannot be held liable for the same. The respondent is also suffering unnecessarily and badly without any fault on its part. Due to these reasons the respondent has to face cost overruns without its fault. Under these circumstances passing any adverse order against the respondent at this stage would amount to complete travesty of justice.

- That the construction of the tower in which the floor is allotted to the complainants is located already complete and the respondent shall hand over the possession of the same to the complainants after getting the occupation certificate subject to the complainants making the payment of the due installments amount as per terms of the application and agreement to sell.
- That the origin of the present complaint is because an investor is unable to get required return due to bad real estate market. It is increasingly becoming evident, particularly by the prayers made in the background that there are other motives in mind by few who engineered this complaint using active social media.
- That the complaint has been worded as if simpleton apartment buyers have lost their monies and therefore, they must have their remedy. The present case also brings out how a few can misguide others to try and attempt abuse of the authority which

is otherwise a statutory body to ensure delivery of apartments and safeguard of investment of every single customer who puts his life saving for a dream house and social security.

- That in the present case, as compared to others in the region, the building has been standing tall and with almost 1000 workers working day and late night towards finishing the project to handover to the esteemed hundreds of customers in the waiting. Some flat buyers who had invested in the hope of rising markets, finding insufficient price rise–due to delay of Dwarka expressway, delay in development of allied roads and shifting of toll plaza engineered false and ingenious excuses to complain and then used social media to make other (non-speculator) flat buyers join them and make complaints, in all probability, by giving them an impression that the attempt may mean 'profit', and there is no penalty if the complaint failed.
- That the three factors: (1) delay in acquisition of land for development of roads and infrastructure (2) delay by government in construction of the Dwarka Expressway and allied roads; and (3) oversupply of the residential units in the NCR region, operated to not yield the price rise as was expected by a few. This cannot be a ground for complaint for refund as the application form itself has abundantly cautioned about the possible delay that might happened due to non-performance by Government Agencies.

- That amongst those who booked (as one now sees) were two categories: (1) those who wanted to purchase a flat to reside in future; and (2) those who were looking at it as an investment to yield profits on resale. For each category a lower price for a Revanta type Sky Scaper was an accepted offer even before tendering any money and bilaterally with full knowledge and clear declarations by taking on themselves the possible effect of delay due to infrastructure.
- That in the present case, keeping in view the contracted price, the completed (and lived-in) apartment including interest and opportunity cost to the Respondent may not yield profits as expected than what envisaged as possible profit. The completed building structure as also the price charged may be contrasted with the possible profit's v/s cost of building investment, effort and intent. It is in this background that the complaint, the prevailing situation at site and this response may kindly be considered. The present complaint has been filed with malafide motives and the same is liable to be dismissed with heavy costs payable to the respondent.

12. 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 based on these undisputed documents and submission made by the parties.

13. Through a perusal of the complaint, it can be concluded that the complainant in the complaint bearing no. 4146 of 2022 is allottee of the

project, namely, "*Raheja Atharva*" (group housing project) being developed by the same respondent/promoter i.e., M/s Raheja Developers Limited situated in sector-109, Gurugram. But while filing written reply on 10.03.2021, the respondent has made reference to details of some other project.

E. Jurisdiction of the authority

14. 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

15. 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 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

16. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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.

17. 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 complainants at a later stage.

F. Findings on the objections raised by the respondent

F.I. Objections regarding the complainants being investors.

18. The respondent has taken a stand that the complainants are the investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time, preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter

contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyers, and they have paid total price of **Rs.52,57,474/-** to the promoter towards purchase of an apartment in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

> *"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

19. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as ***M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr***. has also held that the concept of investor is not defined or referred in the Act. Thus,

the contention of promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

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

20. Another objection raised the respondent that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the flat 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."

21. Also, 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."

22. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the 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 agreements contains an arbitration clause which refers to the dispute resolution system mentioned in agreement.

23. The agreement to sell entered into between the two side on 16.09.2008 contains a clause 15.2 relating to dispute resolution between the parties. The clause reads as under: -

> *"All or any disputes arising out or touching upon in relation to the terms of this Application/Agreement to Sell/ Conveyance Deed including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereof for the time being in force. The arbitration proceedings shall be held at the office of the seller in New Delhi by a sole arbitrator who shall be appointed by mutual consent of the parties. If there is no consensus on appointment of the Arbitrator, the matter will be referred to the concerned court for the same. In case of any proceeding, reference etc. touching upon the arbitrator subject including any award, the territorial jurisdiction of the Courts shall be Gurgaon as well as of Punjab and Haryana High Court at Chandigarh".*

24. 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***, 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.

25. Further, in **Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017**, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows: -

"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.

...

56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."

26. 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. The relevant paras are of the judgement passed by the Supreme Court is reproduced below:

> *"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."*

27. Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainants are well within their rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 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 complainants.

G. I Direct the respondent to pay possession along with delayed possession charges at the prescribed rate of interest from the due date of possession till actual handing over of possession.

28. The complainants are seeking delay possession charges in the aforesaid relief. However, it has come on record that the unit of the complainants were cancelled the respondent vide termination/cancellation letter dated 14.02.2022. Thus, it is relevant to comment upon the validity of cancellation before proceeding with the relief sough by the complainants.

29. The complainants were allotted unit no. H-303, in tower/block- H, in the project "Raheja's Atharva" by the respondent/builder for a basic consideration of Rs.50,86,360/- and it is observed by the Authority that they have already paid an amount of Rs. 52,57,474/- against such basic sale consideration. A buyer's agreement was executed on 16.09.2008. The possession of the unit was to be offered within 36 months ***from the date of execution of agreement which comes out to be 16.09.2011.*** The authority observes that as per payment plan agreed between the parties, the complainants agreed to pay 95% of basic sale consideration before the receipt of occupation certificate and balance 5% was payable at the tim of offer of possession. However, it is pertinent to note that the complainants have paid more than the basic consideration as agreed. Moreover, the fact cannot be ignored that the respondent has failed to bring anything on record that it has proceeded with application of occupation certificate to the concerned department. Further, it is also observed that it has also failed to put on record any reminder issued before such cancellation as stated in cancellation dated 14.04.2022. Thus, it is very clear from the aforesaid fact

that the respondent had no concrete rationale to cancel the allotment of the complainants where it has already received more than basic sale consideration of the unit and without providing any opportunity for making payment to them. Therefore, the said cancellation dated 14.04.2022 being bad in eyes of law is therefore, set aside and the subject unit of the complainants remains intact in their favour and as such they are entitled to the relief here in after referred as under.

30. In the present complaint, the complainants intend to continue with the project and are 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."*

31. Article 4.2 of the agreement to sell provides for handing over of possession and is reproduced below:

> ***4.2 Possession Time and Compensation***
> *That the Seller shall sincerely endeavor to give possession of the plot to the purchaser **within** thirty-six (36) months **from the date of the execution of the Agreement to sell** and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the company. The company on obtaining certificate for*

occupation and used by the competent authorities shall hand over the apartments to the Allottees(s) for his/her occupation and use and subject to the allottee(S) having complied with all the terms and conditions of this flat buyer's agreement. In the event of his failure to take over possession of the plot, provisionally and /or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be lie at his/her risk and cost the purchaser shall be liable to pay compensation @ Rs.5/- per sq. ft. of the plot area per month holding charges for the entire period of such delay....."

32. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reason beyond the control of the seller. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in making payment as per the plan 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 agreement to sell by the promoter is 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.

33. **Payment 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 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.*

34. 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.

35. Taking the case from another angle, the complainants-allottees were entitled to the delayed possession charges/interest only at the rate of Rs.7/- per sq. ft. per month as per relevant clauses of the buyer's agreement for the period of such delay; whereas the promoter was entitled to interest @ 18%

per annum compounded at the time of every succeeding instalment for the delayed payments. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. The authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the buyer's agreement entered between the parties are one-sided, unfair, and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair, and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These type of discriminatory terms and conditions of the buyer's agreement will not be final and binding.

36. 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., 30.05.2023 is **8.70%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%.**

37. 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—*
> *(i) 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;*
> *(ii) 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;"*

38. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.70%** by the respondent/promoter which is the same as is being granted here in case of delayed possession charges.

39. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 4.2 of the agreement executed between the parties on 16.09.2008, the possession of the subject unit was to be delivered within 36 months from the date of agreement to sell. Therefore, the due date of handing over

possession was 16.09.2011. The respondent has failed to handover possession of the subject apartment till date of this order. 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. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainants as per the terms and conditions of the agreement to sell dated 16.09.2008 executed between the parties. It is pertinent to mention over here that even after a passage of more than 11.8 years neither the construction is complete nor an offer of possession of the allotted unit has been made to the allottee by the builder. Further, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

40. 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 complainants are entitled to delay possession charges at rate of the prescribed interest @ 10.70% p.a. w.e.f. 16.09.2011 till actual handing over of possession or offer of possession plus two months after obtaining occupation certificate from the competent authority,

whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G. II Compensation

41. The complainants are seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)***, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

F. Directions of the authority

42. 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 to the each of the complainant against the paid-up amount at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 16.09.2011 till actual handing over of possession or offer of

possession plus two months after obtaining occupation certificate from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

ii. The arrears of such interest accrued from due date of possession of each case till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.

iii. The respondent shall not charge anything from the complainants which is not the part of the agreement to sell.

iv. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority. The complainants w.r.t. obligation conferred upon him under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.

v. The complainant(s) are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and after clearing all the outstanding dues, if any, the respondent shall handover the possession of the allotted unit.

vi. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% 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 delayed possession charges as per section 2(za) of the Act.

43. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

44. Complaint stands disposed of. True certified copy of this order shall be placed in the case file of each matter.

45. File be consigned to registry.

Dated: 30.05.2023

(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM