BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	1644/2018
Date of filing complaint:	17.11.2018
First date of hearing:	20.02.2019
Date of decision	25.04.2023

NAME OF THE BUILDER		M/S EXPERION DEVELOPERS PVT. LTD.	
PROJECT NAME		"WINDCHANTS"	
S. No.	Case No.	Case title	APPEARANCE
1	CR/1644/2018	Sunil Kumar Nigam Vs. Experion developers pvt. Ltd.	Sh. Gaurav Rawat Sh. J.K Dang
2	CR/1645/2018	Sunil Kumar Nigam Vs. Experion developers pvt . Ltd.	Sh. Gaurav Rawat Sh. J.K Dang

CORAM:

Shri Vijay Kumar Goyal — **Member**
Shri Ashok Sangwan — **Member**
Shri Sanjeev Kumar Arora — **Member**

ORDER

1. This order shall dispose both 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"). Since the core issues emanating from these complaints are similar in nature and the

complainant in the above referred matters are allottee of the projects, namely, Windchants, Sector 112, Gurugram being developed by the same respondent promoter i.e., Experion Developers Private Limited. The terms and conditions of the apartment buyer agreements that had been executed between the parties *inter se* are also almost similar with some additions or variation. The fulcrum of the issue involved in both these complaints pertain to failure on the part of the respondent/promoter to deliver timely possession of the units in question, seeking award for delayed possession charges , possession. The complainant(s) have refuted various charges such as increase in super area, GST, VAT, advance maintenance charges, EDC/IDC, compensation etc.

2. Both the aforesaid complaints were filed under section 31 of the Act read with rule 28 of the rules by the complainant-allottee against the promoter M/s Experion Developers Private Limited on account of violation of the apartment buyer agreement executed between the parties *inter se* in respect of said units for not handing over possession by the due date which is an obligation on the part of the promoter under section 11(4)(a) of the Act ibid apart from contractual obligation.

3. Since, the apartment buyer agreements have been executed prior to the commencement of the Act ibid, therefore, the penal proceedings cannot be initiated retrospectively on account of failure of the promoter to give possession by the due date and violation of provisions of section 11(4)(a) of the Act. Delay possession charges to be paid by the promoter is positive obligation under proviso to section 18 of the Act in case of

failure of the promoter to hand over possession by the due date as per builder buyer's agreement.

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

Project: Windchants, Sector-112, Gurugram

Possession clause: 10. Project completion period

10.1 Subject to Force Majeure, timely payment of the Total Sale Consideration and other provisions of this Agreement, based upon the Company's estimates as per present Project plans, the Company intends to hand over possession of the Apartment **within a period of 42 (forty two) months from the date of approval of the Building Plans or the date of receipt of the approval of the Ministry of Environment and Forests, Government of India for the Project or execution of this Agreement, whichever is later** ("Commitment Period"). The Buyer further agrees that the Company shall additionally be entitled to a time period of 180 (one hundred and eighty) days ("Grace Period") after expiry of the Commitment Period for unforeseen and unplanned Project realities.
However, in case of any default under this Agreement that is not rectified or remedied by the Buyer within the time period as may be stipulated, the Company shall not be bound by such Commitment Period.
Note: Grace period of 180 days is not allowed.

Table for both the complaints

Sr. no	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit no. and size of unit	Date of allotment letter	Date of execution of apartment buyer agreement	Due date of possession	Total sale consideration and amount paid by the complainant	Date of offer of possession & OC
1.	CR/1644/2018 Sunil Kumar Nigam V/s Experion Developers Private Limited DOR-17.11.2018	Filed on 19.12.2018	2704, 27th floor, WT-07 Unit size increased to 2441 sq. ft. from 2275 sq. ft.	04.08.2012	26.12.2012	24.12.2016 [Calculated from the date of environmental clearances, being later i.e. 27.12.2012 plus grace period is allowed]	TSC: Rs. 1,57,26,815 AP: Rs. 1,46,57,057	08.12.2017 OC-06.12.2017

2.	CR/1645/2018 Sunil Kumar Nigam V/s Experion Developers Private Limited DOR-20.10.2020	Filed on 13.11.2020	1903, 19th floor, tower- 3 Unit size increased to 2802 sq. ft. from 2650 sq. ft.	17.09.2012	26.12.2012	24.12.2016 [Calculated from the date of environmental clearances, being later i.e. 27.12.2012 plus grace period is allowed]	**TSC:** Rs. 2,17,72,650 **AP:** Rs. 2,25,42,464	**08.12.2017** **OC- 06.12.2017**

Relief sought:

1. *Direct the respondent to pay an amount to be calculated @18% p.a. on total consideration paid from 07.12.2015 till date of handing over of possession after obtaining completion certificate.*
2. *Direct the respondent to waive off excess amount of Rs. 9,71,432/- demanded through demand cum notice of possession letter dated 08.12.2017 for the purported increase in saleable area.*
3. *Direct the respondent to refund payment if calculated sale area is less than booked area of 2275 sq. ft. along with interest @18% from the date of booking i.e. 21.08.2012.*
4. *Direct the respondent to refund the excess amount collected towards the unaccounted build up area of 500 sq. ft. by wrongly referring at as "sale area".*
5. *Direct the respondent to bear the burden of GST without imposing the same on the complainant and refund the amount to be calculated in terms of input tax credit received by the respondent for the GST charged till date along with interest @ 18%.*
6. *Direct the respondent to refund VAT charges illegally demanded and collected by the respondent.*
7. *Direct the respondent to refund the sales tax on IDC/EDC charges collected.*
8. *Direct the respondent to charge monthly maintenance of flat as per carpet area of flat.*
9. *Direct the respondent to waive off excess amount of Rs.3,33,405/- demanded through demand cum notice of possession letter dated 09.12.2017 for the purported ad hoc charges not part of ABA.*
10. *Direct the respondent to pay Rs. 50,00,000/- as compensation against mental harassment, hardship and trauma* and Rs. *Rs. 10,00,000/- as litigation cost.*
11. *Pass an order that the above compensation will not be liable for any taxes including personal income tax.*
12. *Direct the respondent to waive off penalty imposed on delayed payment for duration of conflict/ litigation.*

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

DOR- Date of receiving of complaint
TSC- Total sale consideration
AP- Amount paid by the allottee(s)
OC- Occupation certificate

5. The facts of both the complaints filed by the complainant/allottee(s) are also similar. So, out of the above-mentioned cases, the facts of the lead case of CR/1644/2018 titled as Sunil Kumar Nigam Vs M/s Experion Developers Pvt. Ltd. are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges and other reliefs sought by the complainant in the abovementioned complaints.

A. Project and unit related details

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

S. N.	Particulars	Details
1.	Name of the project	Windchants, Sector-112, Gurugram
2.	Nature of the project	Group housing colony
3.	DTCP License no.	i.) 21 of 2008 dated 08.02.2008 Valid up to - 07.02.2020 ii.) 28 0f 2012 dated 07.04.2012 Valid up to - 06.04.2025
4.	RERA registered/ not registered	i.) **64 of 2017** dated 18.08.2017 Valid up to 17.08.2018 ii.) **73 of 2017** dated 21.08.2017 Valid up to 20.08.2019 iii.) **112 of 2017** dated 28.08.2017 Valid up to 27.08.2019
5.	Building plan granted on	07.06.2012 (Page 180 of reply)
6.	Environment clearance granted on	27.12.2012 (Page 164 of reply)

7.	Unit no.	2704, 27th floor, tower WT-07 [Annexure-C1 on page no. 30 of complaint]
8.	Unit area admeasuring	2275 sq. ft. (Super area) [Annexure-C1 on page no. 30 of complaint]
9.	Increased unit area	2441 sq. ft. [As per demand letter dated 27.09.2017 on page no. 77 of complaint]
10.	Increase in area of the unit (in %)	7.30% (227.5 sq. ft.)
11.	Allotment letter	04.08.2012 [Annexure-C1 on page no. 30 of complaint]
12.	Date of apartment buyer agreement	26.12.2012 [Annexure-C2 on page no. 34 of complaint]
13.	Endorsement in favour of complainant	12.02.2015 [Annexure-R26 on page no. 117 of reply]
14.	Possession clause	**10 Project completion period** **10.1** Subject to Force Majeure, timely payment of the Total Sale Consideration and other provisions of this Agreement, based upon the Company's estimates as per present Project plans, the Company intends to hand over possession of the Apartment ***within a period of 42 (forty two) months from the date of approval of the Building Plans or the date of receipt of the approval of the Ministry of Environment and forests, Government of India for the Project or execution of this Agreement, whichever is later ("Commitment Period")***. The Buyer

		further agrees that the Company shall ***additionally be entitled to a time period of 180 (one hundred and eighty) days ("Grace Period") after expiry of the Commitment Period for unforeseen and unplanned Project realities***. However, in case of any default under this Agreement that is not rectified or remedied by the buyer within the period as may be stipulated, the Company shall not be bound by such Commitment Period.
15.	Due date of possession	24.12.2016 (Inadvertently mentioned in the proceeding of the day as 27.06.2016) [Calculated from the date of environmental clearances, being later i.e., 27.12.2012] ***Note: Grace period of 180 days is allowed.***
16.	Total sale consideration	Rs.1,57,26,815/- [As per statement of account dated 11.12.2018 on page no. 189 of reply]
17.	Amount paid by the complainant	Rs.1,46,57,057/- [As per statement of account dated 11.12.2018 on page no. 189 of reply]
18.	Part occupation certificate	06.12.2017 (As per page no. 79 of complaint)
19.	Offer of possession after receiving part OC	08.12.2017 (Annexure- C8 on page no. 84 of complaint)

B. Facts of the complaint

7. The complainant has made the following submissions in the complaint

   i. That the unit bearing no. WT07/2704 and 'sales area' 2275 sq. ft. was allotted to the complainant by way of transfer of title from the original allottee of the said flat i.e., Ms. Sunita Mittal who had booked the flat in 26.07.2012 and had thereby executed the apartment buyer agreement dated 26.12.2012. The said buyer's agreement was then endorsed in favour of the complainant herein on 12.02.2015.

   ii. That the aforesaid unit was purchased by the complainant from the original allottee for a sum of Rs. 1,00,45,333/- paid vide cheque bearing no. 314064 dated 04.01.2015. The complainant booked the apartment primarily relying on the respondent's assurance *inter alia* that they have already made good progress and all approval viz-a-viz license, building plans of the said complex have been approved by the competent authorities.

   iii. That as per the buyer's agreement, the possession of the subject apartment was to be handed over within 42 months from the date of building plan approvals. It may be noted that the booking of the said flat was done by the original allottee on 26.07.2012. Therefore, the complainant had hoped that the possession would be handed over to him within months as the date of purchase by the complainant from the original allottee was 04.01.2015 and moreover, the due date of possession is 27.06.2016.

   iv. That total sale consideration of apartment measuring 2275 sq. ft. was Rs. 1,44,35,772/- as per ABA inclusive of taxes. The original allottee had paid Rs. 1,05,57,208/- till the time the complainant

purchased this apartment on 04.01.2015. Subsequently, the complainant has been paying instalments as per the construction linked payment plan as mentioned in schedule V of the buyer's agreement.

v. That the respondent issued the notice of possession along with "Part Occupancy Certificate' and thereby calling for amount of Rs. 32,75,798/-. The respondent asked for excess payment of Rs. 15,60,885/- on the pretext of increased sale area (Rs. 9,71,432/-), ad hoc charges (Rs. 3,33,405/-) and GST which was not part of total sale consideration as per buyer's agreement. It may be noted that no prior communication or approval was obtained from the complainant regarding any increase in the saleable area, ad hoc charges beyond what was approved in the original sanction plans and what was represented in the buyer's agreement. The respondent ought to have informed the complainant about the same before altering the same area. However, the complainant got to know about the purported increase in the sale area only when the demand letter dated 27.09.2017 was issued to him for payment of Rs.9,71,432/-.

vi. That on several requests made by the complainant for a detailed calculation on the basis of which the additional amount was being charged for the purported increase in the saleable area, the same were met with evasive responses by the respondent and till date no detailed calculation has been provided to the complainant for the alleged increase in the saleable area.

vii. That it is believed that the respondent has obtained the purported occupation certificate through illegal means. Moreover, the respondent has failed to give any cogent for the delay of possession. Even otherwise, merely obtaining the part occupation certificate does not absolve the developer of his responsibilities under the applicable law. Moreover, the entire case of the complainant is that the part occupancy certificate has been obtained illegally by the respondent.

viii. That till date the complainant had paid total sum of Rs. 1,46,57,057/- . The respondent -builder has not handed over the possession of unit as promised even after five years. The notice of possession which was offered by the respondent – builder contained various unlawful, unjustified demands. The complainant visited the site and told the respondent – builder about incomplete works and project being not habitable and shared the pictures taken at site.

ix. The respondent – builder , for the first time on 28.04.2017 and after receiving more than 80% of consideration, sent email about alleged increase in sale area by 166 sq ft .No justification or details of alleged increase were provided by respondent – builder . The complainant has written *several emails from April 2017 to November, 2019 requesting the respondent* to share details of the alleged increase in

sale area but respondent never shared/provided any computations/calculations of the same.

x. That the respondent has unilaterally changed the definition of term 'Sale Area' in the agreement from the one used in application form .The respondent, while altering the definition, included not only community building but even open to sky Terrace Garden in Sale Area. Similarly, areas like swimming pool, Water tanks, Mumties, Sewerage Treatment Plants etc. which are a part of basic services and presumed to be included in basic Sale Price have also been added in Sale Area which is illegal/ unjustified.

xi. That despite repeated requests by complainant, the respondent has never provided calculation of sale area. That the respondent has failed to complete the construction of the alleged sale area including all common areas thus cannot charge any amount towards maintenance. Similarly the respondent builder cannot charge holding charges and are not payable even in those cases wherein specific clause has been prescribed in the agreement..

xii. Thus demand of Rs. 2,30,123/- by respondent qua maintenance charge is illegal and liable to be stuck down. As the said amount is

already paid by complainant, thus the respondent is liable to return the same along-with interest to complainant.

xiii. That VAT in State of Haryana was introduced in 2003. The HSVAT of Rs 96,538 collected from complainant is not payable as it was not a new tax levied subsequent to date of agreement. Even otherwise respondent cannot shift the burden of HSVAT upon complainant as the said amount was paid by respondent under an amnesty/composition scheme.

xiv. That EDC and IDC can only be collected as per actual liability. Despite various requests respondent has still not provided calculations of EDC and IDC and receipts or any proofs, of depositing the same with the concerned Authority. Respondent has *illegally collected an amount from* Complainant on account of EDC and IDC and service tax thereof.

xv. That the respondent wrongly demanded and collected 'Service Tax' on basic sales price. The respondent has also wrongly collected service tax on EDC and IDC, EDC and IDC themselves being a levy (tax), service tax cannot be charged on the same. Thus, the said

service tax, is liable to be refunded to complainant along-with interest.

xvi. That the respondent has charged from the complainant an exorbitant amount of Rs. 3,33,405 under the guise of Ad-hoc charges and to illegally substantiate the same has given further sub-headings as Dual Meter Charge, PHE Charges, FTTH Charges, Solar Power Charges, ECC charges., etc. Thus, the said amount of Rs. 2,35,500/- is liable to be refunded to complainant along-with interest.

xvii. The car parking area has been specifically excluded from the definition of sale area .It is not even a part of FAR. The respondent, in order to extract more money from complainant, has camouflaged the term 'Car Parking Use Charge' and illegally collected Rs 8,24,720 from respondent. As car parking is a part of common area and the apartment owners have undivided share in same, collecting car parking use charges by respondent is illegal. It is also pertinent to mention that maintenance charge payable by owners also include expenses of maintaining the car parking area hence there is no justification of respondent charging car parking use charge.

xviii. It is settled law that the builder cannot charge for car parking spaces, as the car parking falls within the definition of common areas and facilities; open to the sky parking or stilted portion used as parking space is not a garage and not saleable independently as a flat or alongwith flat.

xix. The demand under the guise of community building furnishing charges (CBFC Rs 224,000) and community building security deposit (CBSD Rs 100,000) by respondent, as made in the notice of possession and agreement, etc., is also against the terms of License No. 21 of 2008 and 28 of 2012 issued by the DTCP, Haryana, as well as the terms of Bilateral Agreement signed by the owner of land i.e. KNS Nirman Pvt. Ltd with the DTCP. Reference is made to clause C of LC IV dated 07.04.2012 wherein owner of the land is required and obligated to construct community buildings/centres at its own cost. The respondent has failed to provide any reasonable explanation for breach of terms of LC IV, bilateral Agreement, etc.

xx. That the said unit was not complete when the letter of possession was issued by respondent- builder. As per respondent's own emails dated 20.03.2019 and 20.11.2019 sky walk was only partly operational. If it

is the case of respondent that sky walk (terrace garden) is a part of Sale Area then as per his own admission, this part of sale area was not ready even two years after offering possession and claiming full payment for sale area. The complainant has attached photos of site taken in January 2018, which conclusively prove that the Project was not in a Habitable condition when possession was offered.

xxi. That the complainant was admittedly made to part with huge amount of money of Rs.11,00,000 while signing the application form whereas the apartment buyer agreement dated 26.12.2012 was shown to the complainant for the first time in December 2012. By the time complainant had to sign the agreement, complainant already parted with a huge amount of money and was left with no other option to sign on the dotted lines of the said agreement.

C. Relief sought by the complainant: -

8. The complainant has sought following relief(s):

   i. Direct the respondent to pay an amount to be calculated @18% p.a. on total consideration paid from 07.12.2015 till date of handing over of possession after obtaining completion certificate.

   ii. Direct the respondent to waive off excess amount of Rs. 9,71,432/- demanded through demand cum notice of possession letter dated 08.12.2017 for the purported increase in saleable area.

iii. Direct the respondent to refund payment if calculated sale area is less than booked area of 2275 sq. ft. along with interest @18% from the date of booking i.e. 21.08.2012.

iv. Direct the respondent to refund the excess amount collected towards the unaccounted build up area of 500 sq. ft. by wrongly referring at as "sale area".

v. Direct the respondent to bear the burden of GST without imposing the same on the complainant and refund the amount to be calculated in terms of input tax credit received by the respondent for the GST charged till date along with interest @ 18%.

vi. Direct the respondent to refund VAT charges illegally demanded and collected by the respondent.

vii. Direct the respondent to refund the sales tax on IDC/EDC charges collected.

viii. Direct the respondent to charge monthly maintenance of flat as per carpet area of flat.

ix. Direct the respondent to waive off excess amount of Rs.3,33,405/- demanded through demand cum notice of possession letter dated 09.12.2017 for the purported ad hoc charges not part of ABA.

x. Direct the respondent to pay Rs. 50,00,000/- as compensation against mental harassment, hardship and trauma and Rs. Rs. 10,00,000/- as litigation cost.

xi. Pass an order that the above compensation will not be liable for any taxes including personal income tax.

xii. Direct the respondent to waive off penalty imposed on delayed payment for duration of conflict/ litigation

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

D. Reply by the respondent

10. The respondent by way of written reply made the following submissions:

    i. That the respondent has developed a residential group housing project called "The Windchants" admeasuring 2.431 acres siatuated at Sector 112 , Gurgaon . The unit WT-07/2704 admeasuring 2275 sq. ft . was allotted to Mrs. Sunita Mittal vide allotment letter dated 04.08.2012 . The buyer's agreement was executed between the parties on 26.12.2012.

    ii. That Mrs. Sunita Mittal (hereinafter referred to as the original allottee) made a request to the respondent to transfer the apartment in question in favour of the complainant herein. The original allottee as well as the complainant made a joint application for transfer of the allotment in favour of the complainant.

    iii. That the allotment of the apartment in question was transferred in favour of the complainant vide letter dated 12.02.2015. The payment receipts issued in favour of the original allottees, provisional allotment letter dated 04.08.2012 as well as the apartment buyer's agreement dated 26.12.2012, were endorsed in favour of the complainant. The complainant had agreed and undertaken to comply with the payment plan, the complainant

started defaulting in making payments almost immediately after transfer of the apartment in his favour.

iv. That the complainant started defaulting in making payments almost immediately after transfer of the apartment in his favor . The respondent has sent demand letter dated 13.02.2015 reminder letter dated 16.03.2015 and a demand letter dated 19.03.2015 . The complainant was informed about the adjustment of EDC vide letter dated 01.06.2015 and vide letter dated 04.06.2015 the complainant was informed about the status of construction as well as installation of geysers and provision of piped gas.

v. That vide letter dated 27.04.2017 the complainant was informed of increase in the super area of the apartment by 166 sq. ft. That letters dated 22.6.2017 towards VAT Liability were sent to the complainant and demand notice dated 27.9.2017 towards increase in super area of the apartment was also sent.

vi. That the respondent made an application for issuance of occupation certificate in respect of the phase of the project in which the apartment in question is situated. The occupation certificate in respect of the tower in which the apartment in question is situated (T1 in the building plans/occupation certificate) was issued by the competent authority. A demand was raised for payment of common area maintenance charges for the period from 09.01.2018 to 08.01.2020.

vii. That by letter dated 08.12.2017, the possession of the apartment was offered to the complainant. Along with the said letter, the statement of account as well as the demand notice dated

08.12.2017 were enclosed. However, out of total demanded amount of Rs. 21,06,622/-, the complainant has only paid an amount of Rs 10,00,000/- only.

viii. That as per clause 10 of the apartment buyer agreement dated 26.12.2012, thereof, the respondent was liable to offer possession of the apartment in question within 42 months from the date of receipt of approval of the building plans or the date of receipt of the approval of the Ministry of Environment and Forests, Govt. of India for the project or execution of buyer's agreement, whichever is later ("**Commitment Period**"). Further the respondent was also entitled to 6 (six) months grace period ("**grace period**"). In the present case, the approval of the Ministry of Environment and Forests was granted on 27.12.2012. Subsequently, the respondent has offered possession of the apartment in question to the complainant vide notice of possession dated 08.12.2017 and the respondent have also adjusted/paid an amount of Rs.1,73,311/- as delay possession compensation as per agreed terms of the buyer's agreement, clause 13.

ix. That the licences issued for the project are license no 21 of 2008 and license no 28 of 2012. Memo approving the building plans dated 07.06.2012 . It is respectfully submitted that the bona fides of the respondent are further evident from the fact that the respondent is continuing to complete construction of the project in an expeditious manner and is also in receipt of occupation certificate dated 23.7.2018 in respect of four more towers and the EWS block of the project. The respondent submitted that the

respondent has acted strictly in accordance with the terms and conditions of the apartment buyer's agreement between the parties. There is no default or lapse on the part of the respondent. The allegations made in the complaint that the respondent has failed to complete construction of the apartment and deliver possession of the same within the stipulated time period, are manifestly false and baseless. On the contrary, it is the complainant who is in clear breach of the apartment buyer's agreement by delaying payment of instalments as per the payment plan, without any cause or justification.

x. That in the month of March 2017, the Architect Team of the respondent carried out the actual measurements of the sale area of all the towers where the civil structure was completed. On the basis of the measurements carried out by the in- house architect team of the respondent, the increase in sale area of the apartment/project was measured and verified and the sale area of the apartment in question was found to be 2449 sq ft. However, the complainant was only charged for sale area of 2441 sq ft. The Complainant was informed vide emails and letter dated 27.04.2017.

xi. That the occupation certificate was issued by the competent authority on 06.12.2017. The possession was offered on 08.12.2017 after receipt of occupation certificate. HVAT was not included in the payments received from the complainant in the years 2012-13 and 2013-14.

xii. In so far as GST is concerned, it has already been conveyed by the Respondent that any benefit arising out of GST can only be

determined after completion of the project. It has been disclosed by the respondent that there are certain phases for which occupation certificate is yet to be issued and hence at this point of time it is not possible to determine GST input credit, if any . The respondent has already communicated by letter dated 21.07.2017 that input credit on duties shall be passed on to the allottees after completion of the project and evaluation of the benefit.

xiii. That the clause 16 of the buyer's sgreement provides that the project shall contain a community building/community centre and that the same shall be a part of the common areas and its use shall be subject to the terms and conditions as may be specified in the deed of declaration and under the provisions of the Haryana Apartment Ownership Act. The community building provided by the respondent is not a community building as defined under Section 3(3)(a)(iv) of the Haryana Regulation and Development of Urban Areas Act, which is required to be compulsorily provided in a project as per the license conditions according to the applicable density norms,. It is submitted that in case of a community building defined under Section 3(3)(a)(iv) of the 1975 Act, in case of non-construction within the prescribed timelines , the same shall vest in the Government. The Community Building provided by the Respondent in the project is a Club, an additional facility for the enjoyment of the residents and the same shall stand transferred to the Association of Apartment Owners once the project is handed over. Thus, there is no violation of the 1975 Act. Consequently, there is no illegality with regard to demand for Community

Building Furnishing Charges and Community Building Security Deposit.

xiv. Thus, the provision does not prohibit alteration/increase in common areas but only prohibits alteration of the percentage of undivided interest in the common areas of the project without the consent of all the apartment owners, that too, after the Deed of Declaration is filed. In the present case, the Deed of Declaration for the phase in which the apartment of the Complainant is located was filed on 12.01.2018. Moreover, there is no change in the percentage of undivided interest of the apartment owners. Hence there is no violation of the Apartment Ownership Act or Rules framed thereunder.

xv. All other averments made in the complaint were denied in toto.

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

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

12. 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 completed territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

14. 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. Objections raised by the respondent.

F.I Objection regarding complainant is in breach of agreement for non-invocation of arbitration.

15. The respondent raised an objection that the complainant has not invoked arbitration proceedings as per application form which contains a provision regarding initiation of arbitration proceedings in case of breach of agreement. The following clause 57 has been incorporated w.r.t arbitration in the buyer's agreement:

> *26* In case of any dispute between the Parties relating to this Agreement and / or matters arising therefrom including the interpretation and validity of the terms hereof and respective rights and obligations of the Parties hereto, the same shall be adjudicated by arbitration by a sole arbitrator to be mutually appointed by the Parties. The Party willing to initiate arbitration will give a request for arbitration ("Request") to the other Party for the appointment of the arbitrator within 30 (thirty) days of the Request. The arbitration shall be held at at Delhi and shall be conducted in accordance with the Arbitration and Conciliation Act, 1996 and amendments / modifications thereto. The arbitration proceedings shall be in the English language and the Parties shall respectively and proportionately bear the costs and expenses of such arbitration unless the arbitrator specifically awards costs. The arbitral award shall be final and binding upon the Parties. The arbitrator shall give reasons in writing for the award.

16. 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, if any, with respect to the provisional booked unit by the complainant the same shall be adjudicated through arbitration mechanism. The authority is of the opinion that the

jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy &Anr. (2012) 2 SCC 506*** and followed in case of ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, Consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. A similar view was taken by the Hon'ble apex court of the land 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** and has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, that the law declared by the Supreme Court shall be binding on all courts within

the territory of India and accordingly, the authority is bound by the aforesaid view.

17. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainant is 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 arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

G. Findings on the relief sought by the complainant

G. I *Direct* the respondent to pay an amount to be calculated @18% p.a. on total consideration paid from 07.12.2015 till date of handing over of possession after obtaining completion certificate.

18. In the present case in hand the complainant is a subsequent allottee . The said unit was transferred in the favour of the complainant on 12.02.2015 i.e., before the due date of handing over of the possession (24.12.2016) of the allotted unit. As decided in ***complainant no. 4031 of 2019 titled as Varun Gupta Vs. Emaar MGF Land Limited***, the authority is of the considered view that in cases where the subsequent allottee had stepped into the shoes of original allottee before the due date of handing over

possession, the delayed possession charges shall be granted w.e.f. due date of handing over possession.

19. The complainant is admittedly the allottee of respondent – builder for a total sum of Rs. 1,57,26,815/-. A buyer's agreement was executed between the parties in this regard on 26.12.2012. The due date for completion of the project was fixed as 24.12.2016 So, in this way, the complainant paid a total sum of Rs. 1,46,57,057 /- against the allotted unit. The occupation certificate of the project was received on 06.12.2017 and the possession was offered to the complainants on 08.12.2017.

20. In the present complaint, the complainants intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

> *"Section 18: - Return of amount and compensation*
>
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
>
> ....
>
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

Clause 10.1 of the buyer's agreement (in short, agreement) provides for handing over of possession and is reproduced below:

> Subject to Force Majeure, timely payment of the Total Sale Consideration and other provisions of this Agreement, based upon the Company's estimates as per present Project plans, the Company intends to hand over possession of the Apartment within a period of 42 (forty two) months from the date of approval of the Building Plans or the date of receipt of the approval of the Ministry of Environment and forests, Government of India for the Project or execution of this Agreement, whichever is later ("Commitment Period"). The Buyer further agrees that the Company shall

additionally be entitled to a time period of 180 (one hundred and eighty) days ("Grace Period") after expiry of the Commitment Period for unforeseen and unplanned Project realities. However, in case of any default under this Agreement that is not rectified or remedied by the buyer within the period as may be stipulated, the Company shall not be bound by such Commitment Period.

21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

> ***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
> *1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*
> *Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

22. 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.

23. 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., 21.04.2023 is @8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.

24. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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;"*

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

26. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 10 of the buyer's agreement the possession

of the subject unit was to be delivered within 42 months from the date of approval of the Building Plans or the date of receipt of the approval of the Ministry of Environment and forests, Government of India for the Project or execution of this Agreement, whichever is later .The due date of possession is calculated from the environmental clearance being later plus grace period of 180 days i.e., 27.12.2012 which comes out to be 24.12.2016.

27. Section 19(10) of the Act obligates the allottees to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate is obtained on 06.12.2017 and the same was obtained after the due date of possession. The respondent offered the possession of the unit in question to the complainants on 08.12.2017.

28. Accordingly, as such the allottees shall be paid, by the promoter, interest for every month of delay on the amount paid by the complainants from the due date i.e 24.12.2016 till date of offer of possession i.e., 08.12.2017 plus two months i.e., 08.02.2018 The amount towards delay possession paid if any shall be adjusted in above amount , at prescribed rate i.e., 10.70 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.II Direct the respondent to waive off excess amount of Rs. 9,71,432/- demanded through demand cum notice of possession letter dated 08.12.2017 for the purported increase in saleable area.

G.III Direct the respondent to refund payment if calculated sale area is less than booked area of 2275 sq. ft. along with interest @18% from the date of booking i.e. 21.08.2012.

G.IV Direct the respondent to refund the excess amount collected towards the unaccounted build up area of 500 sq. ft. by wrongly referring at as "sale area".

29. As per letter dated 27.09.2017 on page no. 77 of complaint, the respondent has increased the super area of the flat from 2275 sq. ft. to 2441 sq. ft. without any prior intimation and justification. Whereas at page no. 142 of reply a letter dated 27.04.2017 regarding finalization of area w.r.t. allotted unit. The respondent has increased the super area by 166 sq. ft. In other words, the area of the said unit was increased by 7.3%. As per clause 8.6 of buyer's agreement, the area of the said unit can be said to be increased by 10% i.e., 227.5 sq. ft. The relevant clause of the agreement is reproduced hereunder: -

> While every attempt shall be made to adhere to the Sale Area, in case any Changes result in any revision in the Sale Area, the Company shall advise the Buyer in writing along with the commensurate increase/decrease in Total Sale Consideration based, however, upon the BSP as agreed herein. Subject otherwise to the terms and conditions of this Agreement, a maximum of 10% variation in the Sale Area and the commensurate variation in the Total Sale Consideration is agreed to be acceptable to the Buyer and the Buyer undertakes to be bound by such increase / decrease in the Sale Area and the commensurate increase /decrease in the Total Sale Consideration. For any increase/decrease in the Sale Area, the payment for the same shall be required to be adjusted at the time of Notice of Possession or immediately in case of any Transfer of the Apartment before the Notice of Possession or as otherwise advised by the Company.

30. The respondent submitted that as per clause 8.6 of buyer's agreement he is entitled to charge for such increase which is less than 10%. The complainant submitted that in ***NCDRC consumer case no. 285 of 2018***

titled as Pawan Gupta Vs Experion Developers Private Limited, it was held that the respondent is not entitled to change any amount on account of increase in area. The relevant part of the order has been reproduced hereunder: -

> *The complaints have been filed mainly for two reasons. The first is that the opposite party has demanded extra money for excess area and second is the delay in handing over the possession. In respect of excess area, the complainant has made a point that without any basis the opposite party sent the demand for excess area and the certificate of the architect was sent to the complainant, which of a later date. The justification given by the party that on the basis of the internal report of the architect the demand was made for excess area is not acceptable because no such report or any other document has been filed by the opposite party to prove the excess area. Once the original plan is approved by the competent authority, the areas of residential unit as well as of the common spaces and common buildings are specified and super area cannot change until there is change in either the area of the flat or in the area of any of the common buildings or the total area of the project (plot area) is changed. The real test for excess area would be that the opposite party should provide a comparison of the areas of the original approved common spaces and the flats with finally approved common spaces/buildings and the flats. This has not been done. In fact, this is a common practice adopted by majority of builders/developers which is basically an unfair trade practice. This has become a means to extract extra money from the allottees at the time when allottee cannot leave the project as his substantial amount is locked in the project and he is about to take possession. There is no prevailing system when the competent authority which approves the plan issues some kind of certificate in respect of the extra super area at the final stage. There is no harm in communicating and charging for the extra area at the final stage but for the sake of transparency the must share the actual reason for increase in the super area based on the comparison of the originally approved buildings and finally approved buildings. Basically, the idea is that the opposite party allottee must know the change in the finally approved lay-out and areas of common spaces and the originally approved lay-out and areas. In my view, until this is done, the opposite party is not entitled to payment of any excess area. Though the Real Estate Regulation Act (RERA) 2016 has made it*

compulsory for the builders/developers to indicate the carpet area of the flat, however the, problem of super area is not yet fully solved and further reforms are required.

31. The authority is of considered view that the said approval of increase in area up to 10% is subject to the conditions that the flats and other components of the super area on the project have been constructed in accordance with the plans approved by the competent authorities. Moreover, in the present case also, the respondent has increased the super area of the flat from 2275 sq. ft. to 2441 sq. ft. without any prior intimation and justification. Whereas on page no. 142 of reply a letter dated 27.04.2017 regarding finalization of area w.r.t. allotted unit was annexed. As per page no. 168 of written arguments filed by the complainant on 14.10.2019, on asking the respondent regarding calculation of saleable area, the respondent replied that the architect certificate has been provided to the complainant in this regard. But it is pertinent to mention herein that the said architect certificate is of 23.09.2020 i.e. after 27.09.2017, when such increase of area has been intimated to the complainant. In other word, the area of the said unit is increased by 4.45%. The respondent is entitled to charge for the same at the agreed rates being less than 10% as was agreed between both the parties.

G.V Direct the respondent to bear the burden of GST without imposing the same on the complainant.

G.VI Direct the respondent to refund the amount to be calculated in terms of input tax credit received by the respondent for the GST charged till date along with interest @ 18%.

32. The respondent has charged GST vide demand letter dated 20.07.2017 & 06.12.2017 whereas, as per the clause 10.1 of buyer's agreement, the due date of possession comes out to be 24.12.2016 which is prior to 01.07.2017 (date of coming into force of GST). The respondent has offered the possession of the allotted unit on 08.12.2017 by that time the GST has become applicable but such delay in delivery of possession is on the part of the respondent/promoter. It is settled principle of law that a person cannot take the benefit of his own wrong/default. So, the respondent/promoter was not entitled to charge GST from the complainant/allottee.

G.VII Direct the respondent to refund VAT charges illegally demanded and collected by the respondent.

33. The complainant has submitted that an amount of Rs. 96,538 /- was paid towards HSVAT. The HVAT demand has been raised in accordance with the assessment made under the Amnesty Scheme proposed by the State Government .It is pertinent to mention herein that all statutory dues , fees , charges , taxes etc are paid by the respondent to the competent authorities/State Government and the said amounts are not retained by the respondent . Thus, there is no illegality whatsoever on the part of the respondent.

G.VIII Direct the respondent to refund the sales tax on IDC/EDC charges collected.

34. As per schedule V of the buyer's agreement , EDC and IDC were included in total sale consideration . An amount of Rs. 7,62,220 is being charged and Rs. 60,980 is being charges as IDC. Therefore , the respondent is justified in demanding EDC and IDC as it is included in the total sale consideration. But since these charges are payable on actual payment basis the respondent cannot charge a higher rate against EDC/IDC as actually paid to the concerned authority. Therefore, the respondent is directed to provided calculation of EDC & IDC.

G. IX Direct the respondent to charge monthly maintenance of flat as per carpet area of flat.

35. The Act mandates under section 11 (4) (d) that the developer will be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees. Clause 1.37 read with clause 15.5, 15.6 & 15.7 of the builder buyer agreement provides the clause for maintenance charges. The respondent has demanded charges towards maintenance of Rs. 2,00,474/- through demand cum notice of possession letter dated 08.12.2017 for a period of 2 years and the same is evident from annexure R51 on page no. 155 of the reply. The authority is of considered view that the respondent shall not demand the advance maintenance charges for more than one (1) year from the allottee even in those cases wherein no

specific clause has been prescribed in the agreement or where the AMC has been demanded for more than one (1) year

G.X Direct the respondent to waive off excess amount of Rs.3,33,405/- demanded through demand cum notice of possession letter dated 09.12.2017 for the purported adhoc charges not part of ABA.

36. As alleged by the complainant, an amount of Rs. 3,33,405/- has been raised on pretext of adhoc charges vide notice of possession letter dated 08.12.2017. On perusal of final statement of account dated 08.12.2017 annexed as annexure R-54 on page no. 159 of the reply, a total amount of Rs. 3,33,405/- has been raised under various heads such as-

Dual meter charges of Rs. 15,000/-
Piped connection charges of Rs. 46,181/-
Geyser charges of Rs. 39,209/-
PHE charges of Rs. 13,452/-
FTTH charges of Rs. 16,965/-
Solar power charges of Rs. 6,380/-
ECC charges of Rs. 1,45,360/-
CBFC charges of Rs. 2,00,000/-
IFMSD Rs. 85,435/-

37. It is submitted on behalf of the complainant that the charges raised above by the promoter are not covered under any provision of ABA. The respondent on the other hand stated that such charges has been charged as per clause 4.2 of buyer's agreement dated 26.12.2012 and the same

does not form part of BSP. The Authority has gone through the relevant clause of the buyer's agreement and the same is reproduced hereunder: -

> *Clause 4.2- The BSP of the Apartment is exclusive of EDC and IDC and other statutory deposits and/or charges, including charges for connections and use of electricity, water, sewerage, sanitation and other amenities, utilities and facilities or any other charges required to be paid by the Company to relevant authorities and shall be payable by the Buyer at such rates as may then be applicable and in such proportion as the Sale Area of the Apartment bears to the total sale area of all the apartments in the Project. If in case at any time in the future, such charges/rates are revised due to enhancement in government and statutory dues, or rates of taxes, cesses or charges under Applicable Laws are enhanced (including with retrospective effect, if applicable), or if fresh notifications and/or amendments / modifications thereto are announced by any Government and/or Competent Authority, including but not limited to revision in the EDC/IDC/other statutory charges, increase in rates/amounts of any deposits/fees for the provision of electricity, water and sewerage facilities, additional fire. protection/mitigation systems, pollution control and effluent treatment plants, rain water harvesting systems or other outgoings of whatever nature, whether prospectively or retrospectively, and by whatever name called, the same shall also be payable by the Buyer in such proportion as the Sale Area of the Apartment bears to the total sale area of all the apartments in the Project. All such charges shall be payable by the Buyer on first demand of the Company/Maintenance Agency, whether before or after registration of the Conveyance Deed and irrespective of the Payment Plan. Delays in making such payments shall attract interest at rates as applicable for payments under the Payment Plan.*

38. A bare perusal of aforesaid clause makes it clear that said charges are not included in BSP but that does not give a liberty to the promoter to charge anything without justifying it to the allottee(s). The complainant is liable to pay EDC, IDC & other statutory deposits (for electricity, water, sewage connectivity, etc.) on pro-rata basis as actual paid to the concerned

Department/Authority by the respondent-promoter subject to furnishing of details to allottees. However, as far as other charges are concerned, the respondent-builder is directed not to charge anything which is not a part of the buyer's agreement. It is further clarified, if any additional services has been availed by the complainant other than as agreed between the parties, the respondent is entitled to charge for those services only.

***G.XI* Direct the respondent to pay Rs. 50,00,000/- as compensation against mental harassment, hardship and trauma and Rs. Rs. 10,00,000/- as litigation cost.**

G.XII Pass an order that the above compensation will not be liable for any taxes including personal income tax.

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

H. Directions of the authority

40. Hence, the authority hereby passes this order and issues the following directions under section 37 of the act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

I. The complainant is entitled to delayed possession charges as per the proviso of section 18(1) of the Real Estate (Regulation and Development) act, 2016 at the prescribed rate of interest i.e., 10.70%p.a. for every month of delay on the amount paid by him to the respondent from the due date of possession i.e 24.12.2016 till date of possession i.e 08.12.2017 plus two months i.e 08.02.2018.

II. The promoter shall not charge anything which is not part of the Buyers agreement.

III. The respondent is directed to pay arrears of interest accrued, if any after adjustment in statement of account; within 90 days from the date of this order as per rule 16(2) of the rules.

IV. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The respondent is further directed to handover the possession within next two weeks and the complainant is also directed to take the possession of the subject unit.

V. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70 % by the respondent/promoter which is the

same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

41. This decision shall mutatis mutandis apply to cases mentioned in para 4 of this order.

42. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.

43. Files be consigned to registry.

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

Haryana Real Estate Regulatory Authority, Gurugram

Date: 25.04.2023