



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>2390 of 2022</b>
<b>Date of filing:</b>	<b>04.10.2022</b>
<b>Date of first hearing:</b>	<b>24.11.2022</b>
<b>Date of decision:</b>	<b>09.05.2023</b>

Pooja Marbles, through its partner  
M/s Manju Rathi w/o Prakash Rathi  
H.no. B-452-A, Sushant Lok Phase1,  
Gurugram-122002

....COMPLAINANT(S)

VERSUS

Vipul Limited, Global Arcade, third floor  
Mehrauli-Gurugram Road,  
Gurugram-122002

....RESPONDENT(S)

**CORAM:**

**Dr.GeetaRathee Singh**  
**Nadim Akhtar**

**Member**  
**Member**

**Present:** - Mr. Kuldeep Kohli, learned counsel for the complainant through

Video conference

Mr. Vineet Sehgal, proxy counsel for the respondent through video  
conference

**ORDER (NADIM AKHTAR-MEMBER)**

1. Present complaint has been filed by complainant on 04.10.2022 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

**A. UNIT AND PROJECT RELATED DETAILS:**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over possession, delay period, have been detailed in following table:

S.No	Particulars	Details
1.	Name of the project	Vipul Plaza, Sector 81 Faridabad, Haryana
2.	Nature of the Project	Commercial
3.	RERA Registered/not registered	Un registered
4.	Unit No.	Unit no. C-439
5.	Unit area admeasuring	192 sq. yards
6.	Allotment letter	05.03.2010
7.	Date of buyers Agreement	24.07.2010
8.	Possession Clause	<i>Clause 15 of buyers Agreement</i>



		<p><i>"The possession of the said premises is proposed to be delivered by the vendor to the vendee within 36 months from the date of this agreement or approval of building plans by the Competent Authority whichever is later. If the completion of the said building is delayed by reason of non-availability of steel and or cement or other building materials, or water supply or electric power or slow down, strike or due to a dispute with the construction agency employed by the Vendor, lock out or civil commotion or by reason of war of enemy action or terrorist action or earthquake or any act of God or non-delivery of possession is as a result of any Act. Notice, order, rule or notification of the Government and or any other public or Competent Authority or due to delay in action of building /zoning plans/ grant of completion/occupation certificate by any Competent Authority or for any other reason beyond the control of the Vendor, the Vendor, as a result of such a contingency arising, reserves the right to alter or vary the terms and conditions of this agreement or if the circumstances beyond the control of the Vendor so warrant, the vendor may suspend the scheme for such period as it might consider expedient.</i></p>
9.	Deemed date of possession	24.07.2013
10.	Basic Sale Price	₹9,45,599/-
11.	Amount paid by the complainant	Rs 10,24,416/- (statement of account dated 06.12.2019 annexed as Annexure C-6)
12.	Delay in handing over of possession from the date of signing of the agreement	3 years

*had*

**B.FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY  
THE COMPLAINANT**

1. That the complainant had booked a commercial unit bearing unit no. C-439 on the fourth floor admeasuring 192 sq. yards in the project of the respondent namely "Vipul Plaza" situated in Faridabad, Haryana and paid the booking amount of ₹1,92,000/- on 06.04.2006. Copy of booking application and receipt annexed as Annexure C-1.
2. That the respondent issued an allotment letter in favour of the complainant on 05.03.2010 after four years of booking made by the complainant. A buyer agreement was executed between the parties on 24.07.2010. A copy of the agreement is annexed as Annexure- C-5. The basic sale price was ₹9,45,599/- (inclusive of EDC, IDC and PLC charges) and the complainant has paid the amount of ₹10,24,416 /- till date as it is evident from the statement of account annexed as Annexure- C-6.
3. That respondent had issued various demand letters to the complainant for the payments on account of the excavation, casting of the foundation, basement floor, plinth level and floor slabs, tax invoice and ED charges for which complainant has paid the amount of ₹6,24,468/- as and when demanded by the respondent from the period of 25.05.2010 to 19.11.2012. Copy of demand letters dated 25.05.2010, 10.09.2010, 14.12.2010, 17.02.2011, 21.04.2011, 03.11.2011, 21.10.2011,



- 16.11.2011, 10.12.2012, 30.06.2012 are annexed as Annexure C-3 colly. Copy of the receipts dated 31.05.2010, 27.09.2010, 15.11.2010, 10.05.2011, 11.11.2011, 22.11.2011, 15.02.2012, 19.11.2012, 10.11.2012, are annexed as AnnexureC-4 colly. Thereafter, the respondent did not raise any demand during the period of 2012 to 2013. The complainant visited the office of the respondent on various occasions; however, respondent had given the vague reasons for the delay in the project. In the year 2014, respondent had issued the demand letters for the casting of ninth floor slab, casting of roof floor slab and completion of the brick work. Consequently, complainant had paid the sum of ₹1,17,377/-. Copies of demand letters dated 15.01.2015, 04.05.2015, 02.09.2015, are annexed as Annexure C-3 colly. Copies of the receipts dated 07.01.2015, 22.05.2015, 11.09.2015 are annexed as Annexure C-4 colly. Complainant had also made the payment of ₹39,124/- towards the completion of plaster vide cheque dated 15.07.2016. A copy of receipt 22.07.2016 is annexed as Annexure C-4(colly).
4. That the respondent levied VAT of 1.05% on the entire amount paid by the complainant till 31.03.2014 and issued the demand letter dated 22.09.2016 for the payment of VAT amounting to ₹ 8,019/-. A copy of the said letter is annexed as Annexure C-3(colly). Accordingly, the complainant has made the payment of ₹ 8,019/- and a copy of receipt dated 27.12.2016 is annexed as Annexure C-4 (colly). However,



respondent cannot charge tax from their customers as per the Amnesty scheme and Haryana Value Added Tax (HVAT), Rules 2004. As per Amnesty Scheme vide notification dated 12.09.2016 of the Haryana Government dealing with VAT, the condition no.4 clearly states that any contractor/developer opting under this scheme shall pay year-wise interest or penalty arising from the business, by way of one-time settlement, a lump sum amount at the rate of one percent of the entire aggregate amount received or receivable from business carried out during a year, without deduction of any kind. Further, as per the scheme, contractor shall not be allowed to levy tax on the purchase of the goods used in the completion of works.

The provisions of Section 49/49 A of the HVAT Rules also debars the developer from collecting any amount by way of tax under the Act. Thus, respondent promoter has arbitrarily charged amount as tax from the complainant.

5. That in the year 2016, complainant visited the site of the project and got to know that the respondent has stopped the construction of the project. Complainant had asked for the explanations from the respondent and respondent stated various reasons for delay, but no satisfactory response has been received from the respondent on the default of delay caused for offering the possession of the unit. On 31.01.2018, complainant sent



an email asking for the status of the Occupation Certificate, however respondent failed to respond in regard to the same.

6. That on 22.08.2018, respondent issued an email wherein he updated the complainant regarding the status of the project. It was further stated in the email that once the construction of the building will get completed, respondent will apply for the occupation certificate. In the same mail, respondent has requested for the payments towards the completion of internal electrical works. Complainant on the assurance given by the respondent again paid an amount of ₹83,866/-. A copy of cheque dated 30.03.2019 has been annexed as Annexure C-4(colly).
7. That after the delay of six years, on 06.12.2019, respondent sent an email offering the possession to the complainant containing certain conditions which the complainant had to comply before taking the possession of the unit.
8. That the said offer of possession was not a valid offer of possession as respondent has levied charges such as electricity connection charges, labour cess and GST which are completely arbitrary and unreasonable. 1% labour cess is required to be paid by the builders and construction companies in terms of "The Building and Other Construction Workers (Regulation of employment and conditions of service) Act, 1996". It is the liability of the builder or the principal contractor to pay the tax for welfare of the labourer. As far as the GST is concerned, the Goods and



Service Tax Act, 2017 came into the force in the year 2017 whereas as per the agreement executed between the parties, possession should have been given to the complainant on or before 24.07.2013. As per the agreement, complainant had agreed to pay the government rates and taxes levied by the Government Authorities, but his liability shall be confined only upto the deemed date of possession. The delay in the delivery of the possession is the default on the part of the respondent. Hence, respondent shall be liable to pay GST accrued after the deemed date of possession. Therefore, complainant is not liable to pay the charges on account of GST.

9. Aggrieved of all the above facts, complainant also demanded for the delay interest on account of delay caused in offering the possession in terms of RERA Act, 2016. But respondent kept avoiding the request of the complainant.
10. Respondent in the reminder to the offer of possession dated 15.09.2021 issued a demand of payment on account of delay charges at the rate of 18% amounting to ₹38,789/- along with GST amounting to ₹4,655/- which is not payable by the complainant. As per various judgments of this Authority, the respondent cannot charge the delay payment charges at the rate of 18% or above, respondent can only charge the delayed payment at the rate of 9.30%. Therefore, respondent should remit the excess amount charged on account of delay payment charges.





11. In forgoing circumstances, the present complaint has been filed.

**C.RELIEF SOUGHT**

12. Complainant is seeking following reliefs:

- i. Direct the respondent to handover the possession to the complainant along with all the amenities which are assured in the brochure.
- ii. Direct the respondent to adjust the entire amounts of interest due to the complainant from the date of delivery to the actual delivery of possession.
- iii. Direct the respondent to pay balance amount due to the complainant from the respondent on account of interest.
- iv. Direct the respondent not to charge anything irrelevant which has not been agreed between the parties
- v. Direct the respondent not to charge anything on account of increase in super area, as same being not permissible as per the Act.
- vi. Direct the respondent to waive off the GST charges, HVAT levied upon the complainant for the reasons explained above in the petition.
- vii. Direct the respondent to withdraw the excessive demands raised against the internal painting and adjusted the same before issuing any further demands.
- viii. Direct the respondent to handover the possession of the unit with proper road, electrification of the roads, functioning of the club etc. and other things which were assured in the brochure.



**D.REPLY SUBMITTED ON BEHALF OF RESPONDENT**

Learned counsel for the respondent filed detailed reply on 10.02.2023 pleading therein:

13. That the present complaint is not maintainable as per the parameters of RERA Act and liable to be dismissed.
14. That occupation certificate was applied by the respondent with the DTCP, Haryana on 09.10.2018 and the same was also issued vide letter dated 29.11.2019, thus present complaint is liable to be dismissed on this ground alone.
15. That the allegations alleged in the complaint are false and baseless as no evidence in support of allegations has been placed on record by the complainant.
16. That on 24.07.2010, buyers' agreement was executed between the parties with the agreed terms and condition. However, complainant has not paid the amount as per the payment plan of the said agreement. The complainant instead of fulfilling the obligations, filed this present complaint.
17. That present complaint has been filed by the complainant just to wriggle out of his obligations to make the outstanding payment which has not been paid despite issuing several reminder letters to him. The complainant instead of fulfilling the obligations to pay the outstanding amount, approached the Hon'ble Authority by filing the present



complaint. Copy of demand letters and offer of possession issued to the complainant on 06.12.2019, 24.08.2020, 25.08.2020, 15.09.2021, 08.11.2021 and 10.01.2022 are annexed as Annexure R-3 colly.

18. That despite repeated reminders issued to the complainant by the respondent promoter, complainant has not come forward to pay the outstanding amount towards the allotted commercial space and also not complied with the conditions informed to him. A copy of the account statement of the complainant is annexed as Annexure R-4.
19. That application for the grant of occupation certificate was submitted by the company on 09.10.2018 and occupation certificate was issued to the company on 29.11.2019, i.e., after a gap of more than 1 year. Therefore, the delay has been caused on the part of the DTCP, Haryana for the issuance of the occupation certificate to the respondent.
20. The sole objective of the complainant is to gain monetary benefits from the complainant due to increase in the value of the properties.
21. That delay has been caused in completing the commercial unit as complainant has defaulted in making the timely payments. Thus, as per the terms and conditions of the buyer's agreement, the complainant shall pay interest calculated at the rate of 18% at the time of succeeding instalments from the date of the instalments became due, for the period of delay and such other penalties imposed by the respondent.



22. That as per the buyer's agreement dated 24.07.2010, the complainant agreed that the possession shall be made by the company to the complainant within 36 months from the date of the agreement. Complainant is aware of this fact that possession of the commercial unit is very much dependent on making the timely payments for the unit. However, complainant has failed to perform his part of obligations and failed to make timely payments.
23. That construction work on the site was also stopped at various intervals in compliance the orders passed by the Hon'ble NGT. Thus, respondent cannot be liable for delay caused in completion of the development of the work.
24. That the GST/VAT are the statutory taxes which were raised by the respondent in accordance to the provisions/norms fixed by the government at different interval of time.
25. The respondent has already offered the possession of adjoining shops after completing the development and construction works.
26. That complainant has himself not come forward to comply with the requisite formalities and to obtain the possession of the shop after the payment of outstanding dues.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT**



27. During oral arguments, both parties reiterated their arguments as were submitted in writing. Learned counsel for complainant submitted that complainant is seeking possession of the commercial unit as delay of seven year has already been caused in handing over the possession.

Learned counsel for the respondent on the other hand, submitted that offer of possession was made to the complainant in the year 2019 and complainant has not come forward to take the possession. Now, complainant has filed the present complaint before the Authority which is completely unjustifiable. Therefore, he is not liable to pay any delay interest from the period of 2019 to 2022.

He further submitted that the electricity charges are levied for the installation of the independent meter for the booked unit of the complainant. Thus, complainant is liable to pay such charges as the amount has to deposited with the concerned department.

**F.FINDINGS ON THE OBJECTION RAISED BY THE RESPONDENT:**

**F.1 Objection regarding the maintainability of the complaint:**

i) The respondent has taken a plea that it had offered possession of the unit to the complainant on 06.12.2019 and thereafter issued various reminders, it is the complainant who is not coming forward to take the possession of the unit and therefore, the present complaint is not maintainable as per the provisions of the RERA Act. Authority observes that in the present case, the complainant had booked a commercial unit in



the project of the respondent in the year 2006 and a buyer agreement, was executed between the parties on 24.17.2010. As per the clause 15 of the buyer's agreement, possession was supposed to be delivered within 36 months from the date of the agreement which means possession was to be handed over by 24.07.2013. However, the possession has been offered to the complainant on 06.12.2019.

Thus, the promoter failed in his obligations to hand over the possession within the time period stipulated in the builder buyer agreement. Section 11(4) of the Act provides that promoter shall be responsible to the allottee as per the agreement of sale. Relevant part of Section 11(4) is reproduced here for ready reference:

*(4) The promoter shall— (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: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.*

Therefore, the Authority observes that complaint is maintainable as per the provisions of the RERA Act and Authority has complete jurisdiction to decide the present complaint.



**F.2 Objection of the respondent w.r.t the reasons for the delay in handing over the possession:**

Respondent has contended that delay has been caused by the DTCP in issuing the occupation certificate due to which offer of possession could not be made to the complainant.

Authority observes that as per the buyer's agreement, offer of possession should have been made to the complainant on or before 24.07.2013. Whereas the respondent promoter applied for grant of occupation certificate on 09.10.2018 and the same was issued by the competent authority on 29.11.2019 i.e. after 6 years from the deemed date of possession. Therefore, respondent cannot take the benefit of this plea for justifying delay in handing over the possession.

Secondly, Respondent also contended that delay has also been caused in the completion of the project due to the restrain orders of NGT. In this regard, Authority observes that NGT orders referred by the respondent pertains to the year 2016 i.e. after the deemed date of possession, therefore, the respondent cannot take the advantage of the delay on his part by claiming the delay in statutory approvals/directions.

**F.3. Objections with regard to untimely payments made by the complainant:**



Respondent has contended that complainant has made default in making the timely payments as per the payment schedule and as per clause 10 of the buyer's agreement the complainant is liable to pay the interest at the rate of 18% compounded at the time of every succeeding installment from the date installment became due, for the period of delay in making the payments. This contention of the respondent is without merit. The definition of "interest" under Section 2 (za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall liable to pay the allottee, in case of default. The relevant section is reproduced below:-

*(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. -For the purpose of this clause-*

*(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*

*(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;*

Further, the functions of the authority are to safeguard the interest of the aggrieved person, may that be the allottee or the promoter. The rights of the





parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of its dominant position and to exploit the needs of the homebuyers. This authority is duty bound to take into consideration the legislative intent i.e. to protect the interest of the allottee in the real estate sector. The clause of the buyer's agreement entered between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. Thus, this term w.r.t payment of interest @ 18% on account of delay on part of complainant is ex-facie, one-sided, unfair and unreasonable and the same shall constitute the unfair trade practice on part of the promoter. These types of discriminatory terms and conditions of the buyer's agreement will not be final and binding. Therefore, interest on the delay of payment from complainant shall be charged at the prescribed rate by the respondent, which is same as may be claimed by the complainant from the respondent on account of any delay in handing over of possession.

**G.FINDING ON THE RELIEF SOUGHT BY THE COMPLAINANT:**

**G.1 Delay possession charges from the delay in handing over the possession:**

As discussed above in point F1, deemed date of possession of the booked unit of the complainant is 24.07.2013 and the respondent has offered the possession on 06.12.2019 after obtaining occupation certificate on



29.11.2019. Therefore, an inordinate delay of six years has already been caused from the deemed date of the possession. Since, complainant despite all the delay, intends to continue with the project and seek the relief of possession along with delay interest, the complainant is entitled for the interest on account of delay caused in handing over the possession as per the mandate of provisions of section 18 of the RERA Act.

Section 18 of the RERA Act is reproduced here for ready reference:

“18. Return of amount and compensation.—(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: 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.

.”

Undisputedly, respondent has offered the possession of the unit to the complainant on 06.12.2019 alongwith additional demand of Rs 1,83,619/- after obtaining the occupation certificate on 29.11.2019 and principles regarding valid offer of possession is detailed out in para 7 of order dated 31.05.2022 passed in **complaint no. 903/2019- Sandeep Goyal vs**



**Omaxe Pvt Ltd.** Accordingly, the offer of possession dated 06.12.2019 duly supported with occupation certificate 29.11.2019 and accompanied with reasonable demand of Rs 1,83,619/- can be deemed to be a valid offer of possession. Therefore, complainant is entitled for delay interest from the deemed date of possession, i.e., 24.07.2013 till the offer of possession dated 06.12.2019 in terms of section 18 of the RERA Act read with Rule 15 of HRERA Rules, 2017.

As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The term 'interest' is defined under Section 2(z) of the Act which is as under:

*(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;*

Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is 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".

21. Consequently, as per website of the state Bank of India i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e., 09.05.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.70%.

22. Therefore, respondent is directed to award the delay interest on account of the delay caused in handing over the possession. Authority has got calculated the delay interest at the rate of 10.70% which works out to ₹ 5,26,074/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Deemed date of possession or date of payment whichever is later	Interest Accrued till 06.12.2019
1.	653526	24.07.2013	445810
2.	39537	07.01.2015	20805
3.	38828	22.05.2015	18895
4.	39012	11.09.2015	17704
5.	39124	22.07.2016	14142
6.	8019	29.12.2016	2522
7.	83866	30.03.2019	6196
8.	Total = ₹9,01,912/-		₹ 5,26,074/-



Complainant claims to have paid an amount of Rs 10,24,416/- which is evident from the statement of accounts dated 06.12.2019. However, proof by way of receipts of only Rs 9,01,912/- are available in the complaint file. Since the delay interest is being awarded to complainant from deemed date of possession 27.04.2013 to valid offer of possession 06.12.2019, total amount for calculation of interest is taken as Rs 9,01,912/-.

**G.2 Quashing the charges raised by the respondent on account of GST, HVAT, Increase in super area and internal painting.**

**GST:**

The complainant has pleaded that the respondent has raised various demands under the head GST, which are completely illegal. Whereas, the respondent has taken a stand that GST/VAT are statutory taxes which were raised by the respondent in accordance with the norms/provisions fixed by the government. The Authority after hearing the parties at length is of the view that due date of possession of the unit was on 24.07.2013 but the offer of possession was made on 06.12.2019. The Government has introduced the Goods and services tax in the year 2017, had the unit been delivered within the due date, the incidence of GST would have not fallen on the allottee/complainant. Therefore, an additional tax burden with respect to GST was enforced upon the buyer for no fault of his since and is due to wrongful act of the promoter in not delivering the unit within the due date of possession; also tax liability would have been very less as



compared with GST if levied. Further, Hon'ble Real Estate Appellate Tribunal in judgement dated 02.09.2022 passed in Appeal no. 502 of 2021 titled as **Pivotal Infrastructure Pvt Ltd vs Neeraj Kumar & Mamta** has already dealt on the issue of the GST charges. Relevant part of the judgement is reproduced below:

*"44. GST*

*We find nothing wrong in the order of the Learned Authority that the appellant is to bear the liability of GST as the GST came into force in the year 2017 and the Appellant promoter was to handover the possession of the allotted unit in the month of February 2016. Since it is the Appellant who has delayed the handing over of the unit, therefore, the appellant is liable to bear any extra expenditure which has arisen after the schedule date of possession."*

No doubt the complainant had agreed to pay all statutory taxes but this liability shall be confined only upto the due date of possession. The delay in delivery of possession is in the default on part of the respondent/promoter and the possession was offered on 06.12.2019, by that time GST had become applicable. However, it is a settled principle of law that a person cannot take the benefit of his own wrong default. Therefore, in the forgoing circumstances, promoter was not entitled to charge GST from the complainant as liability of GST had not become due up to the date of possession as per the buyer's agreement.



**VAT:**

The Government of Haryana has provided for an amnesty scheme namely the Haryana Alternative Tax Compliance Scheme for the contractors of 2016 for the recovery of tax, interest, penalty or other dues payable under the Act, from the period upto 31.03.2014. Therein, an option was provided to the builder to discharge their value added tax at the rate of 1.05% (1% VAT + surcharge on VAT) on the entire aggregate amount received or receivable for the business carried out during the year for the period prior to 31.03.2014, whether assessed or not assessed. Respondent has opted for the scheme and charged the VAT from the allottee for the period upto 31.03.2014 at the rate of 1.05% as per the amnesty scheme. Thus, promoter is entitled to charge VAT from the allottee for the period upto 31.03.2014 at the rate of 1.05% under the amnesty scheme.

**Increase in Super area:**

Complainant is seeking relief that respondent not to charge anything on account of increase in super area. In the complaint petition nothing relevant has been alleged pertaining to increase in super area. On perusal of offer of possession dated 06.12.2019, it is found that original booked area was 492 sqft and revised area as per said offer is 496 sqft which implies that there is increase of 4 sqft only in the area which is very minor alteration. As per clause 13 and 14 of builder buyer agreement, the dimensions of the allotted unit is tentative and subject to alterations and



for said alterations, the respondent in case of increase in area is entitled to recover the extra-price only for the increased area at the same rate of allotment of unit that too without any interest. Accordingly, complainant is liable to pay for the increased area at the rate at which the unit was allotted to him.

**Internal painting:**

These charges are recoverable from complainant only if agreed between the parties in the builder buyer agreement. Respondent can raise demand of these charges with reference to particular clause of BBA under which these charges have been agreed.

**Electricity Connection Charges:**

With respect to the demand of Rs 66,960/- raised against electricity connections the authority places reliance upon the case titled "**Varun Gupta vs Emaar MGF Land Ltd**" vide complaint no. 4031/2019 wherein while deciding the issue of electricity connection charges, Hon'ble HARERA, Gurugram Authority relied on the judgment of the Hon'ble NCDRC in **Rajni Goyal vs Super tech Limited** and held that:-

*"169. Accordingly, the promoter will be entitled to recover the actual charges paid to the concerned department from the complainant on pro-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the flats in this particular project. The complainant will also be entitled to proof of such a payment to the concerned department along with a computation proportionate to the allotted flat, before making payment under the aforesaid head."*





Accordingly, promoter is entitled to recover the actual charges paid to the concerned department from the complainant on pro-rata basis. The respondent shall also supply the complainant a proof of such payment to the concerned department, before receiving the payments under the aforesaid head.

- G.3.** Therefore, in the light of the above facts and circumstances, respondent is directed to issue a revised statement of accounts to the complainant incorporating therein the delay interest which works out to ₹ 5,26,074/- and quashing the demands raised on account of the GST.

#### **H.DIRECTIONS OF THE AUTHORITY**

Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent is directed to pay interest at the prescribed rate of 10.70% for every month of delay caused from the due date of possession i.e., 24.07.2013 till the date of offer of possession i.e., 06.12.2019 which is ₹5,26,074/-
- ii) The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate of interest i.e., 10.70%. Any excess amount shall be refunded.



iii) The respondent shall issue a fresh statement of account incorporating therein the delay interest which works out to ₹ 5,26,074/- and mention the receivables/payables if any in the said statement of the account.

iv) The respondent is directed to waive off the demands made on the account of the GST charges.

v) The respondent shall not charge anything from the complainant which is not the part of the agreement.

iv) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

28. Complaint is, accordingly, **disposed of**. Files be consigned to the record room after uploading the order on the website of the Authority.

  
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DR. GEETA RATHEE SINGH  
[MEMBER]

  
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NADIM AKHTAR  
[MEMBER]