BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.:	**279 of 2018 and 6059 of 2019**
Date of decision: -	**14.03.2023**
Date of pronouncement of order: -	**25.07.2023**

1.	**Cr/ 279/2018**	Privvya93 Owners Association	**Complainant**
2.	**Cr/6059/2019**	Privvy Owners Association	**Complainant**
Both having residence at: - I-601, Parkview Spa, Sector – 46, Gurugram-122018			
Versus			
Spaze Towers Pvt. Ltd. **Regd. Office: -** Spazedge, Sector 47 Gurugram-122002			**Respondent**

CORAM:	
Shri Vijay Kumar Goyal	**Member**
Shri Ashok Sangwan	**Member**
Shri Sanjeev Kumar Arora	**Member**

APPEARANCE:	
Shri Chitranjan Gupta, General Secretary and Advocate Shankar Wig	For both the Complainants
Shri J.K. Dang (Advocate)	Respondent

ORDER

1. The present complaint dated 16.05.2018 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 28 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 provisions 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 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:

Succinct facts of the case are as under: -

S.N.	Particulars	Details
1.	Project name and location	"Privy The address", Sector 93, Gurugram, Haryana.
2.	**Project area**	10.866 acres
3.	**Nature of project**	Residential group housing complex
4.	**RERA registered/not registered**	**Not registered**
5.	DTPC License no.	07 of 2011 dated 15.01.2011
6.	Occupation Certificate details	**OC received dated 20.07.2018 for tower/block-**

		➢ Tower A (ground floor to 14th floor) ➢ Tower B (ground floor to 14th floor) ➢ Tower C (ground floor to 14th floor) ➢ Tower D (ground floor to 14th floor) ➢ Tower E (ground floor to 19th floor) ➢ Tower F (ground floor to 19th floor) ➢ Tower G (ground floor to 18th floor) ➢ Tower H (ground floor to 19th floor) ➢ Tower I (ground floor to 13th floor) ➢ Tower J (ground floor to 9th floor) ➢ EWS block (ground floor to 7th floor)

B. Facts of the complaint

3. That the project was launched by the promoter in the middle of 2011. A large number of allottees had applied at the time of initial offering itself. After paying 30% of basic cost of the apartment, the promoter sent one sided buyer agreement to be executed by the buyers.

4. As per BBA, the apartments were committed to be delivered within 3 years from the date on the BBA. The complainant-allottees have

received a demand letter dated 06.11.2017whereby the promoter has raised illegal demands which arise out of unjustified increase in super area. The grievances of the complainant arise mainly out of demand raised in letter, poor quality workmanship, offering of possession without OC, illegal enrichment of the promoter through over charging of EDC/IDC and non-provision of facilities promised by the promoter at the time of sale of the project.

5. The promoter has not registered the project under RERA despite the fact that construction activity is still going on. The increase in super area by 6-12% has been claimed despite no increase in total land area. The promoter has not explained the nature of labour cess. Even the permissive possession offered in Nov 2017 is without completing the apartment.

It is apparent from the foregoing that the Promoter has defaulted on many of their commitments and have also tried to cheat the buyers. He has tried to fleece the Buyers of the apartments in whatever manner is possible. In fact, some of the actions of the Promoter are with malafide intentions. Exemplary punishment/penalty needs to be imposed on him for his illegal acts of commission and omission.

6. One of the complaints in question (bearing number CR/279/2018), the facts of which is mentioned above was disposed off by the Authority on 11.04.2019, while exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent: -

(i) *The respondent-builder is directed to handover the possession of the allotted units to the respective buyers. Since the occupation certificate has been received by the respondent, as such, the respondent is directed to offer the possession to the allottees urgently within a week's time. All the affected home buyers are directed to take possession from the respondent within a period of 30 days after the receipt of offer of possession.*

(ii) *As per section 19(6) of the Real Estate (Regulation and Development) Act, 2016 those allottees who want to contest on the point of additional charges being sought by the respondent may agitate their grievances before the adjudicating officer.*

7. Vide order dated 15.11.2019 of the Hon'ble Appellate Tribunal, it has remanded the present complaint for dilation over the issues mentioned in para 3 of the said order. The relevant para is here as under:-

3. The learned Authority vide impugned order dated 1.1.04.2019 has directed the appellant/allottees to agitate their grievances before the Adjudicating Officer. Learned counsel for the appellant has stated that the disputed charges were for the super area, club, facade charges, maintenance charges, external electrification/water/sewer and meter charges, PLC, EDC/IDC, labour cess and VAT and unilateral increase in transfer fee

Appellants have also raised to the disputes with respect to the permissive possession and offer of possession without completion, sale of open spaces, no approach road, non-adherence to subvention agreements, green cover, swimming pool/amenities etc.

8. The complaint was remanded back and fixed for hearing. The Authority after hearing both the parties held that: -

"Both the parties are directed to submit their versions on the points raised in the remand order in a tabular form for early disposal of the disputes arisen between the parties.

Respondent shall also submit a detailed report w.r.t amount towards EDC/IDC charged from the allottees and the amount deposited with the DTCP.

Respondent is at liberty to file response to the written submissions submitted by the complainant before the next date of hearing.

Case is adjourned to 17.1.2020"

9. Vide order dated 05.03.2020, the Authority was of the considered view that large numbers of issues HAS BEEN involved in the complaint. Hence, the Authority decided to appoint Dr. Suprabha Dahiya, IAS (retired) as Investigating Commissioner to investigate into the issues and submit the requisite report.

10. A report was submitted by Investigating Commissioner on 18.12.2020, wherein she stated that both the parties were called to submit the

records/documents for inquiries into the issues. After perusing all the documents, she gave the following findings-:

"As per clause 9 of allotment letters and clause 1, 24 and 50 of buyer's agreement, the allottee was informed about the details of common areas taken into consideration to calculate super area and allottee was aware about the increase/decrease of super area upon completion of project and buyer's consent was to be taken only if increase in super area was more than 10% of the tentative super area. As per clause 38(c) of the agreement, the allottees have consented to pay maintenance charges, IFMS to security to the developer or his nominated agency, and charges for repair of external façade of the buildings. Further, as per clause 1.2(c) of the buyer agreement dated 26.04.2013, the allottees have consented to pay EDC @ OF Rs. 316.37 per sq.ft. and IDC @of Rs. 32.31 per sq. ft., the rate fixed by the State Government. Also, the allottee have consented to make payment of external electrification charges and all cesses regardless of the nature in accordance with clause 8 and 3 respectively of the agreement. Lastly the allottees were asked to give specific inputs regarding the areas

where the developer has failed to provide amenities as promised. The complaints on this issue could not be substantiated by the complainant and appear to be based on conjectures. Regarding the current status of the project, the allottees were offered possession in July 2018 and almost 80% of the flats are occupied."

11. Complainant association raised objections to the said report and further requested to initiate the enquiry again w.r.t. concerned matter.

C. Relief Sought

a. To direct the respondent to pay delay interest on the amount paid by the complainant.

b. Striking down of illegal charges levied by the promoter under the heads i) VAT-1, BBA clause 55, (Rs. 40,307), ii) VAT 2 clause 55, (Rs.52,123), iii) Labour cess, clause 55, (Rs.21,160), iv) Club development charges, clause 9 (Rs. 36,156), v) Façade Repair charges, clause 38 c) (Rs. 46,000), vi) Security deposit for electrical, water and sewer, clause not advised by the promoter, (Rs. 18,566) and vii(External electrification (including 33 KV), water, sewer and meter charges, clause 8 i),ii),iii),iv), & viii), Rs. 1,58,553), and the resultant interest. The amounts mentioned here are exclusive of GST.

c. Striking down the increase in Super Area and the resultant increase in total basic price (Rs. 3,68,940) and the preferential location charges (Rs. 14,300), and the resultant interest. The actual area delivered is less than that promised. The promised should be asked to refund the excess charges after actual calculation

d. Payment of subvention by the promoter till legal possession is given after receipt of OC. The sample case is not a subvention case. Amounts need to be determined for other complainant by the promoter.

e. Striking down PLC (Rs. 1,69,700) if the promoter is not able to establish the preferential location to the satisfaction of the complainant.

f. Refund of excess EDC/IDC.

g. Direct the respondent to get the approach road constructed before offering possession.

h. Direct the respondent to establish that provisions for sufficient power back up has been made looking into the peak demand after full occupation.

i. Fixing of reasonable transfer charges that can be charges by the promoter as administrative charges for allowing a transfer. These

charges should be commensurate with the cost to be incurred and as such should not exceed Rs. 20,000.

j. Direct to the respondent to finish the apartments properly before offering possession and raising final demand.

k. Direct the promoter to satisfy the complainant that various facilities/amenities a promised/stipulated have been adequately provided through experts engaged by the complainant.

l. Permission to sell the subject apartments during the pendency of this complaint while keeping this complaint live.

D. Reply by the respondent

12. That the present complaint is not maintainable in law or on facts. The complainant has no locus standi or cause of action to file the present complaint. The details of constructions and allottees have not been provided.

13. That it is respectfully submitted that the relief claimed by way of the present complaint cannot be granted under the Act. Not only are the provisions of the Act inapplicable to the project in question but the same do not, by any stretch of imagination, amount to a dispute involving contravention or non-compliance of the Act. The complainant, inter alia, has impugned several clauses of the Buyer's Agreements that

have been executed voluntarily between the allottees of apartments in the said project, with the respondent. It is submitted that the question of legality of the agreements cannot be gone into in proceedings under the Act.

14. That in so far as relief pertaining to payment of compensation etc is concerned, it is submitted that the question of grant of such relief can only be decided by the Adjudicating Officer under Section 71 of the Act and not by this Hon'ble Authority. The present complaint is liable to be dismissed on this ground alone. That the complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of allotment, as shall be evident from the submissions made in the following paras of the present reply.

15. Thus, the complaint has been filed not by an allottee under the Act but an investor and thus the present complaint is not maintainable for this reason as well.

16. Copies of all the relevant documents have been duly filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint

can be decided since these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

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

17. 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

18. The 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.

19. 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 complainant at a later stage.

F. Findings on the objections raised by the respondent

F.I Objections regarding that the respondent has made an application for grant of occupation certificate before coming into force of RERA:

20. The respondent-promoter has raised the contention that the said project of the respondent is a pre-RERA project as it has already applied for obtaining occupation certificate from the competent authority on 22.05.2017 i.e., before the coming into force of the Haryana Real Estate (Regulation and Development) Rules, 2017 on 28.07.2017. As per proviso to Section 3 of Act of 2016, ongoing projects on the date of this Act i.e., 28.07.2017 refers to the project for which completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project

within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder: -

> *Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:*
>
> *Further as per Rule 2(o) of Haryana Real Estate (Regulation and Development), Rules 2017 provides as under -: on going project" means a project for which a license was issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on or before the 1st May, 2017 and where development works were yet to be completed on the said date, but does not include: (i) any project for which after completion of development works, an application under Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 or under sub code 4.10 of the Haryana Building Code 2017, as the case may be, is made to the Competent Authority on or before publication of these rules and (ii) that part of any project for which part completion/completion, occupation certificate or part thereof has been granted on or before publication of these rules.*

21. As was held in landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** decided on 06.12.2017 which provides as under:

> *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."*

22. The legislation is very clear in this aspect that a project shall be regarded as an "ongoing project" until receipt of completion certificate. Since no completion certificate has been obtained by the promoter-builder within the dates stipulated in the above Act/rules(above-mentioned), with regards to the concerned project, the plea advanced by it is hereby rejected.

F.II Finding on the relief sought

23. The present case was filed in the authority on 16.05.2018 and the same was disposed of on 11.04.2019. The precise details of case have already been discussed in the earlier part of this order. Subsequently, it has been remanded back from the Appellate Tribunal on 15.11.2019 and it was fixed for hearing on 17.12.2019. The authority vide order dated 05.03.2020 appointed Dr. Suprabha Dahiya, IAS (Retd.) (Investigation commissioner) to investigate into the issues pertaining to this complaint, the enquiry report of the Dr. Suprabha Dahiya, IAS(Retd.) (Investigation commissioner) was submitted vide reference letter dated 18.12.2020. Thereafter, the complainant-association raised objections against the report of investigation commissioner and made their submissions that the said report dated 18.12.2020 be rejected and further, requested to initiate enquiry into

the matter concerned by authority. The complainant also through written submissions stated that respondent have made incorrect, false and misleading statements. It further stated that there was a delay of about 2 years in the execution of the agreement and in some cases more than 4 years delay in execution of the agreement. Lastly, it was stated by them that respondent has arbitrarily increased the super area of units wherein it categorically mentioned that respondent failed to intimate the complainant about the change in super area and raised a demand of huge amount and also increasing the area of the units of the project without taking consent of 2/3rd allottees of the project has violated section 14 of the Act and thus liable to be penalised accordingly.

24. The case of the respondent is that the complaint has been filed by 87 members of the association out of them the respondent/builder has already settled 72 matters. It has to be taken into consideration that only 15 allottees are left in this complaint. These 15 allottees wished to continue with the case as neither they opted for out of court settlement nor requested the authority under section 32(g) of the RERA act of 2016 to amicably settle the matter. Now the question arises whether the present complaint with these 15 allottees are

maintainable or not and can be further proceeded or not. As per section 31 of the Act,

> *31. Filing of complaints with the Authority or adjudicating officer-: any aggrieved person may file a complaint with the authority or adjudicating officer...*

25. It can be understood that any person who is aggrieved can file the complaint further we need to read it with the definition clause, which is there in section 2 of the Act, wherein section 2 (zg) describes the word "person"-:

> *(zg) "person" includes,-*
> *(i) an individual;*
> *(ii) a Hindu undivided family;*
> *(iii) a company;*
> *(iv) a firm under the Indian Partnership Act, 1932 or the Limited Liability Partnership Act, 2008, as the case may be;*
> *(v) a competent authority;*
> ***(vi) an association of persons or a body of individuals whether incorporated or not;***
> *(vii) a co-operative society registered under any law relating to co-operative societies;*
> *(viii) any such other entity as the appropriate Government may, by notification, specify in this behalf;*

26. After reading the above-mentioned clause it can be understood that even though the present complaint only pertains to 15 allottees still it

is maintainable and can be proceeded further as the present complainant is an association of person.

27. The authority has already adjudicated relief no.1 vide proceeding dated 31.01.2023, wherein it has held that the individual allottees are advised to file separate complaints for each unit. The said relief of delayed possession charges is said to be adjudicated and further no direction can be given in this regard.

28. Vide proceeding dated 14.03.2023, Advocate Shankar Vig appeared on behalf of complainant and stated that he represents the main Privvy39 owners' association.

29. As far as complaint no. 6059/2019 w.r.t. to compensation in lieu of mental agony/harassment is concerned the authority is of the view that as it was held in ***Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.(supra),*** 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. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may if they wish to file a separate complaint before the Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

30. As far relief no. 2 to 12 are concerned, wherein complainant approach the authority w.r.t. striking down of VAT, labour cess, club development charges, façade repair charges, maintenance charges, sewer and meter charges, preferential location charges, unilateral increase in transfer fees, external electrification charges, unjustified increase in super area, excess charge of EDC/IDC. The detailed discussion/finding on the above-mentioned issues are as follows -:

i. **VAT and Labour cess-** The complainants have stated that the respondent is demanding more than Rs. 1 Lakh from each allottee on account of labour cess and VAT. They have further stated that the claim being raised by the respondent on account of labour cess and VAT is illegal as it is against the RERA act 2016 and the terms of buyer agreement. On the contrary it was mentioned by the respondent that both the charges raised strictly in accordance with the terms of the agreement. It is also mentioned in the agreement that the respondent

can demand any additional tax at any stage during construction of the apartment or at any time up to the execution of the registration of formal sale deed. Thus, demand is valid, legal and legitimate. As per findings of the report, the complainants have consented to pay these charges as per clause 3 of the agreement. It was also stated that entire payment was made on 08.12.2016. Hence, the developer could not factor both labour cess and VAT in the basic price of the flat as actual demand for both the taxes was raised at a later stage by the state Government.

ii. **Club development charges** - The complainants have stated that the respondent's claim for the ownership of the club and other club charges are illegal and against the RERA Act 2016. The respondent is charging membership charges from the apartment owners for the club in the project. They have also been informed by them that the club in the project is owned by them and the same is not a part of the project. On the contrary the respondent has stated that it is wrong to state that club is not a part of the project. However, it is there claim that the club does not form a part of the common area and facilities of the project. As per findings of the report, bare reading of deed of declaration filed by the developer under section 11 of the Haryana Apartment

Ownership Act,1983 and clause 9 of the buyer agreement, the club, nursery school site etc. have been specifically excluded from the purview of common areas and facilities. The exclusion has been upheld by ***Hon'ble Supreme Court in DLF Limited Vs. Manmohan Lowe and others SC 1255/2013.*** The developer has not charged anything from the flat allottees for the construction of the club building rather it is a mere conjecture of them that club has been constructed by the developer out of payments made by them to the developer as they could not submit any document to prove it.

iii. **Façade Repair Charges and Common Maintenance Charges** – Both the parties choose to discuss these two issues together. The complainants have alleged that demand of maintenance charges and security deposit is illegal and against the provisions of the RERA Act and Rules. They stated that respondent is charging Rs. 1,84,000/- and more than Rs. 50,000/- on account of maintenance charges and Façade repair. On the contrary the respondent stated that as per agreement, allottees have agreed and undertook to make payment of the aforesaid charges. As per finding of report, as per clause 38(c) of the agreement, the allottees have consented to pay maintenance charges, IFMS to the

developer or his nominated agency and charges for façade repair of the buildings but at a reasonable cost.

iv. **Water, Sewer and meter charges**- Although they were seeking the said charges through their complaint but at the time of arguments, they stated that they have no complaint regarding water, sewer and meter charges.

v. **Excess charges of EDC/IDC** – They have alleged that the rates of EDC and IDC charged by the respondents are not in accordance with the Haryana Govt. rates and as such the amount claimed by them is unlawful, illegal and thus be refunded back to them. On the contrary the respondents have stated that EDC and IDC are payable to the State Govt. and as per agreement, they same have been charged at the rates fixed by the Government. As per finding of report, the allottees have consented to pay these charges which was mentioned in clause 1.2(c) of the agreement and also as per report obtained during inquiry from the accounts officer, DTCP, Haryana Chandigarh dated 10.11.2020, the developer has deposited Rs. 2895.82 Lakhs as EDC and Rs. 291.64 as IDC. Thus, after perusal of the document i.e., deed of declaration and others that has been put on record, the developer has not taken excess amount from the allottees w.r.t. excess charges of EDC/IDC as alleged

by the complainant-allottees. The developer is required to charge the actual amount of EDC/IDC as paid to government strictly as per agreement and complete details to be provided to the complainant-association.

vi. **Preferential location charges** – During arguments before the Investigating commissioner, the complainants were asked to submit specific examples where the developer has taken charges for PLC at the time of booking but changed the location of the flat to non-PLC at the time of offer of possession even after that the developer is still demanding PLC charges. They were also given time up to 06.11.2020 to submit specific examples through email but they have not submitted even a single example, like the charge is for two side open door or balcony area etc. hence this allegation could not be proved. Moreover, the authority observes that even if the respondent has charged PLC from the complainant-allottees, they should have submitted the proper details within the prescribed time. The same has not been complied with accordingly. The respondent-builder to charge strictly as per agreement only in respect of units situated with PLC and not for non-PLC units.

vii. **External Electrification Charges** – the complainant-allottees have stated that they have already paid the said charges as the same were already included in the cost of the apartments. They further stated that it is the duty of the developer to provide electrification and other services at the doorstep of the allottees of the individual apartments as a part of "external development works "and "internal development works". But the contention of the respondent is that "as per *clause 8(vii) of the agreement the allottees undertakes to pay extra charges on account of external electrification as demanded by HUDA/ any other concerned authority*". As per the findings of the report, there is also an issue that came across before the Commissioner that whether the respondent has taken more amount from the allottees, compared to what has been demanded/deposited with the power utilities department for providing external electrification. It is observed that it is an amount charged by the developer only to setup the infrastructure for bringing electricity to the apartment. The complainant have relied on the details of payment made by the respondents to DHBVN(power utility department)obtained from DHBVN through RTI through which it is informed that respondent has deposited Rs. 1.21 crores with DHBVN for providing external

electrification on the contrary as per documents provided by respondent they have deposited in total Rs. 10.64 crores with the department for external electrification purposes and not Rs. 1.21 crores as claimed by the respondent. As it is a charge deposited with the government department, the developer is required to provide the complete details to the complainant-association w.r.t. the said charges.

viii. **Unjustified increase in Super Area –** The issue of increase in super area is an important issue as several payments are computed based on the calculation of super area. As per report, the actual dimension of common areas for calculation of super area have been taken as per occupation certificate, deed of declaration and the developer has submitted a detailed report dated 20.11.2020 and clarification dated 28.11.2020 certifying that the calculations are based on the occupation certificate and actual spot verification. It was also mentioned in the report that overall, it was found that the measurements and calculations as submitted by the developer for the calculation of super area are correct. Even the developer has provided 2015.0 sq. mtrs super area against which he has raised demand of only 1839.32 sq. metres. The plea of the developer is that

he does not want to change more than 10% as stipulated in the agreement and hence he has restricted himself to 8% increase in super area. In conclusion as per the report, the developer has not taken excess amount from allottees w.r.t. the above-mentioned charges. Through written arguments dated 05.04.2023, that has been filed by the complainant wherein he has stated that there are lapses w.r.t. super area and carpet area. Clause 24 of the BBA deals with the said relief which is as follows _:

"that in case of any major alteration / modification resulting in excess of 10% change in the super area of the flat in the sole opinion of the developer any time prior to and upon the grant of occupation certificate, the developer shall intimate the flat allottee(s) in writing the changes thereof and the resultant change, if any, in the sale price of the flat to be paid by him/ her and the flat allottee(s) agrees to deliver to the developer in writing his / her consent or objections to the changes within fifteen (15) days from the date of dispatch by the developer of such notice failing which the flat allottee(s) shall be deemed to have given his / her full consent to all such alterations / modifications and for payments, if any, to be paid in consequence thereof. if the written notice of the flat allottee(s) is received by the developer within fifteen (15) days of intimation in writing by the developer indicating his / her non-consent / objections to such alterations / modifications as intimated by the developer to the flat allottee(s), then in such case this agreement shall be cancelled without further notice and the developer shall refund the money received from the flat allottee(s) after deducting earnest money within ninety (90) days from the date of intimation received by the developer from the flat allottee(s). on payment of the money after making deductions as stated above the developer and / or the scheduled property owners shall be released and discharged from all its obligations and liabilities under this agreement. in such a situation, the developer shall have an absolute and unfettered right to allot, transfer, sell and assign the flat and all attendant rights and liabilities to a third party. it being specifically agreed that irrespective of any outstanding amount payable by the developer to the flat allottee(s), the flat allottee(s) shall have no right, lien or charge on the flat in respect of which refund as contemplated by this clause is payable."

In the case of ***Varun Gupta V/s Emaar MGF Land Limited 4031/2019, 12.08.2021*** wherein authority already taken a view that the demand for extra payment on account of increase in the super area by the respondent-promoter from the allottee(s) is legal but subject to condition that before raising such demand, details have to be given to the allottee(s) which in the present case is intimated as was mentioned in the report that as per clause 9 of the allotment letter, clauses 1.1, 1.2(d), 24 and 50 of the agreement, the allottees were informed about the details of common areas taken into consideration to calculate super area and allottee was aware about increase/decrease of super area upon completion of the project and buyer consent was to be taken only if increase in super area was more than 10 % of the tentative super area whereas as per deed of declaration a flat having tentative super area was intimated as 1697 sq. ft. which has now been increased to 1839.32 sq. ft. an increase of about 8% in the super area. Also, there are numerous judgements of this authority wherein the developer has been put under an obligation to not to increase the capping of 10% increase in super area of the flats without intimation to the buyers.

31. Hence, the authority hereby disposes off the complaints on the basis of the report of Dr. Suprabha Dahiya, Investigating Commissioner.

32. Complaint stands disposed of.

33. File be consigned to registry.

(Sanjeev Kumar Arora)	(Ashok Sangwan)	(Vijay Kumar Goyal)
Member	Member	Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.07.2023