

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

Order pronounced on: 13.09.2023

Name of the Builder		Vipul Ltd.	
Project Name		Vipul Business Park, Sector 48, Gurugram, Haryana	
S. No.	Complaint No.	Complaint Title	Attendance
1.	1346/2021	Mr. Amanjeet Singh Gambhir and Mrs. Aster Stesekhose Vs M/s Vipul Ltd.	Mr. Geetansh Nagpal Mr. Vijay Pal Chauhan
2.	1347/2021	Mr. Gaurav Gambhir vs. M/S Vipul Ltd.	Mr. Geetansh Nagpal Mr. Vijay Pal Chauhan

CORAM:

Shri Ashok Sangwan

Member

ORDER

1. This order shall dispose 2 complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

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2. The core issues emanating from them are similar and the complainant in the above-referred matters had executed a BBA with the respondent for the purchase of units in the project, namely, Vipul Business Park being developed by the same respondent/promoter i.e., Vipul Limited. The terms and conditions of the BBA form the fulcrum of the issue involved in all these cases about failure on the part of the promoter to issue timely possession of the units in question and seeking award of delayed possession charges.
3. The details of the complaints, reply status, unit no., date of BBA, possession clause, the due date of possession, the offer of possession, total sale consideration, the amount paid up, and reliefs sought are given in the table below:

Sr. no	Complaint no./title/ date of filing the complaint	Reply status	Unit No. and area admeasuring (Carpet area)	Date of execution of apartment buyer's agreement.	Due date of possession & offer of possession	Total sale consideration and amount paid by the Complainant (s) and amount waived off.	Relief Sought
1.	CR/1346/2021 Titled "Mr. Amanjeet Singh Gambhir and Mrs. Aster Stesekhose vs. M/s Vipul Ltd." Date of filing complaint: 08.03.2021	Reply received on: 04.02.2022	812,8th floor. 2352 sq. ft.	02.03.2019	Due date: 02.03.2021 Offer of possession: Not issued	Total sale consideration : Rs. 1,64,36,294/- Amount paid: Rs. 85,00,000/- Amount waived off: Rs. 79,36,293/-	i.Offer of possession n. ii. DPC iii. Not charge HVAT, Advance maintenance charges, IFMS, Not

							sign indemnity bond.
2.	CR/1347/2021 Titled "Mr. Gaurav Gambhir vs. M/S Vipul Ltd." Date of filing complaint: 08.03.2021	Reply received on: 04.02.2022	224, 2nd floor. 1738 sq. ft.	15.02.2019	Due date: 15.02.2021 Offer of possession: Not issued	Total sale consideration : Rs. 1,21,45,526/- Amount paid: Rs. 30,00,000/- Amount waived off: Rs. 91,45,526/-	i. Offer of possession. ii. DPC iii. Not charge HVAT, Advance maintenance charges, IFMS, Not sign indemnity bond.

4. The aforesaid complaints were filed by the complainant against the promoter on account of violation of BBAs, executed between the parties inter se in respect of the purchase of units for seeking award of possession, and delayed possession charges.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance with the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of both the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case CR/1346/2021 titled "Mr. Amanjeet Singh Gambhir and Mrs. Aster Stesekhose Vs M/s Vipul Ltd." are being taken into consideration for determining the rights of allottee(s) qua delay possession charges inter alia.

A. Unit and project-related details

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

CR/1346/2021 titled as "Mr. Amanjeet Singh Gambhir and Mrs. Aster Stesekhose Vs M/s Vipul Ltd."

Sr. No.	Particulars	Details
1.	Name of the project	"Vipul Business Park", Sector 48, Gurugram, Haryana
2.	Project area	3.644 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	554-608 of 2006 dated 24.03.2006 (As per page 55 of the complaint)
5.	Name of licensee	Sh. Naresh Kumar and 54 others
6.	RERA Registered/ not registered	Not Registered
7.	Unit no.	812,8 th floor (As per page 29 of the complaint)

8.	Unit admeasuring area	2352 sq. ft. (As per page 29 of the complaint)
9.	Date of building plans	Not mentioned
10.	Date of execution of agreement to sell	02.03.2019 (As per page 27 of the complaint)
11.	Possession clause	15 Possession The vendor proposes to hand over the possession within 24 months from the date of this agreement or approval of completion of building plans by the competent authority, whichever is later. (Page 35 of the complaint).
12.	Due date of possession	02.03.2021 (calculated from the date of the agreement (As the date of approval of the building plan is not mentioned in the file)
13.	Total consideration sale	Rs. 1,64,36,294/- (As per page 51 of the complaint)
14.	Amount paid by the complainants	Rs. 85,00,000/- (As per Page No. 32 of the complaint) Amount waived off by the builder: Rs. 79,36,293/- (As per Page No. 53 of the complaint)
15.	Occupation certificate /Completion certificate	Received on 01/06/2016 (As per Page No. 54 of the complaint)
16.	Offer of possession	Not offered

B. Facts of the complaint:

8. In 2013, the respondent company issued an advertisement announcing a "commercial complex" called "Vipul Business Park" situated at Fazilpur Jharsa, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of allotments in the said project. Respondent confirmed that the project had got building plan approval from the authority.
9. That the complainants had invested a large consideration of their savings to purchase a commercial space in the respondent's project "Vipul Business Park" at Sector-48, Gurugram, Haryana.
10. That the complainants were caught in the web of false promises of the agents of the respondent company, and paid a total consideration of Rs.85,00,000/- and duly executed the buyer's agreement dated 02.03.2019.
11. After negotiation with the respondent the complainants were awarded a waiver of amount Rs. 79,36,294/- by the respondent vide letter dated 26.03.2019.
12. The complainants were shocked to know that the occupation certificate to the Vipul Business Park for this Commercial space has been granted by the office of District Town and Country Planning Vide Memo ZP/274-A/SDBS/2016/ 11113 dated 01/06/2016 and the complainants have not been offered the possession till date.
13. The complainants had issued a legal notice demanding the possession of the aforementioned unit along with the monetary compensation for the delay in handing over the possession of the said allotment. However, the complainants never received any response to the same.

14. The actions of the respondent, particularly the act of collecting huge amounts of money from the complainants and not delivering the requisite service within the specified period amounts to unfair trade practice. The respondent must abide by the terms of the buyer's agreement in the first instance, when in fact the respondent is willing to impose a heavy interest for failure/delay in paying installments.
15. The complainants have applied for the said commercial space so that they would be able to work therein. This delay has resulted in a lot of mental agony for the complainants who had to look for an alternative.

C. The relief sought by the complainants:

16. The complainants have sought the following relief(s):
 - i. Direct the respondent to issue an offer of possession and hand over possession once it is ready in all aspects and with facilities as promised in the brochure.
 - ii. Direct the respondent to pay the balance amount due to the complainants from the respondent on account of the interest.
 - iii. Direct the respondent to not charge anything that is not part of the BBA such as a fixed deposit of HVAT.
 - iv. Direct the respondent to not ask for Advance monthly maintenance charges for 12 months.
 - v. Direct the respondent to not ask for Interest-free maintenance security.
 - vi. Direct the respondent to not force the complainants to sign any indemnity cum undertaking.

D. Reply by the respondent

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17. The respondent is one of India's leading real estate companies. One of its marvelous projects is the "VIPUL BUSINESS PARK", Sector 48, Sohna Road, Gurugram, Haryana for which the respondent has been granted an occupation certificate by the Directorate, Town and Country Planning, Haryana.
18. The complainants approached the respondent, making inquiries about the project, and after thorough due diligence sought to book an apartment in the said project vide application dated 08.03.2016. In March, 2019 a flat buyer's agreement was executed between the complainants and the answering respondent.
19. On the application of the complainants, a commercial space bearing no. 812 measuring 218.51 sq. meters (2352 sq. ft) was allotted in their name in the aforesaid project. It is further submitted that the complainant has paid only Rs. 85,00,000/- (Rupees Eighty-Five Lakh only) to the answering respondent.
20. That the complaint in hand cannot be decided in summary procedure as prescribed under the Real Estate (Regulation and Development) Act, 2016 as there are some complicated issues involved in the complaint. That complainants failed to bring in evidence of the receipts against payment made by it to the respondent and other relevant documents which can be proved only by summoning the necessary witnesses, examination, and cross-examination of the complainants and other witnesses. It is further submitted that the dispute between the parties requires detailed

investigation, evidence, and detailed examination and cross-examination of the parties as per the procedure settled under the Code of Civil Procedure, 1908, and the Indian Evidence Act. It is settled law of the land that where the dispute between the parties requires extensive evidence and examination of the parties, then only the civil court has jurisdiction to try and decide the dispute between the parties.

21. That the complainants have not approached this Authority with clean hands and are misusing the process of the law to extort money from the respondent. It is submitted that equity begets equity and a person seeking equitable relief must come with clean hands before the Authority.
22. The flat buyer's agreement provides for the resolution of disputes by Arbitration. The above clause of this concluded agreement obliges the complainants to seek recourse for any grievance, dispute, or claim through arbitration only. It is submitted that by the arbitration clause, the jurisdiction of a civil court as well as this Authority is ousted by implication.
23. That FBA must be read in its entirety. It is settled law that parties to an agreement cannot be allowed to adopt pick and choose the clauses of the agreements which are suitable to them. The complainants are relying on the clauses of FBA which are in their favor, however, on the other side they are disputing the other clauses of the agreement which are not in their favor.
24. That the complaint filed by the complainants is not maintainable given the settled law in a plethora of decisions of the Hon'ble Supreme Court, whereby it has categorically been laid down that the agreed clauses of the contract are

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binding on the parties and the courts shall not interfere with the terms and conditions agreed to between the parties. The Hon'ble Supreme Court of India in the judgment in Secretary, Bhubaneswar Development Authority Versus Susanta Kumar Mishra reported as [V (2009) SLT, 242], has been pleased to hold that the parties are bound by the unchallenged terms of the contract. The Hon'ble Supreme Court of India in the matter titled; PUDA (Chief Administrator) and Another Versus Mrs. Shabnam Virk reported as II (2006) CPJ 1 (SC), has held that an allottee would be bound by the terms and conditions contained in the allotment letter agreed by him. The Hon'ble Supreme Court of India has been pleased to lay down the principles in Bharati Knitting Company Vs. DHL Worldwide Express Courier Division of Airfreight Ltd., reported as II (1996) CPJ 25 (SC), wherein it has been held that the parties are bound by the terms and conditions of a contract.

25. That the present complaint is not maintainable and the Hon'ble Regulatory Authority has no jurisdiction whatsoever to decide the present complaint.
26. That the complaint filed by the complainants pertains to the compensation. The complaint was required to be filed before the Adjudicating Officer under rule 29 of the compensation rules. As per section 31 of the Act, the aggrieved person may file the complaint before the Authority or the Adjudicating Officer as the case may be for any violation and contravention of the provisions of the Act or the Rules and Regulations made there under, but the above provisions show that the Authority and Adjudicating Officer have their separate scope as prescribed in the Act and the Rules. The Adjudicating

Officer is empowered to adjudicate the compensation under sections 12, 14, 18, and 19 of the Act, which is to be determined as per the factors provided in section 72 of the Act.

27. There was not any occasion to which the complainant was shocked to know that the occupation certificate for the project had been granted. It is wrong and denied that the office of District Town and Country Planning has granted the occupation certificate. It is out of place to mention here that the project in question has been occupied and in operation since 2016 much before the booking application filed by the complainants for allotment of the commercial space in his name.

28. The delivery of the Flat is subject to the payment of the entire sale consideration. The complainants have themselves failed to prove the amount to total sale consideration, even in the entire complainant the complainant has failed to prove how much amount the complainant has paid toward sale consideration to the answering Respondent. Hence, the complaint deserves to be dismissed on this sole ground alone.

E. Jurisdiction of the authority:

29. The plea of the respondent regarding the rejection of the complaint on the grounds of jurisdiction stands rejected. The authority observes that it has territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

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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 the entire Gurugram District for all purposes with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.

30. So, given 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.
31. **Objection regarding complaint not being maintainable due to the presence of arbitration clause in the agreement between the parties.**

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32. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains a dispute resolution mechanism clause to be adopted by the parties in the event of any dispute.
33. The authority thinks that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the 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 the authority or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. 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. The authority further puts reliance on the catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, followed by ***Aftab Singh and Ors. v. Emaar MGF Land Ltd and Ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, by the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) 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. It was also held in the latter case that the arbitration clause in agreements between the complainant and builder could not circumscribe the jurisdiction of a consumer.

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34. While considering the issue of maintainability of a complaint before a consumer forum/commission in the face of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court in a case titled **M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the aforesaid judgment of NCDRC and as provided in Article 141 of the Constitution of India, 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.

35. Therefore, given the above judgments and considering the provisions of the Act, the authority is of the view that the 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. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondent stands rejected.

F. Findings on the relief sought by the complainant:

F.1 Direct the Respondent to issue an offer of possession and hand over possession once it is ready in all aspects and with facilities as promised in the brochure.

36. The buyer's agreement was signed between the complainants and the respondent in March 2019. As per the said agreement, the complainants

were allotted a commercial unit for a total sale consideration of Rs. 1,64,36,294/-. Out of which, a sum of Rs. 85,00,000/- has been paid by the complainants at the time of booking itself as per clause 5 of the said agreement. Furthermore, the complainants have annexed a letter dated 26.03.2019 whereby the respondent has waived off the remaining payment of Rs. 79,36,293/- thereby showcasing that the entire total sale consideration has been paid. Furthermore, the occupation certificate of the commercial complex in question has already been obtained by the respondent-builder on 01.06.2016 by Memo no. ZP-274-A/SD(BS)/2016/11113. However, the same has not been handed over to the complainants which is a clear violation of Sec-17(1) of the Act of 2016. Sec-17(1) of the Act of 2016 is reproduced as under for ready reference:

"17 (1) The promoter shall execute a registered conveyance deed in favor of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment or the building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within the specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

37. Therefore, in view of the factual as well as legal provisions, the respondent is directed to handover physical possession of the subject unit within a period of 60 days after making a valid offer of possession and thereafter execute a conveyance deed in their favor on payment of registration charges.

F.2 Direct the respondent to pay the balance amount due to the complainants from the respondent on account of the interest.

38. In the present complaint, the complainants intend to continue with the project and are 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."

39. Clause 15 of the buyer's agreement provides for the handing over of possession and is reproduced below:

"15. That the possession of the said Premises is proposed to be delivered by the VENDORS to the VENDEE(S) within 24 months from the date of this Agreement or Approval of completion 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 VENDORS, lock out or civil commotion or by reason of war of enemy action terrorist action or earthquake or any act of God or non-delivery of possession is as result of any Act, Notice, Order, Rule or Notification of the Government and/or another 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 VENDORS, the VENDORS shall be entitled to extension of time for delivery of possession of the said Premises. The VENDORS, 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 VENDORS so warrant, the VENDORS may suspend the Scheme for such period as it might consider expedient."

40. **Admissibility of delay possession charges at prescribed rate of interest:**

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.

41. 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.

42. Consequently, as per the 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., 13.09.2023 is 8.75%. Accordingly, the prescribed rate of interest will be the marginal cost of lending rate +2% i.e., 10.75%.

43. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the

promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

- (1) 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;"*

44. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.75% by the respondent/ promoter which is the same as is being granted to it in case of delayed possession charges.
45. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 15 of the agreement executed between the parties on 02.03.2019, the possession of the subject apartment was to be delivered within 24 months from the date of execution of buyer's agreement. Therefore, the due date of handing over possession was 02.03.2021. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the

possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 02.03.2019 executed between the parties.

46. The respondent/promoter is under an obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainants. Hence, respondent is directed to execute the conveyance deed in favour of complainants within three months from the date of issuance of occupation certificate.
47. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement dated 02.03.2019 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 02.03.2021 till the date of offer of possession plus 2 months or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

F.3 Direct the respondent to not charge anything that is not part of the BBA such as fixed deposit of HVAT.

48. In the instant case, no offer of possession has been made by the respondent, moreover no such demand has yet been raised by the respondent upon the

complainant therefore no cause of action has arisen to address the aforesaid relief prayed. Furthermore, the law relating to the applicability of HVAT, GST, and other taxes has been clearly laid down in the CR/4031/2019 and others. As per the law established, the HVAT shall not be applicable post 30.06.2017 since the applicability of GST since 01.07.2017. In the instant case, the BBA was signed on 2nd March 2019 and its due date of possession arrives at 2nd March 2021, at this time the GST had come into force therefore the HVAT shall not be applicable.

F.4 Direct the respondent to not ask for Advance monthly maintenance charges for a period of 12 months.

49. The clause related to "Advance monthly charges" has been articulated in clause 36(e) of the said BBA. The relevant portion of the said clause is reproduced below:

"36(e) The maintenance charges shall become payable by the VENDEE(S) in advance every month within 5 days of the demand by the VENDORS or the maintenance agency permitted by the VENDORS. In case the VENDEE(S) fails to pay the Total Maintenance Charges by due date or within the period mentioned in the notice, the VENDORS or its Nominee including any other Body or Association of the VENDEE(S) constituted in terms of Haryana Apartment Ownership Act shall be entitle to levy interest at the rate of 18% per annum over the outstanding amount till demand for the next month is raised. In case default in payment is committed by the VENDEE(S) in timely payment for the second month alongwith interest and arrears of previous month, in that event the VENDORS or its Nominee including any other Body or Association of the VENDEE(S) constituted in terms of Haryana Apartment Ownership Act shall be entitled to appropriate these charges from the said Security Deposit. The amount if appropriated out of Security Deposit shall be reimbursed by the VENDEE(S) within 15 days of intimation sent to VENDEE(S) communicating such appropriation. This shall be without prejudice to the rights reserved by the VENDORS in clause 21 (b)

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of the Agreement. The VENDEE(S) also undertakes to deposit with the VENDORS or its Nominee including any other Body or Association of the VENDEE(S)”

50. From the aforesaid clauses, it is evident that the buyer is under an obligation to pay advance monthly charges as prescribed.
51. It is a settled law that the respondent is right in demanding advance maintenance charges at the rate prescribed therein at the time of offer of possession. The issue relating to the demand of Advance maintenance charges has already been dealt with by this Authority in complaint bearing no. CR/4031/2019 and others titled “Varun Gupta vs. Emmar” in which it was held 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 a year.

F.5 Direct the respondent to not ask for Interest-free maintenance security.

52. The issue relating to the demand for Interest-free maintenance security has already been dealt with by this Authority in complaint bearing no. CR/4031/2019 and others titled “Varun Gupta vs. Emmar” in which it was observed that:

“It is held that the promoter may be allowed to collect a reasonable amount from the allottees under the head “IFMS”. However, the authority directs that the promoter must always keep the amount collected under this head in a separate bank account and shall maintain that account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFMS amount and the interest accrued thereon, the promoter must provide details to the allottee. It is further clarified that out of this IFMS/IBMS,

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no amount can be spent by the promoter for the expenditure it is liable to incur to discharge its liability and obligations as per the provisions of section 14 of the Act."

F.6 Direct the respondent to not force the complainants to sign any indemnity cum undertaking.

53. The law regarding signing of indemnity cum undertaking is well settled. An undertaking/ indemnity bond given by a person thereby giving up their valuable rights must be shown to have been executed in a free atmosphere and should not give rise to any suspicion. If a slightest of doubt arises in the mind of the adjudicator that such an agreement was not executed in an atmosphere free of doubts and suspicions, the same would be deemed to be against public policy and would also amount to unfair trade practices. No reliance can be placed on any such indemnity-cum-undertaking and the same is liable to be discarded and ignored in its totality. Therefore, this authority does not place reliance on such indemnity cum undertaking. Furthermore, the NCDRC order dated 03.01.2020 in case titled as Capital Greens Flat Buyer Association and Ors. Vs. DLF Universal Ltd., Consumer case no. 351 of 2015, wherein it was held that the execution of indemnity-cum-undertaking would defeat the provisions of sections 23 and 28 of the Indian Contract Act, 1872 and therefore, would be against public policy, besides being an unfair trade practice. The relevant portion of the said judgment is reproduced herein below:

"Indemnity-cum-undertaking

30. The developer, while offering possession of the allotted flats insisted upon execution of the indemnity-cum-undertaking before it would give possession of the allotted flats to the concerned

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allottee. Clause 13 of the said indemnity-cum-undertaking required the allottee to confirm and acknowledge that by accepting the offer of possession, he would have no further demands/claims against the company of any nature, whatsoever. It is an admitted position that the execution of the undertaking in the format prescribed by the developer was a pre-requisite condition, for the delivery of the possession. The opposite party, in my opinion, could not have insisted upon clause 13 of the Indemnity-cum-undertaking. The obvious purpose behind such an undertaking was to deter the allottee from making any claim against the developer, including the claim on account of the delay in delivery of possession and the claim on account of any latent defect which the allottee may find in the apartment. The execution of such an undertaking would defeat the provisions of Section 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being an unfair trade practice. Any delay solely on account of the allottee not executing such an undertaking would be attributable to the developer and would entitle the allottee to compensation for the period the possession is delayed solely on account of his having not executed the said undertaking-cum-indemnity." The said judgment of NCDRC was also upheld by the Hon'ble Supreme Court vide its judgement dated 14.12.2020 passed in civil appeal nos. 3864-3889 of 2020 against the order of NCDRC."

54. Therefore, the complainant shall not be made liable to sign any Indemnity cum undertaking.

G. Directions issued by the Authority:

55. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

- i. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.75% p.a. for every month of delay from the due date of possession i.e., 02.03.2021 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

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- ii. The respondent is directed to hand over physical possession of the unit to the complainants after making a valid offer of possession.
 - iii. The arrears of such interest accrued from 02.03.2021 till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from the date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules;
 - iv. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
56. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
57. Complaint stands disposed of.
58. File be consigned to the Registry.

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 13.09.2023