

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

Order pronounced on: 07.02.2023

<b>NAME OF THE BUILDER</b>	<b>SPLENDOR LANDBASE LIMITED</b>	
<b>PROJECT NAME</b>	<b>SPLENDOR TRADE TOWER</b>	<b>Appearance</b>
CR/3400/2020	Shri Parasram Industries Pvt. Ltd. V/S Splendor Landbase Limited	Sh. Chaitanya Singhal Sh. Ravi Aggarwal
CR/4199/2020	Shri Parasram Industries Pvt. Ltd. V/S Splendor Landbase Limited	Sh. Chaitanya Singhal Sh. Ravi Aggarwal
CR/4218/2020	Shri Parasram Industries Private Limited V/S Splendor Landbase Limited	Sh. Chaitanya Singhal Sh. Ravi Aggarwal
CR/4226/2020	Shri Parasram Industries Private Limited V/S Splendor Landbase Limited	Sh. Chaitanya Singhal Sh. Ravi Aggarwal
CR/4227/2020	Shri Parasram Industries Private Limited V/S Splendor Landbase Limited	Sh. Chaitanya Singhal Sh. Ravi Aggarwal
CR/4383/2020	Shri Parasram Industries Private Limited V/S Splendor Landbase Limited	Sh. Chaitanya Singhal Sh. Ravi Aggarwal
CR/4384/2020	Shri Parasram Industries Private Limited V/S Splendor Landbase Limited	Sh. Chaitanya Singhal Sh. Ravi Aggarwal
CR/4388/2020	Shri Parasram Industries Private Limited V/S Splendor Landbase Limited	Sh. Chaitanya Singhal Sh. Ravi Aggarwal
CR/4389/2020	Shri Parasram Industries Private Limited V/S Splendor Landbase Limited	Sh. Chaitanya Singhal Sh. Ravi Aggarwal
CR/4425/2020	Shri Parasram Industries Private Limited V/S Splendor Landbase Limited	Sh. Chaitanya Singhal Sh. Ravi Aggarwal
CR/4426/2020	Shri Parasram Industries Private Limited V/S Splendor Landbase Limited	Sh. Chaitanya Singhal Sh. Ravi Aggarwal
CR/4452/2020	Shri Parasram Industries Private Limited V/S Splendor Landbase Limited	Sh. Chaitanya Singhal Sh. Ravi Aggarwal
CR/4453/2020	Shri Parasram Industries Private Limited V/S Splendor Landbase Limited	Sh. Chaitanya Singhal Sh. Ravi Aggarwal

CR/4468/2020	Shri Parasram Industries Private Limited V/S Splendor Landbase Limited	Sh. Chaitanya Singhal Sh. Ravi Aggarwal
CR/4471/2020	Shri Parasram Industries Private Limited V/S Splendor Landbase Limited	Sh. Chaitanya Singhal Sh. Ravi Aggarwal
CR/4472/2020	Shri Parasram Industries Private Limited V/S Splendor Landbase Limited	Sh. Chaitanya Singhal Sh. Ravi Aggarwal
CR/4474/2020	Shri Parasram Industries Private Limited V/S Splendor Landbase Limited	Sh. Chaitanya Singhal Sh. Ravi Aggarwal
CR/4475/2020	Shri Parasram Industries Private Limited V/S Splendor Landbase Limited	Sh. Chaitanya Singhal Sh. Ravi Aggarwal
CR/4696/2020	Shri Parasram Industries Private Limited V/S Splendor Landbase Limited	Sh. Chaitanya Singhal Sh. Ravi Aggarwal
CR/1533/2021	Somya Goyal V/S Splendor Land Base Limited	Sh. Chaitanya Singhal Sh. Ravi Aggarwal

**CORAM:**

Shri Vijay Kumar Goyal  
 Shri Ashok Sangwan  
 Shri Sanjeev Kumar Arora

Member  
 Member  
 Member


**HARERA**  
**GURUGRAM**
**ORDER**

1. This order shall dispose of all the 20 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, 'Splender Trade Tower' situated in sector-65, Gurugram being developed by the same respondent-promoter i.e., Splender Landbase Limited. The terms and conditions of the builder buyer's agreements that had been executed between the parties inter se are also similar. The fulcrum of the issues involved in all these cases pertains to failure on the part of the respondent/promoter to deliver timely possession of the units in question, seeking award of delayed possession charges, demand of electrification charges, sale deed handling charges, maintenance charges, VAT and firefighting charges etc.
3. The details of the complaints, reply status, unit numbers, date of agreement, due date of possession, offer of possession and relief sought are given in the tabular form below:

<b>PROJECT NAME</b> 'Splender Trade Tower'							
<b>Possession Clause D: 3 years from the date of execution of Agreement</b>							
<b>In All Complaints</b>							
<b>Offer of Possession: 21.09.2016 [as per Email alleged by the Respondent but it's not a formal offer letter]</b>							
<b>Occupation certificate: 14.09.2016</b>							
S.n	Com. No. Title DOF	Reply status	Apartme nt/ Unit No/plot no.	Date of Agreement	Due date of possession	Offer of possession	Relief Sought



3400/2020 Shri parasram industries pvt. Ltd. V/S Splendor landbase ltd. D.O.F. 27.10.2020	Received on 04.12.2020	Unit no. 55, Ground floor SA 640 sq. ft. (as per page 51 of complaint )	15.05.2010 (as per page 50 of complaint)	15.05.2013	No formal offer of possession  TC- 31,42,400 ( as per BBA on page no. 52 of complaint) AP-29,01,008 (as per page 8 of complaint)	-Possession -DPC -Withdraw charges on account of changeover of electric supply from 11 KV to 33 KV. -Withdraw sale deed handling charges. -VAT -IFMS _Common area charges
4199/2020 Shri parasram industries pvt. Ltd. V/S Splendor landbase ltd. D.O.F. 11.12.2020	Received on 08.02.2021	Unit no. 05, Ground floor SA 780 sq. ft. (as per page 54 of complaint )	14.05.2010 as per page 53 of complaint	14.05.2013	No formal offer of possession  TC- 38,50,660 AP-33,79,352 (as per page 8 of complaint)	Possession DPC Withdraw charges on account of changeover of electric supply from 11 KV to 33 KV. Withdraw sale deed handling charges.
4218/2020 Shri parasram industries pvt. Ltd. V/S Splendor landbase ltd. D.O.F. 11.12.2020	Received on 03.02.2021	Unit no. 04, Ground floor SA 790 sq. ft. (as per page 54 of complaint )	14.05.2010 as per page 53 of complaint	14.05.2013	No formal offer of possession  TC- 38,96,200 AP-34,31,216 (as per page 8 of complaint)	Possession DPC Withdraw charges on account of changeover of electric supply from 11 KV to 33 KV. Withdraw sale deed handling charges.
4226/2020 Shri parasram industries pvt. Ltd. V/S Splendor landbase ltd. D.O.F. 11.12.2020	Received on 03.02.2021	Unit no. 03, Ground floor SA 785 sq. ft. (as per page 54 of complaint )	14.05.2010 as per page 53 of complaint	14.05.2013	No formal offer of possession  TC- 38,65,840 AP-34,05,284 (as per page 8 of complaint)	Possession DPC Withdraw charges on account of changeover of electric supply from 11 KV to 33 KV. Withdraw sale deed handling charges.



4227/2020 Shri parasram industries pvt. Ltd. V/S Splendor landbase ltd. D.O.F. 11.12.2020	Received on 08.02.2021	Unit no 02, Ground floor SA 785 sq. ft. (as per page 54 of complaint )	14.05.2010 (as per page 53 of complaint)	14.05.2013	No formal offer of possession  TC- 39,26,560 AP-34,05,284 (as per page 8 of complaint)	Possession DPC Withdraw charges on account of changeover of electric supply from 11 KV to 33 KV. Withdraw sale deed handling charges.
4383/2020 Shri parasram industries pvt. Ltd. V/S Splendor landbase ltd. D.O.F. 14.12.2020	Received on 02.02.2021	Unit no.07, Ground floor SA 795 sq. ft. (as per page 54 of complaint )	14.05.2010 as per page 53 of complaint	14.05.2013	No formal offer of possession  TC- 39,11,380 AP-34,57,148 (as per page 8 of complaint)	Possession DPC Withdraw charges on account of changeover of electric supply from 11 KV to 33 KV. Withdraw sale deed handling charges.
4384/2020 Shri parasram industries pvt. Ltd. V/S Splendor landbase ltd. D.O.F. 11.12.2020	Received on 01.02.2021	Unit no 06 Ground floor SA 790 sq. ft. (as per page 54 of complaint )	14.05.2010 as per page 53 of complaint	14.05.2013	No formal offer of possession  TC- 39,06,320 AP-34,29,262 (as per page 8 of complaint)	Possession DPC Withdraw charges on account of changeover of electric supply from 11 KV to 33 KV. Withdraw sale deed handling charges.
4388/2020 Shri parasram industries pvt. Ltd. V/S Splendor landbase ltd. D.O.F. 14.12.2020	Received on 01.02.2021	Unit no. 011, ground floor SA 815 sq. ft. (as per page 54 of complaint )	14.05.2010 as per page 53 of complaint	14.05.2013	No formal offer of possession  TC- 39,97,400 AP-34,56,204 (as per page 8 of complaint)	Possession DPC Withdraw charges on account of changeover of electric supply from 11 KV to 33 KV. Withdraw sale deed handling charges.



	4389/2020 Shri parasram industries pvt. Ltd. V/S Splendor landbase ltd. D.O.F. 14.12.2020	Received on 01.02.2021	Unit no 012, Ground floor SA 810 sq. ft. (as per page 54 of complaint )	14.05.2010 as per page 53 of complaint	14.05.2013	No formal offer of possession  TC- 39,31,620 AP-34,39,788 (as per page 8 of complaint)	Possession DPC Withdraw charges on account of changeover of electric supply from 11 KV to 33 KV. Withdraw sale deed handling charges.
	4425/2020 Shri parasram industries pvt. Ltd. V/S Splendor landbase ltd. D.O.F. 15.12.2020	Received on 02.02.2021	Unit no 34, Ground floor SA 775 sq. ft. (as per page 54 of complaint )	15.05.2010 as per page 53 of complaint	15.05.2013	No formal offer of possession  TC- 37,29,220 AP- 33,92,897 (as per page 8 of complaint)	Possession DPC Withdraw charges on account of changeover of electric supply from 11 KV to 33 KV. Withdraw sale deed handling charges.
	4426/2020 Shri parasram industries pvt. Ltd. V/S Splendor landbase ltd. D.O.F. 17.12.2020	Received on 03.02.2021	Unit no, 38 Ground floor SA 875 sq. ft. (as per page 54 of complaint )	14.05.2010 as per page 53 of complaint	14.05.2013	No formal offer of possession  TC- 42,25,100 AP-39,29,371 (as per page 8 of complaint)	Possession DPC Withdraw charges on account of changeover of electric supply from 11 KV to 33 KV. Withdraw sale deed handling charges.
13	4452/2020 Shri parasram industries pvt. Ltd. V/S Splendor landbase ltd. D.O.F. 14.12.2020	Received on 08.02.2021	Unit no. 26, Ground floor SA 880 sq. ft. (as per page 54 of complaint )	14.05.2010 as per page 53 of complaint	14.05.2013	No formal offer of possession  TC- 42,04,860 AP-38,97,995 (as per page 8 of complaint)	Possession DPC Withdraw charges on account of changeover of electric supply from 11 KV to 33 KV. Withdraw sale deed handling charges.



4453/2020 Shri parasram industries pvt. Ltd. V/S Splendor landbase ltd. D.O.F. 15.12.2020	Received on 03.02.2021	Unit no.54B, Ground floor, SA 675 sq. ft. (as per page 54 of complaint )	15.05.2010 as per page 53 of complaint	15.05.2013	No formal offer of possession  TC- 28,89,260 AP- 30,54,442 (as per page 8 of complaint)	Possession DPC Withdraw charges on account of changeover of electric supply from 11 KV to 33 KV. Withdraw sale deed handling charges.
4468/2020 Shri parasram industries pvt. Ltd. V/S Splendor landbase ltd. D.O.F. 15.12.2020	Received on 08.02.2021	Unit no 54 C Ground Floor SA 750sq. Ft. (as per page 54 of complaint )	15.05.2010 as per page 53 of complaint	15.05.2013	No formal offer of possession  TC- 33,44,660 AP- 33,59,654 (as per page 8 of complaint)	Possession DPC Withdraw charges on account of changeover of electric supply from 11 KV to 33 KV. Withdraw sale deed handling charges.
4471/2020 Shri parasram industries pvt. Ltd. V/S Splendor landbase ltd. D.O.F. 15.12.2020	Received on 02.02.2021	Unit no 50 Ground Floor SA 530 sq. ft. (as per page 54 of complaint )	15.05.2010 as per page 53 of complaint	15.05.2013	No formal offer of possession  TC- 24,89,520 AP- 23,73,677 (as per page 8 of complaint)	Possession DPC Withdraw charges on account of changeover of electric supply from 11 KV to 33 KV. Withdraw sale deed handling charges.
4472/2020 Shri parasram industries pvt. Ltd. V/S Splendor landbase ltd. D.O.F. 14.12.2020	Received on 03.02.2021	Unit no 10, Ground floor SA 540 sq. ft. (as per page 54 of complaint )	14.05.2010 as per page 53 of complaint	14.05.2013	No formal offer of possession  TC- 26,31,200 AP-24,41,857 (as per page 8 of complaint)	Possession DPC Withdraw charges on account of changeover of electric supply from 11 KV to 33 KV. Withdraw sale deed handling charges.



4474/2020 Shri parasram holding pvt. Ltd. V/S Splendor landbase ltd. D.O.F. 17.12.2020	Received on 01.02.2021	Unit no 123 ,1 <sup>st</sup> floor, SA 960 sq. ft. (as per page 54 of complaint )	05.06.2010 as per page 47 of complaint	05.06.2013	No formal offer of possession  TC- 44,64,000 AP-44,67,476 (as per page 8 of complaint)	Possession DPC Withdraw charges on account of changeover of electric supply from 11 KV to 33 KV. Withdraw sale deed handling charges.
4475/2020 Shri parasram industries pvt. Ltd. V/S Splendor landbase ltd. D.O.F. 15.12.2020	Received on 03.02.2021	Unit no 124, first floor SA 1115 sq. ft. (as per page 54 of complaint )	05.06.2010 as per page 53 of complaint	05.06.2013	No formal offer of possession  TC- 51,84,750 AP- 51,95,758 (as per page 8 of complaint)	Possession DPC Withdraw charges on account of changeover of electric supply from 11 KV to 33 KV. Withdraw sale deed handling charges.
4696/2020 Shri parasram industries pvt. Ltd. V/S Splendor landbase ltd. D.O.F. 17.12.2020	Received on 01.02.2021	Unit no 29, Ground floor SA 810 sq. ft. (as per page 54 of complaint )	14.05.2010 as per page 53 of complaint	14.05.2013	No formal offer of possession  TC- 39,61,980 AP-33,63,666 (as per page 8 of complaint)	Possession DPC Withdraw charges on account of changeover of electric supply from 11 KV to 33 KV. Withdraw sale deed handling charges.
1533/2020 Somya Goyal V/S Splendor landbase ltd. D.O.F. 18.03.2021	Reply received on 09.08.2021	Unit no. G-51 Area- 500 sq.ft.	15.05.2010	15.05.2013	No formal offer of possession  TC:25,30,000/- AP: 24,08,087/-	Possession DPC Withdraw charges on account of changeover of electric supply from 11 KV to 33 KV. Withdraw sale deed handling charges

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties inter se in respect of said units for not





- handing over the possession by the due date besides delay possession charges and in addition, independent issues have been raised and consequential reliefs have been sought.
5. The delay possession charges to be paid by the promoter is positive obligation under proviso to section 18(1) of the Act in case of failure of the promoter to hand over possession by the due date as per builder buyer's agreement.
  6. 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 allottees and the real estate agents under the Act, the rules and the regulations made thereunder.
  7. The facts of all the complaints filed by the complainant/ allottees are also similar in nature. Out of the above-mentioned cases, the particulars of lead case CR/3400/2020 at serial no. 1 titled as Shri Parasram Industries Private Limited Vs. M/s Splender Landbase Private Limited are being taken into consideration for determining the rights of the allottees qua possession, delay possession charges, electrification charges, taxes viz GST and VAT etc, advance maintenance charges and holding charges etc.

#### **Unit and project related details**

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

**CR/3400/2020**



S. No.	Heads	Information
1.	Project name and location	Splendor Trade Tower, Sector 65, Gurugram.
2.	Project area	2.708 acres
3.	Nature of the project	Commercial complex
4.	DTCP license no.	104 of 2008 dated 15.05.2008
	License valid/renewed upto	14.05.2018
	Name of licensee	Splendor Land Base Ltd.
5.	HRERA registered/ not registered	<b>Not Registered</b>
6.	Old Unit no. as per original space buyer agreement	G-31-B [page 46 of complaint]
7.	Revised Unit No. as per Revised Space buyer Agreement	55, Ground Floor [Page 51 of complaint]
8.	Unit measuring	640 sq. ft.
9.	Revised Unit Area	557 sq. ft. (super area) [as per final reminder letter dated 16.02.2019 at page 103 of complaint]
10.	Date of Booking	25.04.2008 [Page 46 of complaint]
11.	Date of execution of flat buyer's agreement	15.05.2010
12.	Payment plan	Construction linked payment plan [at page 67 of complaint]
13.	Total consideration as per payment plan at page 67 of complaint	Rs.31,42,400/-
14.	Total amount paid by the complainant as alleged by the complainant	Rs.29,01,008/-

15.	Due date of delivery of possession as per clause 11 (D) of the said agreement i.e. 3 years from the date of signing of this agreement [Page 57 of complaint]	<b>15.05.2013</b>
16.	<b>Date of offer of possession to the complainant</b>	<b>Not Offered Yet</b>
17.	<b>Occupation Certificate</b>	<b>14.09.2016</b> [page 95 of complaint]
18.	<b>Completion Certificate</b>	<b>21.06.2018</b> [Page 97 of complaint]

#### **Facts of the complaint**

The complainant has submitted as under:

9. That on 25/04/2008, the complainant booked multiple commercial unit i.e. shops (at present having 19 shops) in the project of the respondent namely "Splendor Trade Tower" situated in Sector-65 Gurugram.
10. That on **25.04.2008**, a builder buyer agreement with regard to the allotted unit was executed between the parties. As per that agreement the complainant was allotted 20 commercial units i.e. shops in all namely-G-48 G-3, G-47, G-6, G-7, G-14, G-15, G-17, G-18, G-19, G-20, G-21, G-22, G-23, G-24, G-44, G-27, G-26, G-31, G-30 for a basic sale price (BSP) of Rs. 4910/- per square feet. As per the builder buyer agreement, the respondent promised to deliver the possession of booked units within a period of 3 years from the date of builder buyer agreement which comes out to be 25/04/2011. Further, it was agreed upon that in case the respondent failed to handover possession within



the given time frame, then an amount of Rs. 25/- per sq. ft. of the super area per month of the allotted unit would be payable by the respondent to the complainant as compensation for delayed possession.

11. That in the month of **May 2010**, the respondent approached the complainant and told that due to changes in the sanctioned plans, building plans and other lay-out plans of the project, the original builder buyer agreement entered between them could not be honoured. The respondent told to surrender and return the existing builder buyer agreements and to provide "revised builder buyer agreement".
12. That on 26/05/2010, the complainant in good faith surrendered the original builder buyer agreement with the respondent. But, the respondent very cleverly took the old builder buyer agreement with it and issued new agreements changing the date of possession and extending it to further for 3 years (i.e. changing delivery of possession from 2011 to 2013). The respondent made alterations in the date of possession in the revised builder buyer agreement only to avoid its liability on account of delayed possession charges which were fixed at Rs. 25/- per sq. ft. per month. Thus, the complainant has been cheated and defrauded by the respondent. The respondent has neither any right and authority to change the layout of the sanctioned plan, nor it could change the allotted unit numbers.
13. That on 07.11.2011, the complainant visited the site of the project "and was surprised to find out that only excavation work was complete and foundation work had started. The construction work was only in its initial stage. The respondent had to give possession of



shops in the March 2011 whereas the construction work of the project had only started at that time.

14. That the respondent continued to make unjustified demands without completing the required stage of construction and on continuous follow ups, every time, the respondent made false promises to complete in further six months but no reasonable justification was given for delay. On visiting the project site, the complainant found that despite the escalators and lift not installed, the respondent had wrongly demanded another instalment claiming that air conditioning has been done. Even though the said stage was not achieved, the complainant had made the payments to avoid any controversy. It was shocked to note that even after almost six months from the date of schedule, the respondent was not able to complete and install escalators.
15. That till date, the complainant had paid a total sum of Rs. 29, 01,008/- out of which a major part of payments has been made during the period, the respondent claims to be "Force Majeure Period". The respondent did not inform the complainant of the prevailing force majeure conditions at the time of demanding payments.
16. That the respondent had arbitrarily reduced the area of the shop from 640 sq. ft. to 557sq. ft. In percentage of terms, the area of shop has been reduced by 13%. Due to reduction in area of shop, the basic sale price get reduced from Rs. 31, 42,400/- to Rs. 27, 34,870/- However, the complainant had paid a total sum of Rs. 29, 01008/- to the respondent. Therefore, the respondent is liable to refund the excess amount paid by complainant. However, on the contrary, the



- respondent is wrongly demanding payment of Rs. 4,703 /- on account of "Net BSP receivable" which is totally wrong.
17. That as per the BBA, the respondent is only empowered to collect charges on account on building insurance, IFMS (interest free maintenance security), sale deed handling charges, common area maintenance charges, however no charges on account of electricity electrification charges, firefighting chares are mentioned in the BBA.
  18. That the complainant visited the project "Splendor Trade Tower" and found a large number of variations and alterations in the building plan. The floor plan of building attached with the buyer's agreement is different from actual site. The common area and entrance have been encroached and converted into HDFC Bank and IDFC Bank. The fictitious plot numbers have been created for both the banks for addresses. As per the floor plan annexed to BBA, the last shop in the corner was no. 17. However as per the actual site, the fictitious unit no's have been created which are unit no. 18A, 18B, 18C, 18D and all these 4 units have been given to banks on lease by the respondent. Apart from these, other common areas of the building have also been encroached in a similar way. The actual site photo as on today have been annexed with the complaint. The common passage at the first floor in splendor trade tower has been blocked from both sides, as such there is no proper fire exit. The only access route to first floor is escalator. There has been a great level of changes in Building Plan and alteration in the number of assets after obtaining the "occupation certificate". The respondent is wrongly charging common area maintenance bills from the complainant and all other allottees for the Common Area encroached and rented by respondent banks

**Relief sought by the Complainant:**

19. The complainant has sought following relief(s):
- i. Pay DPC (delayed possession charges) from due date of possession i.e. March 2011 till the handing over of possession
  - ii. Withdraw the common area maintenance charges till the time possession is given
  - iii. Withdraw arbitrary charges on account electrification charges, firefighting charges, property tax, sale deed handling charges.
  - iv. Withdraw VAT charges since the due date of possession of project was the year 2011 prior to the coming of VAT in force.
  - v. Direct the respondent to quash the one-year advance maintenance charges Rs. 79225/-
  - vi. Settle the accounts in respect of each shop and refund the amount due to the complainant.
20. 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.

**Reply by the respondent**

**The respondent has contested the complaint by way of reply on the following grounds:**

21. That the present complaint is not maintainable before this Hon'ble Authority as the project in question "Splendor Trade Tower" located at sector-65, Gurugram is not an ongoing project. The occupation certificate of the said project had been received on 14.09.2016 i.e., much before the RERA Act came in force.



22. That while the respondent was undertaking the construction of the said project in the month of July 2010 and was in full swing, Delhi and the NCR region experienced unprecedented rainfall which continued throughout the months of August and September 2010. This led to heavy flooding in the surrounding areas of the project site and heavy inflow of water into the basement shaft, constructed on the project site, and the inflow of water brought with it huge amount of slush/soil, which in turn filled up to above 5 meters height from the basement raft casted in the basement pit.
23. That the respondent had duly informed about above force majeure condition prevention to the complainant vide various communications including annexure P-8. The above force majeure prevention caused a delay of one year approx. in the construction of the said project. A set of 31 photographs reflecting huge loss and damages occurred to the respondent's building due to torrential and continued excessive rainfall, prolonged accumulation of water etc
24. That within a period of one year from the restart of construction as stated above, the respondent was forced to stop construction of the subject project for its no fault as per directions of Deputy Commissioner, Gurgaon in pursuance of an order passed by the Hon'ble High Court of Punjab & Haryana in a Civil Writ Petition No.10787 of 2011 in which the respondent was also unnecessarily impleaded as party. The respondent had strongly contested the said petition and ultimately, the Hon'ble High Court had passed judgment in its favour. The above said writ petition was though abuse of process of law as observed by the Hon'ble P & H High Court in its judgment but



- in view of interim order passed by it, the respondent was forced to stop construction altogether for almost four months.
25. That despite above mentioned and other force majeure preventions faced by the respondent, the project was completed in March 2014, and it applied for grant of its occupation certificate on 17 April 2014.
26. That the respondent further sent various emails and letters dated 21.03.2016, 21.09.2016, 04.10.2016, 05.09.2017, 03.10.2018, 27.12.2019 and 17.02.2020 respectively to the complainant to clear the outstanding dues and to execute conveyance deed in its favour in terms of space buyer agreement but it kept quiet and did not comply with the terms of that agreement.
27. That due to continuing, repeated and deliberate defaults of the complainant as demonstrated above, the respondent was constrained to issue notices for cancellation dated 30.08.2021 of all shops/units in the said project and requesting it inter alia to pay the outstanding dues and complete the registration formalities and take possession of the said units within a period of 15 days failing the allotment of the said units/shops would stand cancelled without any further notice and the amount would be refunded after deducting earnest money and interest on delay payments, other expenses and loss in terms of the space buyer agreement.
28. That despite issuance of the aforesaid various letters and communications issued by the respondent to the complainant from time to time requesting it to pay the dues, complete the registration formalities and take possession of the unit allotted to it in the said project, this Hon'ble Authority on the application dated 14.09.2021 filed by the complainant in the captioned complaint (Annexure A/14



to the said application @ page nos52-55) vide which the complainant had challenged the said notice for cancelation dated 30.08.2021 and sought interim stay under section 36 of the RERA Act against the respondent restraining the respondent from cancelling the booked units of the complainant and further sought directions from this hon'ble authority to withdraw the "Cancellation Notice" dated 30.08.2021, in the order dated 15.09.2021 passed on the said application had observed that *"It is strange that the promoter has issued offer of possession letter in a very running manner and has not made offer of possession in a formal manner which could prove the offer of possession in a patent manner". It is strange that as alleged by the unit buyer, they have not received the offer of possession letter and it is one of the main reasons that they have come here for grant of delayed possession charges."*

29. Hence, under the facts and circumstances as mentioned above and as a consequence of the said cancellation and in terms of the said space buyer agreement, the respondent vide letter dated 27.07.2022 had issued refund cheque to the complainant after deduction / forfeiture of earnest money and expenses incurred by it towards losses and expenses caused to the respondent, in terms of article C.3 of the subject space buyer agreement.
30. All other averments made in the complaint were denied in toto.
31. 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 those undisputed documents and written submissions made by the parties.

#### **Jurisdiction of the authority**



32. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint(s) for the reasons given below:

**F.I Territorial jurisdiction**

33. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the Town and Country Planning Department, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes with office 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 complaints.

**F.II Subject matter jurisdiction**

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

**Section 11(4)(a)**

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

35. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint(s)



regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

### **Findings on the objections raised by the respondent**

#### **G.1 Objection regarding untimely payments done by the complainant**

36. It has been contended that the complainant made default in making payments and as a result thereof, the respondent had to issue various reminder letters. Clause 3 of the buyer's agreement provides that timely payment of instalment being the essence of the transaction, and the relevant clause is reproduced below:

*"3. Time is of essence*

*"Timely Payments of all amounts as per this Agreement, payable by the Purchaser(s) shall be the essence of this Agreement. If the Purchaser(s) neglects, omits, ignore, or fails, for any reason whatsoever, to pay to the Seller any of the instalments or other amounts and charges due and payable by the Purchaser(s) under the terms and conditions of this Agreement or by respective due dates thereof or if the Purchaser(s) in any other way fails to perform, comply or observe any of the terms and conditions herein contained within the time stipulated or agreed to, the Seiler / Confirming Party shall be entitled to cancel / terminate this Agreement forthwith and forfeit the booking amounts or amounts paid upto the Earnest Money and Non-Refundable Amount. The Seller/Confirming Party is not under any obligation to send reminders for the payments to be made by the Purchaser(s), as per schedule of payments and for the payments to be made as per demand by the Seller/Confirming Party."*

37. At the outset, it is relevant to comment on the said clause of the agreement i.e., "3 TIME IS OF ESSENCE" wherein the payments to be made by the complainant had been subjected to all kinds of terms and conditions. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in



favor of the promoter and against the allottees that even a single default in making timely payment as per the payment plan may result in termination of the said agreement and forfeiture of the earnest money. Moreover, the authority has observed that despite the complainant being in default in making timely payments, the respondent did not exercise its discretion to terminate the buyer's agreements prior to 30.08.2021 and whereas the due date for completion of the project and offer of possession of the allotted unit was 14.05.2013.

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

38. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the 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. The 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 Ors. [2018(1) RCR (Civil) 298]** 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."

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

"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."

40. It is not disputed that occupation certificate of the project was received on 14.09.2016 by the promoter. There is an email dated



21.09.2016 on the file addressed to one Mr. Manish Ji and all respected investors intimating about receipt of occupation certificate of the project and requesting them to clear the dues immediately. A copy of the same was admittedly sent to the complainant. But whether that document can be treated as an offer of possession of the allotted unit. The answer is in the negative. Thus, the communication issued in this regard cannot be said to be valid offer of possession of the allotted unit. However, the completion certificate of the project was admittedly received on 21.06.2018. So, as per the ratio of law laid down in the cases of *Neelkamal (supra)* and reiterated by the Hon'ble Apex Court in case of *Newtech Promoters Private Limited Vs State of U.P & Ors., 2021-2022(1)RCR(C)357*, the same would be treated as an ongoing project as per the provisions of section 3(1) of the Act 2016. Though the occupation certificate of the project was received before the Act of 2016 came into operation but some of its provisions are retroactive or quasi retroactive in effect and the jurisdiction of the authority on that ground can't be challenged, the project being on going one. So, the plea advanced in this regard on behalf of the promoter is devoid of merit.

41. Then the agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved



by the respective departments/competent authorities and are not in contravention of any Act/ statutory provisions and are not unreasonable or exorbitant in nature.

**Findings on the relief sought by the complainant**

42. The complainant is an allottee of above-mentioned units agreed to be sold to it vide buyers' agreements dated 14.05.2010, 15.05.2010 and 05.06.2010 respectively for different amounts detailed in those documents. The due date for completion of the project and handing over possession of the allotted units was agreed to be 3 years from the date of buyer's agreements and which comes to be 14.05.2013, 15.05.2013 and 05.06.2013 respectively. It is pleaded by the complainant that against the allotted units, it had already paid substantial amount but the respondent-builder failed to complete the project and offer possession of the allotted units. The occupation certificate of the project was received in 14.09.2016 and an intimation was given to the complainant on 21.09.2016 asking it only to clear the dues for taking possession. It led to sending a letter dated 07.03.2019 by the complainant asking the respondent to offer possession of the allotted units and settlement of accounts. But it replied to that letter on 29.04.2019 claiming to have offered possession on 21.09.2016 itself.
43. It is pertinent to mention here that when the complainant visited the project, it found a number of variations and alterations in the building plan besides some common areas being encroached upon leading to filing of the complaint seeking possession of the allotted units, delay possession charges and other reliefs.



44. But the case of respondent as set up in the reply is that after completion of the project on 14.09.2016, its completion certificate has been received on 21.06.2018. Moreover, after receipt of occupation certificate of the project, the possession of the allotted unit was offered to the complainant on 21.09.2016 who undertook to take its possession and confirmed the same vide email dated 07.06.2017. But despite repeated reminders/ notices, the allottee failed to take possession. Even prior to that the respondent-builder vide letter dated 04.09.2014 sent an intimation to the complainant for fit outs for possession after clearing the dues but with no results. When despite a number of reminders and notices, the complainant failed to clear the dues and take possession, the respondent issued a notice dated 30.08.2021 for cancellation of the allotted unit after expiry of 15 days. Though the complainant challenged that act of respondent, and the authority issued an interim order dated 15.09.2021 but it did not pass any specific order restraining it as per the provisions of section 36 of Act of 2016. So, in view of that order, the respondent again issued a letter dated 27.09.2021 to the complainant to clear the dues as per buyer 's agreement but with no results leading to issuance of notice of cancellation on 30.08.2021, ultimately cancellation of the allotted units and issuing a cheque for a refund of the remaining amount.
45. During the pendency of the complaint, the complainant filed an application challenging the cancellation of the allotted unit vide letter dated 30.08.2021 and the authority vide its ordered dated 15.09.2021 passed an order detailed as under:

*"Certain controversial issues have been brought on record and the matter was argued by both the parties:*

*i) Occupation certificate of the project was received on 14.09.2016 of Splendor Trade Tower. However, the CC of the project has been received on 21.06.2018.*

*ii) It is strange that the promoter has issued offer of possession letter in a very very running manner and has not made offer of possession in a formal manner which could prove the offer of possession in a patent manner.*

*iii) As per the provisions of the Act, after the receipt of occupation certificate the builder is duty bound to make offer of possession within two months by giving an opportunity to the complainant to clear all his dues pending.*

*iv) It is strange that as alleged by the unit buyer, they have not received the offer of possession letter and it is one of the main reasons that they have come here for grant of delayed possession charges.*

*v) It has been brought on record by the counsel for the buyer that the respondent has issued them cancellation notice and direction should be given to respondent that till the pendency of this complaint, the cancellation will be held in abeyance. Direction issued. The respondent shall refrain from cancelling the unit till the finality of the complaint."*

46. Though the matter was adjourned to 05.10.2021 but on that date and in view of pendency of case titled ***Emaar India Ltd. V/s Simmi Sikka and Anr. Bearing appeal no. 128 RERA -Appeal-35-2021***, the case was adjourned sine die. However, on the basis of an application dated 30.08.2022, the case was revived by the authority wherein it is pleaded the despite orders dated 15.09.2021 passed by it, the respondent cancelled the allotment of the unit vide letter dated 29.07.2022. So, besides restoring the allotment of the unit with a direction to handover its possession, contempt proceedings be also initiated against the builder.
47. The issue for consideration before the authority is as to whether the cancellation of allotment dated 30.08.2021 issued by the respondent to the complainant is wrong and illegal. The authority is of view that when the first notice of cancellation of the allotted unit was ordered to be stayed vide its order dated 15.09.2021 and that order was still in operation till the pendency of complaint, the respondent was not legally competent to issue second notice of cancellation i.e.,

29.07.2022 of the same subject matter and sent the remaining amount to the allottee by way of an account payee cheques. Though it is pleaded on behalf of respondent that the authority refrained it from cancelling the unit till the finality of the complaint, but it has not passed any such restraint order as provided under section 36 of the Act against the respondent. But the plea advanced in this regard is without any basis. When the authority vide its order dated 15.09.2021 restrained the respondent from cancelling the allotment of the unit then if any action contrary to that order is taken by the developer then that is violation of the orders of the authority and can't hold ground legally. So, on this sole ground, the notice of cancellation of the allotted unit is liable to be set aside.

48. It has come in the written submissions of the respondent that after completion of the project, it applied for its occupation certificate on 17.04.2014 but the same could not be granted due to pendency of an appeal and which was finally decided on 22.04.2016 and leading to issuance of occupation certificate on 14.09.2016 by DG, TCP Haryana. Moreover, the respondent has already intimated about the possession of the unit to the complainant vide email dated 21.09.2016 and it failed to respond, clear the dues and come forward for taking possession of the allotted units. Even despite a number of reminders and notices of termination, the allottee failed to respond leading to issuance of notice of termination dated 30.08.2021 and the same reiterated vide notice dated 29.07.2022. But the pleas advanced in this regard are devoid of merit. Though, there is nothing on record to show that either any offer of possession of the allotted unit was made to the complainant on the basis of occupation certificate dated 14.09.2016 but, the respondent



send an email dated 21.09.2016 offering possession of the allotted unit to all the allottees of the project. Though that mail was addressed only to Mr. Manish Aggarwal w.r.t. his unit and with a copy to other allottees including the complainant but, that document can be termed as offer of possession of the allotted unit to the complainant followed by letter dated 16.02.2019 terming it as a reminder of offer of possession of the allotted unit. Though it is pleaded that possession of an allotted unit has to be made through a proper document in writing on the basis of occupation certificate and that was made in the case in hand after receipt of occupation certificate of the project vide email dated 21.09.2016. So, the complainant would be entitled to delay possession charges of the allotted unit upto 21.09.2016 plus 2 months i.e., 21.11.2016 from the due date of possession i.e., 15.05.2013.

#### **Delay Possession Charges**

49. In all the complaints, the allottee intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Section 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."*

50. Clause D of the space buyer's agreement provides the time period of handing over possession and the same is reproduced below:

#### ***"D. Possession***



*The Developer shall endeavor to complete the construction of the Said Office/Retail Space/Unit within a period of three years from the date of execution of this Agreement subject to timely payment by the Allottee of sale price, stamp duty and other charges due and payable according to the Payment Plan applicable to him/her/it or as demanded by the Developer and subject further to force majeure. The Developer on obtaining certificate for occupation/completion and use from the competent authority shall hand over the Office/Retail Space/Unit to the Allottee for his/her/it occupation and use subject to the Allottee having complied with all the terms and conditions of this Agreement. In the event of his/her/its failure to take over or occupy and use the Office/Retail Space/Unit allotted within thirty (30) days from the date of intimation in writing by the Company, then the Allottee shall be deemed to have possession of his/her/its Office/Retail Space/Unit (hereinafter referred to as "Deemed Possession") and the same shall lie at his/her risk and cost and the Allottee shall be liable to pay to the Company holding charges @Rs.25/- per sq.ft. of the super area for office use or Rs. 50/- per sq.ft. of the super area of the Retail Space/Office/Unit for the Use as retail space(s) Purpose per month for the entire period of such delay.."*

*(Emphasis supplied)*

51. The authority has gone through the possession clause of the buyers agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement 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.

52. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. The proviso to section 18 of the Act 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.*

53. 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.
54. 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., 07.02.2023 is 8.60%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.60%.

55. The definition of term 'interest' as defined under section (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;"*

56. Therefore, interest on the delayed payments from the complainant shall be charged at the prescribed rate i.e., 10.60% by the respondent/promoter which is the same as is being granted to him in case of delayed possession charges.

## **H.II Decrease in super area**

57. It is contended that the respondent has reduced the super area of the subject unit of the complainant without giving any formal intimation to, or by taking any written consent from it. The said fact has not been denied by the respondent in reply. The authority observes that the said decrease in the area has been as per clause C1 of the buyer's agreement. The relevant clause from the agreement is reproduced as under: -

***"C. Terms and conditions of allotment***

*However, in case of any major alteration / modification resulting in more than 10% change in the super area of the Office/Rental Space Unit or manual change in the specifications of the Office/Retail Space/Unit, change in flooring, change in floor plans, any time prior to and upon the grant of occupation/completion certificate, the Developer shall intimate to the Allottee in writing of the changes thereof and the resultant change, if any, in the Price of Office/Retail Space(s) Unit to be paid by him/her/it and the Allottee agrees to inform the Developer in writing his/hers consent or objections to the changes within thirty (30) days from the date of such notice failing which the Allottee shall be deemed to have given his consent to all the alterations/modifications. If the Allottee writes to the Developer within thirty (30) days of intimation by the Developer indicating his non-consent/objections to such alterations/modifications resulting in more than 10% change in the super area or change in floor plans or change in flooring, then the allotment shall be deemed to be cancelled and the Developer shall refund the ensure money received from the Allottee. The Allottee agrees that any increase or reduction in the super area of the Office/Retail Space(s)/Unit shall be payable or refundable..."*

58. On perusal of record, the respondent reduced more than 10% of the area of the shops in all the above-mentioned complaints. There is nothing on the record to show that before reducing the super area of the allotted unit, any notice in this regard was given to the allottee or his consent in this regard was taken. So, as per the above-mentioned term and conditions of allotment, the respondent-builder is liable to refund the amount taken in excess of the allotted area to the complainant

**H.III Maintenance Charges**

59. The complainant has pleaded that the respondent also imposed common area maintenance charges of Rs. 3,57,289/- upto February 2019. The respondent in this regard took a plea that maintenance



charges were duly agreed upon by the complainant at the time of booking and the same was incorporated in the buyer's agreement. The undertaking to pay the above-mentioned charges was comprehensively set out in the buyers' agreement. In this context, the following clause of the buyer's agreement is noteworthy:

*"8. The Developer shall undertake the maintenance of the Complex and the common areas in addition to upkeep of plant and machinery. The Developer is authorized to nominate any third-party agency to undertake the maintenance of the Complex and the common areas including insurance, etc. All costs, expenses, charges etc. shall be paid by the Allottee to the extent of his share."*

60. The authority is of view that the respondent is right in demanding maintenance charges at the rates prescribed in the buyer's agreement at the time of offer of possession. However, the respondent shall not demand the maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the maintenance charges has been demanded for more than a year. However, while discussing above, it has been held that the possession of the allotted unit was offered to the complainant on 21.09.2016 on the basis of occupation certificate dated 14.09.2016. So, the common area maintenance charges would be payable by the complainant to the respondent builder at the agreed rates with effect from 21.11.2016.

#### **H.IV VAT charges**

61. It is contended on behalf of complainant that the respondent raised an illegal and unjustified demand towards VAT. It is pleaded that the liability to pay VAT is on the builder and not on the allottee. But the version of respondent is otherwise and took a plea that while booking the unit as well as entering into space buyer agreement, the allottee

agreed to pay any tax/ charges including any fresh incident of tax even if applicable retrospectively.

62. The liability to pay Value Added Tax by the builder as works contractor has clearly been settled by the **Hon'ble Apex Court in M/s Larsen and Toubro Limited Vs State of Karnataka (2013) 46 PHT 269 (SC)** wherein it was held that the builders/developers etc. engaged in the activities of the construction of building, flat and commercial properties are covered under the definition of "works contract" and are liable to pay Sales Tax as per applicable laws of the state. The provisions of Haryana VAT Act, 2003 (herein after referred as HVAT Act) r/w Haryana Value Added Tax Rules further clarified that the agreements entered with prospective buyers for sale of constructed flats, apartments or other buildings by builders and/or developers amount to transfer of property of goods involved in the execution of a works contract and thus liable to be subjected to VAT.
63. The Govt. of Haryana, Excise and Taxation Department vide notification no. S.O.89/H.A.6/2003/S.60/2014 dated 12.08.2014 provided a lump-sum scheme in respect of builders/developers which was further amended vide another notification no. 23/H.A.6/2003/S.60/2015 dated 24.09.2015 according to which the builder/developer can opt for this scheme w.e.f. 01.04.2014. Under the above scheme, a developer had an option to pay lump sum tax in lieu of tax payable by him under the Act, by way of lump sum tax calculated at the compounded rate of 1% of entire aggregate amount specified in the agreement or value specified for the purpose of stamp duty, whichever is higher, in respect of the said agreement. The builder/developer opting for this scheme here-in-after shall be



referred to as the 'Composition Developer'. This scheme remained in force till 30.06.2017. But the developer builder who did not avail benefit of composition scheme under the above mentioned Act then, in such a situation, the amount of VAT on the allotted unit would be chargeable from the buyer/prospective buyer on furnishing proof of its deposit with the department.

#### **H.IV Electrification charges**

64. The promoter cannot charge electrification charges from the allottee while issuing offer of possession letter of a unit even though there is any provision in the builder buyer agreement to the contrary. However the allottee is liable to pay reasonable sum for providing electricity/meter charges etc. to be paid to the concerned authorities.

#### **H.V Interest Free Maintenance Security (IFMS)**

65. It is held that the promoter may be allowed to collect a reasonable amount from the allottee 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.

#### **H.VI Administrative charges**



66. The registration of property at the registration office is mandatory for execution of the conveyance (sale) deed between the developer (seller) and the homebuyer (purchaser). Besides the stamp duty, homebuyer also pay for execution of the conveyance/sale deed. This amount, which is given to the developer in the name of registration charges, is significant. The authority considering the pleas of the developer-promoter directs that a nominal amount of up to Rs.15000/- can be charged by the promoter - developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard. For any other charges like incidental/miscellaneous and of like nature, since the same are not defined and no quantum is specified in the BBA, therefore, the same cannot be charged.

#### **H.X Holding charges**

67. The allottee has also challenged the authority of the respondent builder to raised demand by way of holding charges on the ground that since the project is incomplete and the offer of possession in not lawful. On the contrary, the respondent submitted that all the demands have been strictly raised as per the terms of the flat buyer's agreement.

68. After considering the rival contentions advanced, it is observed that this issue has already been settled by the Hon'ble Supreme Court vide judgment dated 14.12.2020 in civil appeal no. 3864-3889/202, whereby the Hon'ble Court had upheld the order dated 03.01.2020 passed by NCDRC, which lays in unequivocal terms that no holding charges are payable by the allottee to the developer.

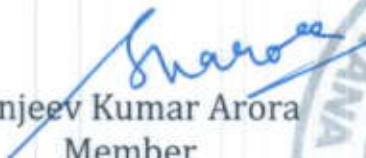
#### **Directions of the authority**

69. Thus, due to the above-mentioned findings on various issues and discussion above, 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 cancellation of the allotted unit vide letters dated 30.08.2021 and 29.07.2022 respectively is set aside being illegal and the unit is being restored to its original position.
  - ii. The respondent is directed to pay interest at the prescribed rate of 10.60 % p.a. for every month of delay from the due date of possession till the obtaining of occupation certificate i.e., 14.09.2016 plus two months i.e., 14.11.2016 to the complainant(s) as per section 19(10) of the Act.
  - iii. The arrears of such interest accrued from due date of possession till its admissibility as per direction (ii) above shall be paid by the promoter to the allottees within a period of 90 days.
  - iv. The respondent shall issue a revised statement of account after adjustment of interest for the delayed period; the complainant is directed to pay outstanding dues, if any, within a period of 30 days from intimation of revised statement of account and the respondent is directed to handover possession of the allotted unit in next 30 days.
  - v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.60 % by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of



default i.e., the delayed possession charges as per section 2(za) of the Act.

70. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
71. The complaints stand disposed of. True certified copy of this order be placed on the case files of each matter
72. Files be consigned to the registry.

  
Sanjeev Kumar Arora  
Member

  
Ashok Sangwan  
Member

  
Vijay Kumar Goyal  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated:07.02.2023**