

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

Complaint no. :	5018 of 2020
Date of filing complaint:	21.01.2021
First date of hearing:	24.02.2021
Date of decision :	07.07.2023

1. Smt. Renu Gupta W/o Sh. Nishant Gupta 2. Nishant Gupta HUF Both R/O: BW-25A, Shalimar Bagh, Delhi- 110088	Complainants
Versus	
M/s Advance India Projects Limited Regd. office: 232B, 4 th floor, Okhla Industrial Estate, Phase-III, New Delhi-110020	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE WHEN ARGUED:	
Sh. Rajan Kumar Hans (Advocate)	Complainants
Sh. Rahul Thareja (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

S.no.	Particulars	Details	
1.	Name of the project	"AIPL Joy Street"	
2.	Project location	Sector 66, Village Medawas & Badshahpur, Gurugram, Haryana	
3.	Project	Commercial complex	
4.	RERA registered/not registered	157 of 2017 dated 28.08.2017	
		Valid up to	31.12.2020
5.	DTPC License no.	7 of 2008 dated 21.01.2008	152 of 2008 dated 30.07.2008
6.	Validity status	20.01.2022	01.08.2016
7.	Licensed area	2.8875 acres	13.55
8.	Name of licensee	Landmark Apartments Private Limited	Ananya Land Holdings
9.	Allotment letter	27.03.2019 [As per annexure P1 on page no. 19 of complaint]	
10.	Unit No.	Retail shop no. FF/006, 1 st floor [As per annexure P1 on page no. 19 of complaint]	
11.	Unit Area	1228.82 sq. ft. (super area) [As per annexure P1 on page no. 19 of	



		complaint]
12.	Date of agreement for assured return	15.10.2019 [As per annexure P2 on page no. 21 of complaint]
13.	Assured return	<p><i>That it has been agreed by the Company that in case the date of filing of application by the Promoter for grant of Occupancy Certificate with DGTCP is post 15-Sep-19, in such case, the Company will pay to the Allottee penalty of Rs. 40.62/- per sq. ft. per month on super area till (the construction and services work in the Project is complete in terms of the provisions of the Haryana Building Code for the purpose of filing of application for grant of Occupancy Certificate with DCTCP the date of filing of application by the Promoter for grant of Occupancy Certificate with DGTCP) The return shall be inclusive of all Taxes and Cesses whatsoever payable or due on the return. All payments made to the Allottee shall be subject to applicable tax deduction at source as per the provisions of the Income Tax Act</i></p> <p><i>That it has been agreed by the Allottee that in case the date of filing of application by the Promoter for grant of Occupancy Certificate with DTCP issued prior to 15-Sep-19, in such case, the Allottee will Pay the Company an incentive of Rs. 40.62/- per sq. ft. per month on super area for the period of preponement.</i></p>
14.	Due date of possession	31.12.2020

		[Calculated as per clause j of application form]
15.	Total sale consideration	Rs. 1,06,90,734/- [As per statement of account dated 07.10.2020 on page no. 32 of complaint]
16.	Amount paid	Rs. 75,00,000/- [As per statement of account dated 07.10.2020 on page no. 33 of complaint]
17.	Application for grant of occupation certificate	16.07.2020 [As per page no. 58 of reply]
18.	Occupation certificate	28.09.2020 [As per annexure R12 on page no. 59 of reply]
19.	Intimation of constructive possession	07.10.2020 [As per annexure P5 on page no. 28 of complaint]

B. Facts of the complaint:

3. That the complainants vide application form dated 15.03.2019, booked a unit in the project namely "AIPL JOYSTREET", Sector 66, Gurgaon, (hereinafter, called "the Project") and paid booking amount of Rs. 10,00,000/- vide cheque no. 860354, drawn on Union Bank of India.
4. That the respondent allotted them a unit bearing no. FF/006, on the first floor having a super area of 1228.82 Sq. ft. (hereinafter, called the unit) vide allotment letter dated 27.03.2019.

5. That as per the term & conditions of the allotment letter, a price schedule and payment plan were agreed upon between the parties, being reproduced hereunder: -

S no.	PARTICULAR	AMOUNT (Rs)
1	Basic Sales Price	Rs. 98,30,560/-
2	Development Charges	Rs. 7,37,292/-
3	IFMS	Rs. 1,22,882/-
	TOTAL	Rs. 1,06,90,734/-

S no.	Installment Milestone	% Completion of Amount	Due Amount (exclusive of GST at the rate of 12%)
1	At the Time of booking		Rs. 8,92,857.14/-
2	150 days from the time of booking.	40.87%	Rs. 31,24,892.73/-
3	On Application of Occupancy Certificate.	59.13%	Rs. 66,72,984.13/-

6. That on 15.10.2019, an agreement was executed between the parties wherein the respondent agreed to make payment of the penalty amount of Rs. 40.62/- per square feet per month on its failure to apply for occupancy certificate beyond 15.09.2019 till the time of actual application.

7. That as per the agreement between the parties, the respondent was supposed to provide following i.e.,
- i. Normal assured return +
 - ii. Assured return on advance payment +
 - iii. Assured penalty amount
- to the complainants and despite some issues in the calculations, it has already paid an amount of Rs. 7,96,374/- to them.
8. That on 10.04.2020, the respondent sent an email titled "Temporary freeze on the processing of assured return" wherein it mentioned its inability to provide the assured return due to closure of the offices and lack of manpower to process the payments.
9. That the complainants waited patiently but the respondent did not start the payment of the assured return despite several reminders through emails and verbal discussions.
10. That after relentless perusal the respondent lastly credited an amount of Rs. 3,55,151/- on 18.08.2020. Even after that, as per the calculations of complainants, it still has to clear an amount of Rs. 5,76,999/- as per the term & conditions of its agreement with them.
11. That on 17.08.2020, the respondent issued the last installment demand of Rs. 74,58,996/- on the milestone of "On Application of Occupancy Certificate". Further, on 07.10.2020, without intimating the status of the occupancy certificate, the respondent issued the "Notice of Offer of

"Possession" whereas the work on the actual site is yet to be finished and was continuing even till date.

12. That along with the notice of the possession, the respondent also sent updated ledger statement vide which it issued a demand of Rs. 57,90,115.74/- for taking the possession. It is pertinent to note that the demand letter was having illegal payments under various heads, were not part of the term & conditions as agreed upon vide allotment letter dated 27.03.2019.
13. That there are demands under various doubtful heads not acceptable to the complainants, the name of the head and demanded amount are being produced hereunder as:

S no.	Demand under head	Amount Demanded
1.	Sinking fund	Rs. 2,17,501/-
2.	Labour Cess	Rs. 25,502/-
3.	Infrastructure Augmentation Charge	Rs. 22,434/-
4.	Electric Switch in station & Deposit charge	Rs.1,55,246/-
5.	Sewage Storm Water Charges	Rs. 17,400/-
	TOTAL ILLEGAL CHARGES	Rs. 4,38,083/-

14. That the respondent has charged G.S.T at the rate of 12% and also failed to provide GST input credit, supposed to be adjusted at the time of possession. Even by a conservative estimate and industrial practice, 4% hypothetical figure of GST input credit would amount close to Rs. 4,00,000/-, which is a decent sum to account for.
15. That after the notice of the possession, the complainants went on the site to see the actual status of the construction and were shocked to find out that the respondent has not done the construction as per the layout plan shared with them and has failed to install the escalator in front of the shop which was a main attraction for them to choose that particular retail unit.
16. That the main grievance of the complainants is that the respondent has failed to clear the pending amount of the assured return which by its calculations amounts to Rs. 5,76,999/-. The other major grievances of the complainants are that it has made illegal demand of Rs. 4,38,083/- under various heads which are not part of the essence of the agreement as per the conditions set out in the allotment letter. Further, it has failed to provide the GST input credit at the time of the possession and thus, has made the contraventions of Section 171 of the Central Goods and Services Tax act, 2017 and has also changed the layout plan of the site. It has further failed to install the escalator in front of the shop being the major attraction to purchase the retail shop.
17. That the complainants want to continue and to take possession of the retail shop and do not want the refund, provided the respondent-builder adjusts

the pending amount with the demand amount and issues a fresh demand letter to them.

C. Relief sought by the complainants:

18. The complainants have sought following relief(s):

- i. Direct the respondent to clear the pending dues of assured return amounting to Rs. 5,76,999/-.
- ii. Direct the respondent not to charge illegal demands pertaining to sinking fund, labour cess etc. amounting to Rs. 4,38,083/-.
- iii. Direct the respondent to provide GST input credit to be adjusted on the possession.
- iv. Direct the respondent to issue a fresh demand after removing all illegal entries, providing adjustment of pending assured return and pending GST input credit.
- v. Direct the respondent to provide escalator in front of the retail shop as per the layout plan or provide an alternate shop having that facility.

D. Reply by respondent:

The respondent by way of written reply made the following submissions

- i. That the complaint is not maintainable for the reason that the booking application form contains the jurisdiction clause.
- ii. That the complainants have not approached the Authority with clean hands and have intentionally suppressed and concealed the material facts and filed the present complaint maliciously with an ulterior motive and is nothing but a sheer abuse of the process of law.

- iii. That the complainants, after checking the veracity of the project namely, 'AIPL Joystreet', Sector 66, Gurugram applied for allotment of a unit vide a booking application form and agreed to be bound by the terms and conditions of the documents executed by them.
- iv. That based on it, the respondent vide offer letter dated 27.03.2019 allotted them, unit bearing no. FF/006 having tentative super area of 1228.82 Sq. ft. for a sale consideration of Rs.1,06,90,734/- (exclusive of the registration charges, stamp duty, service tax and other charges).
- v. That as per the terms of the allotment, it was agreed that time is the essence with respect to the due performance by the complainants under the agreement and more specially, the timely payment of installments towards sale consideration and other charges, deposits and amounts payable by them. It is important to mention here that it was acknowledged by them that the unit was purchased not for the purpose of self-occupation and use but for the purpose of leasing out to third parties.
- vi. That the complainants purchased the said unit on assured return basis and used to get the same every month from the respondent. They have already earned huge amount as assured return from it. They chose the said unit for investment as they were interested in getting return on their investment and agreed to pay the total sale consideration along with other charges including VAT and maintenance charges.

- vii. That the complainants entered into an agreement dated 15.10.2019 with the respondent and as per clause 3, thereof no penalty or claim would lie against it in case of delay and that this agreement would supersede in respect of delay penalty.
- viii. That on account of certain force majeure circumstances such as construction ban, due to court order/governmental authority guidelines, the assured return could not be paid by the respondent to the complainants from 01.11.2019 till 05.12.2019 and the same was intimated to them by its letter dated 30.11.2019.
- ix. That, furthermore, the outbreak of the deadly Covid-19 virus resulted in delay in implementation of the project. The outbreak resulted not only in disruption of the supply chain of the necessary material but also shortage of the labour at the construction sites as several labourers migrated to their respective hometowns. The Covid-19 outbreak which has been classified as 'pandemic' is an Act of God and the same was thus beyond the reasonable apprehension of respondent. The respondent in such unprecedented time could not have given the assured return amount to the complainants in the lockdown period i.e. 22.03.2020 till 15.06.2020 and the same was intimated to them vide emails dated 10.10.2020, 29.05.2020 and 24.06.2020 respectively.
- x. That however, as a goodwill gesture, the respondent credited an assured return amount of Rs. 3,26,616/- even for the months in which

the country was in lockdown and a detailed breakup of the same was given by it to the complainants vide its email dated 24.09.2020.

- xi. That the possession of the subject unit was to be handed over to the complainants strictly as per the terms of the allotment and as per clause (j) of the booking application form, the due date of handing over of possession was 31.12.2020.
- xii. That although, the implementation of the project was affected, yet the respondent completed the construction of the tower in which unit of the complainants was located and applied for the grant of occupation certificate on 16.07.2020 and which was granted by the competent authority on 28.09.2020.
- xiii. That the respondent raised net payable amount of Rs. 74,58,996.39/- vide demand dated 17.08.2020. However, despite reminders dated 04.09.2020 and 29.09.2020, the complainants failed to remit the due amount.
- xiv. That the respondent has already offered the possession of the unit to the complainants on 07.10.2020 and as per the statement of account, a huge amount of Rs. 57,90,115.74/- is still payable by them. It was informed to them vide said offer that they are bound to complete the documentation formalities and make payment towards the outstanding amount by 22.10.2020 and any delay in doing so would attract holding charges as per the terms of the agreement.

- xv. That the total price of unit payable as set out in annexure-A of the booking application form and reproduced by the complainants in above paras was exclusive of the tax and cess, other charges including but not limited to enhanced EDC, IDC, infrastructure augmentation charges, stamp duty, registration charges, other incidental and legal charges for registration of the agreement and conveyance deed, cost/ charges/ deposits that may be required for electricity connection, water, sewerage, electric connection deposit, electric and water meter deposit, gas pipeline deposit, gas pipeline charges, payments for any additional material equipment for common use etc. The same was even admitted and acknowledged by the complainants in the note of the booking application form that the said charges are payable over and above the basic sale price, development charges and IFMS. The complainants cannot wriggle out of their obligation to do so and are bound to adhere to the mutually terms and conditions.
- xvi. That the booking date of the subject unit is 15.3.2019 i.e., post GST era and the input credit is thus not applicable on the booking in question as per the accounts of the respondent. However, it is pertinent to mention here that the respondent has from time to time processed the GST input credit for all the applicable customers and booking in the project 'AIPL Joy Street'.
19. Both the parties filed written submissions and the same were taken on record and who reiterated their earlier version as set up in the pleadings.

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

E. Jurisdiction of the authority:

21. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, 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

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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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

F. Findings on the objections raised by the respondent:

F.I Objection regarding complainants is in breach of terms of application form providing for amicable settlement.

22. The respondent has raised an objection that the complainants have not invoked arbitration proceedings as per application form which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated w.r.t arbitration in the buyer's agreement:

"All or any disputes arising out or touching upon in relation to the terms of this Application Form or its termination including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions failing which the same shall be settled through the adjudicating officer appointed under the Real Estate (Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017 and the regulations made thereunder".

23. The respondent contended that as per the terms & conditions of the application form duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, with respect to the provisional booked unit by the complainants, the same shall be adjudicated through settlement or before Adjudicating Officer. The Authority is of the opinion that the jurisdiction of the Authority cannot be fettered by the existence of an arbitration clause/ clause referring matter to amicable settlement in the

application form 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. Further, while considering the issue of maintainability of a complaint before a consumer forum/commission in the face 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. The relevant para 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."

24. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainants are well within the right 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 settlement. Hence, the Authority has no hesitation in holding that it has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

G. Entitlement of the complainants:

G.I Direct the respondent to clear the pending dues of assured return amounting to Rs. 5,76,999/-.

25. The project detailed above was launched by the respondent as commercial complex and the complainants were allotted the subject unit bearing no. FF/006 (Retail shop) on 27.03.2019 for total sale consideration of Rs. 1,06,90,734/-. They have already paid an amount of Rs. 75,00,000/- against total sale consideration of Rs. 1,06,90,734/- constituting 70.16% of sale consideration. An agreement dated 15.10.2019 was executed between the parties, detailing the terms and conditions of assured return. As per clause 1 and 2 of that agreement, the respondent undertook to pay return at the rate of Rs. 40.62/- per sq. ft. till the date of filing of application for grant of OC where such application has been made post 15.09.2019. But in the circumstances where such application has been made prior to 15.09.2019, then such return shall be payable by the allottee to the builder at the rate of Rs. 40.62/- sq. ft. for the period of preponement.
26. In the present case, the respondent has made an application for grant of OC on 16.07.2020 i.e. post 15.09.2019. Therefore, as per clause 1 of said agreement, the respondent was under an obligation to pay assured return till application for grant of OC i.e. 16.07.2020. The complainants submitted that the respondent has failed to pay assured returns amounting to Rs. 5,76,999/- and lastly paid an amount of Rs. 3,55,151/- on 18.08.2020. On the other hand, the respondent submitted that it was unable to pay assured return for the period of 01.11.2019 to 05.12.2019 and 22.03.2020 till to 15.06.2020 constituting delay of four and half month and duly informed

about the same vide various letters to the complainant. Later, it has credited an amount of Rs. 3,26,616/- during the period of lockdown towards payment of such returns.

27. Vide written submissions, the complainants submitted that the respondent has to make payment of normal assured return, assured return penalty and pre-payment interest totalling to Rs. 20,64,534/- against which they have received only Rs. 14,02,399/- and still an amount of Rs. 6,62,135/- is pending on part of the respondent. But the respondent submitted that it has paid an amount of Rs. 12,93,031/- towards assured return and the same was not paid for the four and half month only.
28. Since there was some confusion with regard to amount payable by the respondent on pretext of assured return, vide proceedings dated 31.03.2023, both the parties were directed to reconcile the statement in w.r.t. payable assured return amount. Although written submissions dated 28.04.2023 & 01.05.2023 were filed by complainants and respondent respectively but no reconciled statement of account has been filed. In view of aforesaid circumstances vide proceedings dated 05.05.2023, the respondent was again directed to file reconciled statement w.r.t assured return but nothing in this regard has come on record. In view of these facts, the Authority vide proceedings dated 26.05.2023 referred the matter to the CA of the Authority to provide a report providing details of assured return to be paid by the respondent to the complainant. Both the parties were also directed to file required documents in this regard and appear before the CA

Asha, Chartered Accountant of the Authority. Despite several communication, both the parties failed to put on record necessary documents required for disposal of the matter.

29. In view of these facts, the Authority hereby directs the respondent-promoter to issues fresh statement of account after reconciliation of assured return and make payment of pending assured return as per agreed terms of agreement and allotment.

G.II Direct the respondent not to charge illegal demands pertaining to sinking fund, labour cess etc. amounting to Rs. 4,38,083/-.

30. The complainant submitted that vide notice for possession dated 07.10.2020 (page 30-31 of complaint), the respondent raised illegal demand of Rs. 4,38,083/- on pretext of following -

Sinking fund- Along with offer of possession the respondent charges an amount of Rs. 2,17,501/- on account of sinking fund (@Rs. 2.50 per sq. ft. per month (plus tax) for 5-year advance). It is a general practice that amount on account of IFMS (Interest-free maintenance charges) has been charged by the builder to meet the unforeseen future capital expenses and capital expenditure/loss. Another charge by any other name be it "sinking charges" on account to fulfil purpose to meet capital expenditures/loss would not be justified. Moreover, no purpose for collecting such charges has been defined and thus, the respondent is not entitled to charge any amount on account of sinking fund.

Labour cess- It is observed that the responding has charged an amount of Rs. 25,502/- on account of labour cess. The labour cess is levied @1% on

the cost of construction incurred by an employer as per the provisions of section 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with notification no. S.O 2899 dated 26.09.1996. It is levied and collected on the cost of construction incurred by employer including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint titles as **Mr. Sumit Kumar Gupta and Anr. Vs. Supset Properties Private Limited (962 of 2019)** wherein it was held that since labour cess is to be paid by the respondent, as such, no labour cess should be charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainant is completely arbitrary and they cannot be made liable to pay any labour cess to the respondent. It is the respondent builder who is solely responsible for the disbursement of said amount.

The builder is supposed to pay a cess for the welfare of the labour employed at the site of construction and which goes to the welfare boards to undertake social security schemes and welfare measures for building and other construction workers. So, the demand raised is not valid one and the allottees are not liable to pay the labour cess amount.

Infrastructure augmentation charges - Infrastructure Augmentation Charges (IAC) is basically money charged from a developer for additional FAR used in relation to the granted one. The respondent has charged an

amount of Rs. 22,434/- on pretext of IAC calculated @ 16.30 per sq. ft plus taxes. Such levy is made by the Haryana Government to cop up with the extra burden of facilities it has to made available due to such violation of FAR. Since the allottees are to be ultimately get the benefit of those services, hence, the respondent is right on charging Infrastructure Augmentation Charges.

Electric Switch in station and deposit charge- An amount of Rs. 1,55,246/- has been charged by the respondent on pretext of electric Switch in station and deposit charge. As per clause of application form (on page no. 34 of complaint), such price was exclusive of various charges such as electricity connection, water, sewage, electric connection deposit, electric and meter deposit, gas pipeline deposits, payments for additional capital equipment for common use. As per perusal of aforesaid clause, the respondent is right in charging Rs. 1,55,246/- on pretext of electric Switch in station and deposit charge. However, it is to be noted that since it is a case where no buyer's agreement has been executed inter-se parties, the allottees shall not be burden by any un-necessary charges twice by any other name.

31. Sewage/storm water charges - The respondent builder has charged an amount of Rs. 17,400/- on account of sewage and storm water charges. Since no buyer's agreement has been executed between the parties, general view is considered in this particular case. As decided in **complaint bearing no. 4031/2019 titled as Varun Gupta Vs Emaar MGF Land Limited**, the promoter would be entitled to recover the actual charges paid to the

concerned department from the complainants on pro-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the unit allotted to them vis-à-vis the area of all the units in that particular project. The complainants would also be entitled to proof of such a payment to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid head.

G.III Direct the respondent to provide GST input credit to be adjusted on the possession.

32. The complainants submitted that the respondent has not passed any benefit of GST input tax credit in their favour. The respondent on the other hand submitted that since the booking of complainants was made on 15.03.2019, hence post GST era, input tax credit is not applicable.
33. Vide 33rd & 34th GST council meeting dated 24.02.2019 & 19.03.2019, amended rate for GST has been introduced providing applicable input tax credit provisions for different type of projects. The respondent shall provide input tax credit as per applicable rates vide aforesaid amendments.

G.IV Direct the respondent to issue a fresh demand after removing all illegal entries, providing adjustment of pending assured return and pending GST input credit.

34. The respondent is directed to provide a fresh statement of account after taking into account of aforesaid directions of the Authority with regards to various illegal/ legal demands claimed by the complainants within 15 days of date of this order.

G.V Direct the respondent to provide escalator in front of the retail shop as per the layout plan or provide an alternate shop having that facility.

35. The complainants' in para 21 pleaded that after notice of the possession dated 07.10.2020, they visited the site to see the actual status of the construction but were shocked to find out with that the respondent-builder has not done the construction as per the layout plan shared with them. The respondent has also failed to install the escalator in front of the shop which was the main attraction for the complainant to choose that particular retail unit. To support that contention, the complainants made a reference to annexure P7 on page no. 43 of complaint. On the other hand, the respondent submitted that there was no escalator proposal in front of the allotted unit of the complainants and the same is evident from floor plan dated 13.02.2019 annexed as annexure R 22 on page no. 83 of reply.
36. Since the complainants still wish to continue with the project, so for claiming compensation under sections 12, 14, 18 and section 19 of the Act, they may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules. The complainants are seeking relief w.r.t. compensation in the above-mentioned reliefs. *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.,* 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.

H. Directions of the Authority:

37. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- i. The respondent is hereby directed to issues fresh statement of account after reconciliation of assured return and make payment of pending assured return as per agreed terms of agreement and allotment.
 - ii. The respondent/promoter is further directed to issue fresh statement of account after taking into consideration of above finding of Authority within 15 days from date of this order.
 - iii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
38. Complaint stands disposed of.
39. File be consigned to the registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.07.2023