BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of order:	10.12.2024

NAME OF THE BUILDER		ADVANCE INDIA PROJECTS LTD. & LANDMARK APARTMENTS PVT. LTD.	
PROJECT NAME		AIPL JOY STREET	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/7161/2022	Rajkumar Rana & Shanti Rana V/s Advance India Projects Ltd. & Landmark Apartments Pvt. Ltd	Sh. Dhruv Lamba Sh. Dhruv Rohtagi
2.	CR/7164/2022	Rajkumar Rana & Shanti Rana V/s Advance India Projects Ltd. & Landmark Apartments Pvt. Ltd	Sh. Dhruv Lamba Sh. Dhruv Rohtagi

CORAM:
Shri. Arun Kumar — **Chairperson**
Shri. Vijay Kumar Goyal — **Member**

ORDER

1. This order shall dispose of both the 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.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects,

namely, 'AIPL Joy Street' being developed by the same respondent promoters i.e., M/s Advance India Projects Ltd.

3. The details of the complaints, reply to status, unit no., date of agreement, & allotment, due date of possession, offer of possession and relief sought are given in the table below:

Project Name and Location	**"AIPL Joy Street", Sector 66, Gurugram, Haryana.**	
7. POSSESSION OF THE UNIT ***7.1 Schedule for possession of the unit:*** *- The Promoter agrees and understands that timely delivery of possession of the Unit to the Allottee and the Common Areas to the association of allottees or the Governmental Authority, as the case may be, as provided under Rule 2(1)(f) of Rules, 2017, is the essence of the Agreement.* (Page no. 76 of the complaint)		
RERA Registered/ not registered	1[illegible] of 2017dated 28.08.2017 valid up to 31.12.2020	
Due date of possession	31.12.2020	
Occupation certificate	28.09.2020	
Complaint No.	**CR/7161/2022**	**CR/7164/2022**
Unit no.	FF-061 retail shop admeasuring 375.23 sq. ft. [pg. 101 of complaint]	SF/SEN-02 flea market admeasuring 341.54 sq. ft. [pg. 100 of complaint]
Allotment letter	03.08.2016 [pg. 28 of complaint]	19.12.2016 [pg. 75 of reply]
Date of execution of buyer's agreement	22.08.2016 [pg. 34 of complaint]	29.03.2017 [pg. 31 of complaint]
Email by the respondent for executing new BBA in terms of RERA	06.07.2019 [pg. 61 of complaint]	06.07.2019 [pg. 61 of complaint]
Date of execution of new registered buyers' agreement	08.07.2019 [pg. 63 of complaint]	08.07.2019 [pg. 63 of complaint]
Basic sale consideration	₹ 26,26,610/- [as per SOA dated 12.04.2023 at pg. 155 of reply]	₹ 28,86,013/- [as per SOA dated 12.04.2023 at pg. 155 of reply]
Total amount paid	₹ 32,46,047/- [as per SOA dated 12.04.2023 at pg. 157 of reply]	₹ 37,72,171/- [as per SOA dated 12.04.2023 at pg. 157 of reply]
Offer of constructive possession	03.10.2020 [pg. 101 of complaint]	01.10.2020 [pg. 100 of complaint]

Assured return clause as per BBA dated 22.08.2016	**32. *ASSURED RETURN:*** *Where the Allottee has opted for Payment Plan as per Annexure-A, attached herewith and accordingly,* ***the company has agreed to pay Rs.37,120/- per month by way of assured return to the allottee from 06.08.2016, or the date of execution for this agreement till the date of offer of possession of the unit.*** *The return shall be inclusive of all taxes whatsoever payable or due on the return.*	**32. *ASSURED RETURN:*** *Where the Allottee has opted for Payment Plan as per Annexure-A, attached herewith and accordingly,* ***the company has agreed to pay Rs.13,957/- per month by way of assured return to the allottee from 08.01.2017, or the date of execution for this agreement till the date of offer of possession of the unit.*** *The return shall be inclusive of all taxes whatsoever payable or due on the return.*
Assured return amount paid	₹ 6,72,271/- [pg. 184 of reply]	₹ 5,00,494/- [pg. 177 of reply]
Assured return period	November 2018 till September 2020	November 2018 till September 2020
Pre termination letter	02.03.2021 [pg. 175 of reply]	NA
Lease deed	No document placed on record	28.06.2023 [pg. 6 of additional documents filed by respondent dated 21.11.2024]
1. Direct the respondent to pay delay possession charges at prescribed rate of interest from the due date of possession till actual handing over of physical possession. **2. Direct the respondent to pay assured return as promised in clause 32 of the BBA dated 22.08.2016.** **3. Direct the respondent to withdraw all illegal demands.** **4. Direct the respondent to allow credit of an appropriate amount of GST, in accordance with law and directions of CBIC and interest thereupon @ 18%.** **5. Direct the respondent to charge CAM charges from the date of handing over of actual possession of the subject unit.** **6. Direct the respondent not to charge holding charges from the complainants.** **7. Direct the respondent not to charge anything which is not part of the BBA.** **8. Penalise the respondent under section 61 of the Act, 2016 for violation of various provisions of the Act, 2016.**		

4. 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 of the obligations cast upon the promoters, the allottees and the

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

5. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case ***CR/7161/2022 titled as Rajkumar Rana & Shanti Rana V/s Advance India Projects Ltd. & Landmark Apartments Pvt. Ltd.*** are being taken into consideration for determining the rights of the allottees qua delay possession charges, and other reliefs sought by the complainants.

A. Unit and project related details

6. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, date of buyer's agreement etc, have been detailed in the following tabular form:

CR/7161/2022 titled as Rajkumar Rana & Shanti Rana V/s Advance India Projects Ltd. & Landmark Apartments Pvt. Ltd.

S. N.	Particulars	Details
1.	Name of the project	"AIPL Joystreet", Sector- 66, Gurugram.
2.	Project area	3.9562 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	**7 of 2008 dated 21.01.2008, valid till 20.01.2025** **152 of 2008 dated 30.07.2008 valid till 29.07.2025**
5.	Name of licensee	Landmark Apartments Pvt. Ltd.
6.	RERA Registered/ not registered	157 of 2017dated 28.08.2017 valid up to 31.12.2020
7.	Unit no.	Retail Shop. 61, First Floor (Page 36 of the complaint)
8.	Area admeasuring (Super area)	342.94 sq. ft. (Page 36 of complaint)
9.	Allotment letter	03.08.2016 (Page no. 28 of the complaint)
10.	Date of execution of agreement for sale	22.08.2016 (Page no. 34 of the complaint))
11.	Date of execution of new buyer's agreement	08.07.2019 (Page 64 of the complaint)

12.	Possession clause as per new buyer agreement dated 08.07.2019	***7. POSSESSION OF THE UNIT*** ***7.1 Schedule for possession of the unit:*** *- The Promoter agrees and understands that timely delivery of possession of the Unit to the Allottee and the Common Areas to the association of allottees or the Governmental Authority, as the case may be, as provided under Rule 2(1)(f) of Rules, 2017, is the essence of the Agreement.* (Page no. 76 of the complaint)
13.	Assured return clause as per buyer's agreement dated 22.08.2016	**32. *ASSURED RETURN:*** *Where the Allottee has opted for Payment Plan as per Annexure-A, attached herewith and accordingly,* ***the company has agreed to pay Rs.37,120/- per month by way of assured return to the allottee from 06.08.2016, or the date of execution for this agreement till the date of offer of possession of the unit****. The return shall be inclusive of all taxes whatsoever payable or due on the return.* (Page no. 47 of the complaint)
14.	Due date of possession	31.12.2020 (As mentioned in clause 5 of page 76 of complaint)
15.	Total sale consideration	Rs.28,89,271/- (As per SOA dated 12.04.2023 on page 157 of the reply as per SOA dated 12.04.2023 on page 157 of the reply)
16.	Amount paid by the complainant	Rs.32,46,048/- (As per SOA dated 12.04.2023 on page 157 of the reply)
17.	Occupation certificate /Completion certificate	28.09.2020 (Page 162 of the reply)
18.	Offer of possession	03.10.2020 (Page no. 165 of the reply)
19.	Assured return paid	Rs.6,72,271/- (Page 184 of the reply)
20.	Pre termination letter	02.03.2021 (Page 175 of the reply)

B. Facts of the complaint

7. The complainants have submitted as under:

a. That on 18.05.2016, the present complainants namely Mr. Rajkumar Rana and Ms. Shanti Rana had booked a unit (along with 01 car parking space) in the subject project and in lieu of the same paid an amount of Rs.3,00,000/-. The payment was acknowledged by the respondent's company and accordingly a booking receipt was issued.

b. That on 03.08.2016, an allotment letter was issued by the respondent's company M/s. ADVANCE INDIA PROJECTS LIMITED in the name of the present complainants namely Mr. Rajkumar Rana and Ms. Shanti Rana vide which a retail shop (along with 01 car parking space) bearing no. 61 on First Floor having a super area of 342.94 sq. ft. was allotted at BSP @ Rs. 7,000/- per sq. ft., Development charges @ Rs. 600/- per sq. ft. and IFMS @ Rs. 100/- per sq. ft. The present complainants opted for a down-payment plan.

c. That on 22.08.2016, a buyer's Agreement was executed between M/s Advance India Projects Ltd. (hereinafter referred to as the respondent no.1) and Mr. Rajkumar Rana and Ms. Shanti Rana (hereinafter referred to as the complainants) wherein a retail shop (along with 01 car parking space) bearing no. 61 on First Floor having a super area of 342.94 sq. ft. was allotted. As per Annexure- A of the buyer's agreement, the total sale consideration of the subject unit was Rs. 26,40,638/- (excl. tax). It is pertinent to mention over here that Clause 1.2 of the said agreement talks about Due date of possession, clause 11 specifies "Procedure for Taking Possession" and Clause 12 specifically talks about "Handing Over Possession".

d. That vide clause 1.2 of the buyer's agreement dated 22.08.2016, the promoters have proposed to complete the construction of the subject unit within 42 months from 01.01.2016 plus 6 months grace period and accordingly, the due date of possession comes out to be 01.07.2019. The

grace period of 6 months should not be allowed in the present case as it is a well stated law that "No one can take benefit out of his own wrong".

e. That on 06.07.2019, on this date, the complainants got a communication from the respondent's company that the Real Estate (Regulation and Development) Act, 2016 has been enacted and notified, and hence a supplementary agreement to the buyer's agreement is required to be signed to align few terms of the buyer's agreement with the RERA guidelines. It is of grave importance to mention over here that the complainants were communicated only about the modification of a few clauses as per RERA guidelines and rest all the significant terms of the previous agreement will remain the same. Further, the complainants asked the respondent's company to share the draft of the clauses that needs to be signed along with a written communication to this effect. Accordingly, the respondent's company mailed on 06.07.2019 but still no such draft was shared. The complainants relied and acted upon the false promises and representations and assurances made by the respondent's company that the process is being carried out only to give effect to the RERA guidelines, without making any change to the substantive rights of the complainants.

f. That accordingly, after reaching there at the Sub-Registrar office on the designated date and time, to the utter shock and surprise of the complainants, the respondent's representative requested the complainants to sign an entirely new buyer's agreement dated 08.07.2019. The complainants objected to the same and said that it is not possible to read such a voluminous legal document in such a short span of time and requested that the registration process needs to be rescheduled to a later date so that the complainants get time to go through the terms of the new buyer's agreement. To this, the complainants were told that

the date for the agreement's registration has been fixed-up after a lot of efforts and coordination with the authorities and also the registration fees challan has already been generated so the registration process has to be completed today itself. The complainants were also again informed that the new buyer's agreement is being executed in order to accommodate the RERA guidelines, without making any alterations to the main clauses of the previous agreement and due care has been taken so that the rights of the unit holders are not hampered.

g. That the respondent's company has misrepresented to the complainants that the terms of the new agreement were not changed and are in accordance with the previous buyer's agreement. The clause 7 of the new buyer's agreement speaks about "Possession of The Unit" (corresponding to clause 11 and 12 of the previous buyer's agreement dated 22.08.2016) and fraudulently induced a new word "Constructive possession" in place of physical possession. Also, the clause which deals with the due date of possession was also changed which becomes apparently clear by seeing the possession clauses. As per clause 1.2 of the agreement dated 22.08.2016, the due date of possession comes out to be 01.07.2019 but as per the clause 5 of the new agreement dated 08.07.2019, the due date of possession is mentioned to be 31.12.2020. It is further submitted that the new agreement has been executed after the Real Estate (Regulation and Development) Act,2016 came into force and the same is not in accordance with the model buyer's agreement which is again a clear-cut violation of the provisions of the Act of 2016 and Rules of 2017.

h. That in the execution of the new buyer's agreement it is a matter of fact that the consent of the present complainants was obtained by undue influence (as defined u/sec 16 of the Indian Contract Act, 1872) and misrepresentation (as defined u/sec 18 of the Indian Contract Act, 1872)

and hence the same cannot be said to be the "Free Consent" (as defined u/sec 14 of the Indian Contract Act, 1872). The respondents were in a dominant position vis-à-vis the allottees (the present complainants) who have given their hard-earned savings to the respondents as it is very apparent on the face of it that the respondents were in a position to dominate the will of the present complainants. In the light of the above and as per the provisions of the Indian Contract Act, 1872 the contract is voidable.

i. That on 03.10.2020, a notice of offer of possession was sent by the respondent's company to the present complainants along with final statement of account. The subject of the said notice reads as "Intimation of Constructive Possession of Unit no.....". Not only this, but the said statement of account also consisted of certain illegal demands as Sinking Fund, Labour cess, Infrastructure Augmentation Charges, Electric switch-in station & Deposit Charges, Sewage/ Storm Water/ Water Connection charges, Electric Meter Charges etc. It is pertinent to mention here that the total sale consideration which was Rs. 26,40,638/- (vide buyer's agreement dated 22.08.2016) was increased to Rs. 30,51,006.02/- (vide new buyer's agreement dated 08.07.2019) and now has become Rs. 34,12,047.98/- in the final statement of accounts.

VALIDITY OF OFFER OF POSSESSION

j. The said notice of offer of possession was completely illegal and unlawful as Firstly, it nowhere talks about physical handing over of possession. So, such an offer of possession where practically no physical possession is offered is itself null and void in the eyes of law. Secondly, the said notice of offer of possession was accompanied by many illegal demands as Sinking Fund, Labour cess, Infrastructure Augmentation Charges, Electric switch-in station & Deposit Charges, Sewage/ Storm Water/ Water

Connection charges, Electric Meter Charges, Payment due area change to name a few. This Hon'ble Authority in many of its judgements have held that an offer of possession which is accompanied by unlawful and illegal demands is not a valid / lawful offer of possession. Thirdly, the complainants were allotted a retail shop along with 01 car parking space. It is important to mention here that the said notice of offer of possession nowhere mentions or talks about the said car parking space. Fourthly, the said notice of offer of possession was accompanied with Indemnity Bond cum Undertaking. In view of the submissions made above, the said notice of offer of possession dated 03.10.2020 is illegal, unlawful and not valid in the eyes of law. It is most humbly prayed before this Hon'ble Authority to struck down the said notice of offer of possession along with the illegal demands made by the respondent's company and declare the same as unlawful and invalid. Further, it is also most humbly prayed that a direction w.r.t issuance of a fresh offer of possession in which physical possession of the subject unit is offered along with 01 car parking space be made and a fresh statement of accounts be issued after removing all the illegal charges. That the present complainants had made all the payments well on time as and when demanded by the respondent builder. It is a matter of fact that the complainants had made a payment of Rs.26,37,071/- towards the total sale consideration of the subject unit.

k. That as per clause 32 of the buyer's agreement dated 22.08.2016, the company has agreed to pay Rs. 37,120/- per month by way of assured return to the allottee from 06.08.2016 or the execution of the agreement till the date of offer of possession of the unit. It is of immense importance to submit here that no valid/ lawful offer of possession has been made to the complainants till date. In light of the submissions made above, the respondent's company is liable to pay assured return to the tune of Rs.

37,120/- per month till the date a valid/ lawful offer of possession is made to the present complainants.

l. That furthermore, as per clause 1.2 of the agreement dated 22.08.2016, the promoters have proposed to complete the construction of the subject unit within 42 months from 01.01.2016 plus 6 months grace period and accordingly, the due date of possession comes out to be 01.07.2019. The grace period of 6 months should not be allowed in the present case as it is a well stated law that "No one can take benefit out of his own wrong. But it's a matter of fact that till date, the possession of the subject unit is not handed over to the present complainants and in view of the same, the respondents are liable to pay delay possession charges at the prescribed rate from the due date of possession i.e., 01.07.2019 till actual handing over of the possession as per the provisions of the Act of 2016.

m. That the respondent had made certain illegal demands as Sinking Fund to the tune of Rs.66,416/-, Labour-cess to the tune of Rs.7,787/-, Infrastructure Augmentation Charges to the tune of Rs.6,850/-, Electric switch-in station & Deposit Charges to the tune of Rs.47,405/-, Sewage/ Storm Water/ Water Connection charges to the tune of Rs.5,314/-, Electric Meter Charges to the tune of Rs. 9,440/-, Payment due area change to the tune of Rs. 2,78,081/-. It is most humbly prayed before this authority that the respondent be directed to withdraw all these illegal demands and issue a fresh statement of accounts after adjusting the delay possession charges and assured return till date of actual handing over of possession.

n. That the respondents cannot charge Holding charges from the present complainants as per the law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12.2020, the holding charges shall

also not be charged by the respondent builder at any point of time even if they are part of the agreement.

GST INPUT CREDIT

o. That the CBEC clarified that under GST regime, full input credit would be available for offsetting the headline rate of 12%. As a result, the input taxes embedded in the flat will not (& should not) form a part of the cost of the flat/ complex. The input credits should take care of the headline rate of 12% and it is for this reason that refund of overflow of input tax credits to the builder has been disallowed. The builders are expected to pass on the benefits of lower tax burden under the GST regime to the buyers of property by way of reduced prices/ installments. It is, therefore, advised to all builders/ construction companies that in the flats under construction, they should not ask customers to pay higher tax rate on instalments to be received after imposition of GST. Despite this clarity on law position, if any builder resorts to such practice, the same can be deemed to be profiteering under section 171 of GST law. Therefore, the Respondent may kindly be directed to allow credit of an appropriate amount of GST, in accordance with law and directions of the CBEC/ CBIC (around 4-5%). Furthermore, the Respondent may kindly also be directed to pay interest thereon @18% p.a. (under the GST legislation) from the date when the above amount was profiteered/ collected

CAM Charges

p. That CAM charges should be charged from the date of handing over of the actual physical possession of the subject unit. That due to the acts of the respondents and the deceitful intent as evident from the facts outlined above, the complainants have been unnecessarily harassed mentally as well as financially, and therefore the opposite party is liable to compensate the complainants on account of the aforesaid unfair trade

practice. Without prejudice to the above, the Complainants reserves the right to file a complaint before the Hon'ble Adjudicating Officer for compensation.

C. Relief sought by the complainants:

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

a. Direct the respondent to pay delay possession charges at prescribed rate of interest from the due date of possession i.e.,01.07.2019 till actual handing over of the physical possession of the subject unit as per the provisions of the Act of 2016.

b. Direct the respondent to pay assured return as promised in the clause 32 of the buyer's agreement dated 22.08.2016 till actual handing over of the physical possession of the subject unit.

c. Direct the respondent to withdraw all the illegal demands as Sinking Fund to the tune of Rs.66,416/-, Labour-cess to the tune of Rs.7,787/-, Infrastructure Augmentation Charges to the tune of Rs.6,850/-, Electric switch-in station & Deposit Charges to the tune of Rs.47,405/-, Sewage/ Storm Water/ Water Connection charges to the tune of Rs.5,314/-, Electric Meter Charges to the tune of Rs. 9,440/-, Payment due area change to the tune of Rs. 2,78,081/-.

d. Direct the respondent to allow credit of an appropriate amount of GST, in accordance with law and directions of the CBEC/ CBIC (around 4-5%) and interest thereupon@18%.

e. Direct the respondent to charge CAM charges from the date of handing over of the actual physical possession of the subject unit.

f. Direct the respondent to not charge "Holding charges" from the complainants.

g. Direct the respondent to not charge anything from the present complainants which is not part of the agreement.

h. To penalise the respondent u/sec 61 of the Act of 2016 for violation of various provisions of the Act of 2016 as mentioned in the complaint itself.

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 no. 1

10. The respondent no. 1 has contested the complaint on the following grounds:

a. That the Complainants has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the Buyer's Agreement, as shall be evident from the submissions made in the following paras of the present reply. The Respondent craves leave of this Hon'ble Authority to refer to and rely upon the terms and conditions set out in the Buyer's Agreement in detail at the time of the hearing of the present complaint, so as to bring out the mutual obligations and the responsibilities of the Respondent as well as the Complainants.

b. That the Complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. It is submitted that the Respondent No. 1 has already offered possession of the unit in question to the Complainants, who has failed to complete all the formalities and take the possession of the unit, as such, the Respondent No. 1 has already complied with its obligations under the Buyer's Agreement. The reliefs sought in the false and frivolous complaint are barred by estoppel. That the present complaint is not maintainable in law or on facts.

c. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive

evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint can only be adjudicated by the Civil Court. The present complaint deserves to be dismissed on this ground alone. That the Complainants are not "Allottees" but are Investors who has booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. That the Complainants have not come before this Hon'ble Authority with clean hands and have suppressed vital and material facts from this Hon'ble Authority. The correct facts are set out in the succeeding paras of the present reply.

d. That the Complainants had approached the Respondent No. 1 and expressed an interest in booking an apartment in the commercial colony developed by the Respondent No. 1 and booked the unit in question, bearing number FF/061, First Floor admeasuring 342.94 sq. ft. (tentative area) situated in the project developed by the Respondent No. 1, known as "AIPL Joy Street" at Sector 65, Gurugram, Haryana. That thereafter the Complainants vide application form dated 18.05.2016 applied to the Respondent No. 1 for provisional allotment of a unit bearing number FF/061, First Floor in the project. The Complainants consciously and willfully opted for down payment plan as per their choice for remittance of the sale consideration for the unit in question and further represented to the Respondent No. 1 that they shall remit every installment on time as per the payment schedule. That the Respondent No. 1 had no reason to suspect bonafide of the Complainants.

e. That at this instance, it needs to be noted that relationship between the Parties is commercial in nature and sacrosanct to the agreed terms. That in the present case, the Complainants purchased the Unit only on the categorical understanding that the Unit shall not be for physical

possession. That the booking was categorically, willingly and voluntarily made by the Complainant with an understanding of the same being for leasing purposes and not self-use, as can be noted in clause 41 of the Schedule I of the Application form:

> *"41. The Applicant has clearly understood that the Unit is not for the purpose of self-occupation and use by the Applicant and is for the purpose of leasing to third parties along with combined units as larger area. The Applicant has given unfettered rights to the Company to lease out the unit along with other combined units as a larger area on the terms and conditions that the Company would deem fit. The Applicant shall at no point of time object to any such decision of leasing by the Company."*

f. That pursuant to the execution of the Application Form, the Respondent No. 1 had no reason to suspect the bonafide of the Complainants and the Allotment letter dated 03.08.2016 was issued to the Complainants.

g. That the Unit allotted was provisional and subject to change as was categorically agreed between the parties. That the Clause 2 of the Application Form is reiterated as under:

> *"I/We clearly understands that the allotment of the unit by the Company pursuant to this Application shall be purely provisional till such time that the Unit Buyer's Agreement/Agreement to Sell on the format prescribed by the Company is executed by the Company in my/our favour. Further, the allotment of a unit in the project shall be subject to the terms and conditions, restrictions and limitations as contained in the license granted by DTCP for development of the said project land by the Company and the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017 and the regulations made thereunder and the applicable law."*

h. That thereafter, Buyer's Agreement dated 22.08.2016 was executed between the Complainants and the Respondents. That pursuant to the execution of the Buyer's Agreement, an Agreement to Sell dated 08.07.2019 was executed between the Complainants and the Respondents on the mutually agreed terms and conditions, upon

guidelines issued after introduction of the Real Estate (Regulation and Development) Act, 2016 read with the Applicable Rules to the state of Haryana.

i. It is pertinent to note that as per clause 17 of Schedule I of the Application form, the Applicant shall get possession of the Unit only after the Applicant has fully discharged all his obligations and there is no breach on the part of the Applicant and complete payment of Sale Consideration against the Unit has been made and all other applicable charges/dues/taxes of the Applicant have been paid. Conveyance / Sale Deed/necessary transfer documents in favour of the Applicant shall be executed and/or registered upon payment of the entire Sale Consideration and other dues, taxes, charges etc. in respect of the Unit by the Applicant. That in the present case, the Complainant failed to abide by the terms and conditions of the Buyer's Agreement and defaulted in remitting timely installments. That the Respondent No. 1 was constrained to issue payment reminder letters to the Complainants. It was further conveyed by the Respondent No. 1 to the Complainants that in the event of failure to remit the amounts mentioned in the said notice, the Respondent No. 1 would be constrained to cancel the provisional allotment of the unit in question. Despite the aforesaid delays and defaults, the Respondent has given an interest waiver of Rs.60,000/- to the Complainant. Further as per clause 38 of Schedule I of the Application form, subject to the aforesaid and subject to the Applicant not being in default under any part of this Agreement including but not limited to the timely payment of the Total Price and also subject to the Applicant having complied with all formalities or documentation as prescribed by the Company, the Company endeavours to hand over the possession of the Unit to the Applicant within a period of 42 (forty two) months, with a

further grace period of 6 (six) months, from 01 January, 2016. It is submitted that the Complainants despite being in default, has been offered the possession of the said unit in question within the stipulated time. Further, upon the execution of the Agreement to Sell dated 08.07.2019, the terms and conditions therein, supersede the terms and conditions contained in the earlier Builder Buyer Agreement dated 22.08.2016. That in terms of Clause 5 of the Agreement to Sell dated 08.07.2019, the due date possession of the unit in question was 31.12.2020, or any other date, as may be extended by the Hon'ble Authority. The clause 5 is of Agreement to Sell dated 08.07.2019 is reproduced hereinbelow:-

> *"5. TIME IS ESSENCE:*
> *The Promoter shall abide by the time schedule for completing the project, handing over the possession of the Unit to the Allottee (which for the purpose of this Agreement shall mean issuance of Notice of Offer of Possession of the Unit by the Promoter to the Allottee) and the Common Areas to the association of allottees or the Governmental Authority, as the case may be, as provided under the Rule 2(1)(f)* ***of Rules, 2017 by 31.12.2020*** *as disclosed at the time of registration of the Project with the Authority or such extended period as may be intimated and approved by the Authority from time to time. The completion of the Project shall mean grant of Occupancy Certificate for the Project."*

Thus, it is very much evident, that having received the offer of possession on 03.10.2020, there is no delay on the part of the Respondent No.1.

j. It is submitted that the rights and obligations of the Complainants as well as the Respondent No. 1 are completely and entirely determined by the covenants incorporated in the Buyer's Agreement which continue to be binding upon the parties thereto with full force and effect. That as per clause 55 of the Buyer's Agreement, it is mutually agreed between the parties that in the event of the breach, failure, neglect, omission or ignorance of the Allottee to perform its obligations or fulfill any of the terms and conditions set out in this Agreement, it shall be deemed to be

an event of default and the Allottee shall be liable for consequences stipulated herein. It is submitted that the Respondent No. 1 has done its part of obligations within the stipulated time whereas on the contrary, the Complainants themselves failed to abide by its commitments.

k. That it is submitted that the project underwent a change/modification and upon the same being done, objections/suggestions for approval of building plans were invited from the Complainant on 16.11.2019, to which the Complainants had given their consent and no objection. That the Respondent No. 1 was miserably affected by the ban on construction activities, orders by the NGT and EPCA, demobilization of labour, etc. being circumstances beyond the control of the Respondent and force majeure circumstances, that the construction was severely affected during this period and the same was rightfully intimated to the Complainants by the letter dated 30.11.2019.

l. That it is pertinent to highlight that the arrangement between the parties was to transfer the constructive possession of the Unit and the same was categorically agreed between the Parties in the Application form and the no protest in this regard had ever been raised by the Complainants and the same was willingly and voluntarily accepted by the Complainants. That the leasing arrangement furthers the constructive possession of the Unit. It may be necessary to point out that due to the lapses on the part of the Complainants to make the outstanding dues towards the possession, has caused severe prejudice to the Respondent No. 1 as, the unit in question could have generated valuable returns not only for the Respondent No. 1 but for the Complainants as well.

m. That the Complainants by filing the present complaint and by taking such baseless and untenable pleas is just trying to conceal the material facts in order to somehow cover up their own wrongs, delays and latches and to

wriggle out of their contractual obligations by concocting false and frivolous story. Therefore, the present Complaint is filed with grave illegalities and lack of jurisdiction and the same is liable to be dismissed at the very outset and the Complainants shall be directed to file pursue the complaint before the civil court for any dispute arises from the Agreement in the form of investment agreement and lease agreement.

n. That the law of equity and justice cannot allow such Complainants to reap benefits of such opportunistic attitude and will strive for balance of rights of both the parties at dispute. That this Hon'ble Authority should not allow the Complainants to mislead the Hon'ble Authority and to misuse Real Estate (Regulation and Development) Act, 2016 for harassing the builder. That despite the utter failure of the Complainants in fulfilling the obligations, the Respondent No. 1 has always showed exemplary conduct.

o. That it is further submitted that despite there being a number of defaulters in the project, the Respondent No. 1 itself infused funds into the project and has diligently developed the project in question. The Respondent No. 1 had applied for Occupation Certificate on 16.07.2020. Occupation certificate was thereafter issued in favour of the Respondent dated 28.09.2020. It is pertinent to note that once an application for grant of Occupation Certificate is submitted for approval in the office of the concerned statutory authority. Therefore, the time period utilized by the statutory authority to grant occupation certificate to the Respondent No. 1 is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project.

p. That the Complainants were offered possession of the unit in question through letter of offer of possession dated 03.10.2020. The Complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation

necessary for handover of the unit in question to the Complainants. The Respondent No. 1 earnestly requested the Complainants to obtain constructive possession of the unit in question and to further complete all the formalities regarding delivery of possession. However, the Complainants did not pay any heed to the legitimate, just and fair requests of the Respondent No. 1 and threatened the Respondent with institution of unwarranted litigation. It is relevant to note here that the Respondent No. 1 company had complied with its obligations by offering the possession well within time.

q. That it is pertinent to mention that the Complainants did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the Buyer's Agreement and consequently in order to needlessly linger on the matter, the Complainants refrained from obtaining possession of the unit in question. The Complainants are not entitled to contend that they are entitled for any sort of interest even after receipt of offer for possession within stipulated time. The Complainants has consciously and maliciously refrained from obtaining possession of the unit in question.

r. That it is the obligation of the Complainants under the Act to take the possession of the allotment within two months of Occupancy Certificate after completion of all formalities including the payment of outstanding dues, as per the notice of offer of possession. The relevant provisions of the Act are reiterated hereinbelow:

> *Section 19(10): Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.*
> *Section 19(11): Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.*

s. That the Complainants has intentionally distorted the real and true facts in order to generate an impression that the Respondent No. 1 has reneged from its commitments. No cause of action has arisen or subsists in favor of the Complainants to institute or prosecute the instant complaint.

t. That it is submitted that several allottees, including the Complainants have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualization and development of the project in question. It is submitted that despite giving numerous opportunities to the Complainants, it as a last resort, once again issued a Pre-termination letter dated 02.03.2021 thereby requesting the Complainants to clear their outstanding dues and complete all necessary formalities as per the terms and conditions of the Buyer's Agreement, but on the contrary, the Complainants evidently ignored all the requests of the Respondent and continued to be in default of payment of dues and taking possession.

u. That it is submitted that this Hon'ble Authority has no jurisdiction to deal with the cases pertaining to leasing. That the Act is entirely silent on the same. That had the legislature intended the jurisdiction of the Act to extend to leasing arrangements, the same would have been incorporated. It is a settled principle that what cannot be attained directly, cannot be attained indirectly. Accordingly, the Hon'ble Authority has no jurisdiction to deal with the present matter and the present Complaint need to be dismissed at the outset.

v. That in any manner whatsoever, as has been noted in the preliminary objections to the maintainability, the Hon'ble Authority has no power to deal with cases pertaining to assured return. Additionally, similar issue regarding jurisdiction of Hon'ble Authority for deciding the complaints pertaining to assured return is already pending with the Hon'ble Haryana

Real Estate Appellate Tribunal, Chandigarh as the Hon'ble Tribunal has granted stay in the matter titled as "Venetial LDF Projects LLP vs. Mohan Yadav [Appeal No. 95 of 2022]" against the judgment passed by this Hon'ble Authority granting the relief of assured returns to Mr. Mohan Yadav (Complainant).

w. That it is submitted that the Respondent No. 1 has acted strictly in accordance with the terms and conditions of the Agreement between the parties. There is no default or lapse on the part of the Respondent No. 1. The allegations made in the Complaint inter-alia that the Respondent No. 1 has failed to comply with its obligations are completely false and bereft of any merits. On the contrary, it is the Complainants who are in clear breach of the terms of the Agreement by not remitting the outstanding amount of the said unit in question within the stipulated time and by not coming forward to take the possession of the said unit in question. The allegations levelled by the Complainants are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

x. Without prejudice to the aforesaid preliminary objections and the contention of the Respondent No. 1 that unless the question of maintainability is first decided, the Respondent No. 1 ought not to be called upon to file the reply on merits to the Complaint, this reply is being filed by way of abundant caution, with liberty to file such further reply as may be necessary, in case the Complaint is held to be maintainable.

y. It is also submitted that the all the facts and submissions set out in the Complaint are incorrect and are denied as if the same are specifically set out herein and traversed, except those which are specifically admitted herein.

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

12. The present complaint was filed on 28.11.2022 in the authority. The notice for hearing was duly served to respondent no. 2. However, despite providing enough opportunity for filing the reply, no written reply has been filed by the respondent no. 2. Thus, keeping in view the opportunity given to the respondent no. 2, that despite lapse of one year the respondent has failed to file the reply in the registry. Therefore, in view of the above-mentioned fact, the defence of the respondent no. 2 is hereby struck off by the authority. Further, respondent no. 2 failed to put in appearance before the authority and has also failed to file reply. In view of the same, the matter is proceeded ex-parte against respondent no. 2.

13. Written submissions filed by the complainant and respondent no. 1 are also taken on record and considered by the authority while adjudicating upon the relief sought by the complainant.

E. Jurisdiction of the authority

14. 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

15. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

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

> ***Section 11(4) (a)***
> *Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.*
> ***Section 34-Functions of the Authority:***
> ***34(f)*** *to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

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

F. Findings on the objections raised by the respondent:

F.I. Objection regarding maintainability of complaint on account of complainant being investor.

18. The respondent took a stand that the complainants are investors and not consumers and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is buyer, and they have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

> *"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent"*

19. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

G. Findings on application under section 35 being filed by the complainant on 24.09.2024.

20. On 24.09.2024 the respondent made an application under section 35 of the Act, 2016 in the present matter wherein the complainant prayed for appointment of inquiry officer/expert to examine the agreement executed in the year 2019 inter se parties and to ascertain whether the said agreement is in compliance with RERA Act, 2016 or not. Thereafter abrogate the clauses which are arbitrary and against the law and to initiate penal proceedings against the errant respondent promoter for violation of provisions of the Act, 2016 & Rules, 2017.

21. In the present matter the respondent firstly executed the buyers' agreement on 22.08.2016 and thereafter the respondent vide mail dated 06.07.2019 requested the complainant to execute the agreement to sell and get the same registered in terms of RERA Act, 2016. The complainants agreed to the same and executed the fresh buyers' agreement on 08.07.2019 which as per

complainant is not in consonance with RERA Act, 2016. The authority considering the said request of complainants hereby directs the planning branch of the Authority to examine the BBA executed with the complainants and the draft BBA submitted by the respondent at the time of registration with the model Buyers' agreement as per RERA Rules, 2017 and issue show cause notice and initiate penal proceedings as per the Act, 2016 for any violation of the provisions thereof, if any.

22. Further, the complainants may approach the adjudicating officer for compensation under the Act, 2016 if the respondents are found guilty under the Act, 2016.

H. Findings on the relief sought by the complainant.

H.I. Direct the respondent to pay delay possession charges at prescribed rate of interest from the due date of possession i.e.,01.07.2019 till actual handing over of the physical possession of the subject unit as per the provisions of the Act of 2016.

23. In the present matter the authority observed that the registered buyers' agreement executed inter se parties on 08.07.2019. Clause 7.1 provides for the handing over of possession of the subject unit as provided under rule 2(1)(f) of Rules, 2017. The said project is registered by the authority vide registration no. 157 of 2017 dated 28.08.2017 valid up to 31.12.2020. Accordingly, the due date of handing over of possession of the subject unit comes out to be 31.12.2020. As per the documents available on record the respondent offered the possession of the unit on 03.10.2020 after obtaining OC from the competent authority on 28.09.2020.

24. Before adjudicating upon the relief of delay possession charges it would be relevant to give observation upon the validity of the offer of possession dated 03.10.2020. The complainants in the present matter have pleaded that the respondent fraudulently changed the term possession with constructive possession in the BBA dated 08.07.2019 whereas as per the agreement dated 22.08.2016 the respondent was obligated to offer the actual physical

possession of the unit. On the contrary the respondent, contended that the new agreement amounts to novation of contract and falls within the ambit of section 62 of Indian Contract Act, 1872 and therefore the agreement dated 08.07.2019 amounts to recession of previous contract and makes the parties bound by the new agreement.

25. The authority herein observes that the complainants have failed to put forth any document to show that the agreement dated 08.07.2019 was executed under coercion. Also, no objection/protest whatsoever, was made by the complainants at any point of time since the execution of the new BBA. Therefore, the offer of possession dated 03.10.2020 is in terms of the agreement dated 08.07.2019 executed between the parties and is valid. In view of the above findings no delay in handing over the possession of the subject unit on part of respondent is established and accordingly no case of delay possession charges is made out. In case the lese as per the agreed terms has not been executed, then the complainant can invoke clause 21(k)(ii) of the agreement dated 08.07.2019.

H.II. Direct the respondent to pay assured return as promised in the clause 32 of the buyer's agreement dated 22.08.2016 till actual handing over of the physical possession of the subject unit.

26. The complainants are seeking unpaid assured returns on monthly basis as per the builder buyer agreement. It is pleaded that the respondent has not complied with the terms and conditions of the agreement. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019), citing earlier decision of the authority (Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018) it was held by the authority that it has no jurisdiction to deal with cases of assured returns. Though in those cases, the

issue of assured returns was involved to be paid by the builder to an allottee but at that time, neither the full facts were brought before the authority nor it was argued on behalf of the allottees that on the basis of contractual obligations, the builder is obligated to pay that amount. Thereafter, the authority after detailed hearing and consideration of material facts of the case in CR/8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd. rejected the objections raised by the respondent with respect to non-payment of assured return due to coming into the force of BUDS Act, 2019. The authority in the said matter very well deliberated that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon. So, it can be said that the agreement for assured returns between the promoter and an allotee arises out of the same relationship and is marked by the original agreement for sale. Therefore, it can be said that the authority has complete jurisdiction with respect to assured return cases as the contractual relationship arises out of the agreement for sale only and between the same contracting parties to agreement for sale. Also, the Act of 2016 has no provision for re-writing of contractual obligations between the parties as held by the Hon'ble Bombay High Court in case Neelkamal Realtors Suburban Private Limited and Anr. V/s Union of India & Ors., (supra) as quoted earlier. So, the respondent/builder can't take a plea that there was no contractual obligation to pay the amount of assured returns to the allottee after the Act of 2016 came into force or that a new agreement is being executed with regard to that fact. When there is an obligation of the promoter against an allottee to pay the amount of assured returns, then he can't wriggle out from that situation by taking a plea of the enforcement of Act of 2016, BUDS Act 2019 or any other law. Section 2(4) of

the above-mentioned Act defines the word 'deposit' as an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form. Further, section 2(4)(l) deals with the exception wherein 2(4)(l)(ii) specifically mention that deposit does not include an advance received in connection with consideration of an immovable property, under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable properly as specified in terms of the agreement or arrangement. In the present matter the money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period as agreed between the allottee and the builder in terms of buyer's agreement, MoU or addendum executed inter-se parties. Moreover, the developer is also bound by promissory estoppel. As per this doctrine, the view is that if any person has made a promise and the promisee has acted on such promise and altered his position, then the person/promisor is bound to comply with his or her promise. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint. The Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per section 2(4)(l)(ii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

27. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an

agreement defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allotee arises out of the same relationship and is marked by the original agreement for sale.

28. It is not disputed that the respondent is a real estate developer, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainants besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainants-allottees in terms of the builder buyer agreement read with addendum to the said agreement.

29. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. As per the possession clause incorporated in the agreement executed between the parties on 08.07.2019, the possession of the subject unit was to be delivered within stipulated time i.e., 31.12.2020. The assured return is payable to the allottees on account of provisions in the BBA. The assured return in this case is payable as per 33 of the agreement dated 22.08.2016. *(Note: the date of agreement referred for assured return has been inadvertently mentioned as 0807.2019 in the proceedings dated 10.12.2024 instead of 22.08.2016). The respondent agreed to pay an amount of ₹37,120/- per month from 06.08.2016 or the date of execution of this agreement till the date of offer of possession of the unit i.e., 03.10.2020. The respondent is directed to pay the amount of assured return as agreed in clause 32 of the agreement dated 22.08.2016

executed inter se parties till the date of issue of notice of possession of the unit i.e., till 03.10.2020.

30. Accordingly, the respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.

H.III. Direct the respondent to withdraw all the illegal demands:

- **Infrastructure Augmentation Charges to the tune of Rs.6,850/-.**
- **Electric switch-in station & Deposit Charges to the tune of Rs.47,405/-.**

31. The complainant has sought the relief for quashing the above-mentioned charges charged by the respondent at the time of offer of possession dated 03.10.2020. The authority is of the view that the respondent is directed not to charge anything which is not the part of BBA dated 08.07.2019.

- **Sinking Fund to the tune of Rs.66,416/-.**

32. The authority observes that the term sinking fund is not mentioned anywhere in the BBA executed inter-se parties. Moreover, sinking fund and IFMS are the same as both of them are collected for the same purpose. Therefore, the respondent cannot charge it under different heads and is directed to quash the amount of ₹ 66,416/- charged towards sinking fund as the respondent has already charged the maintenance security.

- **Labour-cess to the tune of Rs.7,787/-.**

33. Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with notification no. S.O 2899 dated 26.9.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint no.962 of 2019 titled ***Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited*** wherein it was held that since labour cess is to be paid by the

respondent, as such no labour cess should be charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainant is completely arbitrary and the complainant cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount. Accordingly, the respondent is directed to quash the amount of ₹7,787/- charged from the complainants on account of labour cess.

- **Sewage/ Storm Water/ Water Connection charges to the tune of Rs.5,314/-.**

34. The authority has already deliberated the said issue in complaint bearing no. ***4031 of 2019*** **titled as** ***Varun Gupta V/s Emaar MGF Land Ltd.*** wherein the authority has held that the promoter would be entitled to recover the actual charges paid to the concerned departments from the complainant/allottee 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 would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads.

- **Electric Meter Charges to the tune of Rs. 9,440/-.**

35. The respondent also demands a sum of ₹ 9,440/- besides taxes as meter connection charges and the demand has been challenged by the allottee being illegal. However, while deliberating this issue in complaint bearing no. ***4031 of 2019*** **titled as** ***Varun Gupta V/s Emaar MGF Land Ltd.*** the authority has held that the promoter would be entitled to recover the actual charges paid to the concerned departments from the complainant/allottee(s) on pro-rata basis on account of electricity connection. However, the complainant(s) would also be entitled to proof of such payments to the concerned department along

with a computation proportionate to the allotted unit, before making payment under the aforesaid heads. The model of the digital meters installed in the complex be shared with allottee(s) so that they could verify the rates in the market and the coloniser.

- **Payment due area change to the tune of Rs. 2,78,081/-.**

36. As per the documents available on record it is observed that the complainants and the respondents has already entered into an agreement on 08.07.2019 wherein the super area of the allotted unit was increased to 375.23 sq. ft. from 342.94 sq. ft. as provided in the previous agreement dated 22.08.2016. As per the agreed payment plan annexed at schedule F of the BBA dated 08.07.2019 the respondent mentioned the total sale consideration (inc. of taxes) as ₹ 28,51,748/-. Therefore, the authority opines that the respondent already changed the sale consideration of the unit as per the revised area as mentioned in the BBA dated 08.07.2019 and the respondent cannot charge for change of area of the said unit being already agreed between the parties in BBA dated 08.07.2019.

H.IV. Direct the respondent to allow credit of an appropriate amount of GST, in accordance with law and directions of the CBEC/ CBIC (around 4-5%) and interest thereupon@18%.

37. It is contended on behalf of complainants that the respondent raised an illegal and unjustified demand towards GST. It is pleaded that the liability to pay GST is on the builder and not on the allottee. But the version of respondents is otherwise and took a plea that while booking the unit as well as entering into flat buyer agreement, the allottee agreed to pay any tax/ charges including any fresh incident of tax even if applicable retrospectively. It is important to note that the possession of the subject unit was required to be delivered by 31.12.2020 and the incidence of GST came into operation thereafter on 01.07.2017. The authority is of view that the due date of possession is after 01.07.2017 i.e. date of coming into force of GST, the builder is entitled for

charging GST w.e.f. 01.07.2017. The promoter shall charge GST from the allottees **where the same was leviable,** at the applicable rate, if they have not opted for composition scheme subject to furnishing of such proof of payments and relevant details and input credit shall be passed on to the allottees as per law.

H.V. Direct the respondent to charge CAM charges from the date of handing over of the actual physical possession of the subject unit.

38. In the present matter, although the respondent has offered the possession of the said unit on 03.10.2020 after receiving OC. But vide said letter dated 03.10.2020 only constructive possession has been offered by the respondent which means the complainants are not in actual physical possession of the said unit. The respondent has very specifically mentioned in its application form and BBA executed inter se parties that physical possession was never to be handed over and is for the purpose of lease only. Furthermore, it is the obligation of respondent to put the said unit on lease. Accordingly, the CAM charges shall be payable by the lessee once the said unit is put on lease by the respondent and the complainants are not liable to pay the CAM charges.

H.VI. Direct the respondent to not charge "Holding charges" from the complainants.

H.VII. Direct the respondent to not charge anything from the present complainants which is not part of the agreement.

39. The complainant has also challenged the demand raised by the respondent builder in respect of holding charges. On the contrary, the respondent submitted that all the demands have been strictly raised as per the terms of the flat buyer agreement.

40. The authority observes that the SOA annexed with the offer of possession dated 03.10.2020 does not mention any charges under the head of "Holding Charges". Although, this issue already stands settled by the Hon'ble Supreme Court vide judgment dated 14.12.2020 in civil appeal no. 3864-3889/202, whereby the Hon'ble Court had upheld the order dated 03.01.2020 passed by

NCDRC, which lays in unequivocal terms that no holding charges are payable by the allottee to the developer.

41. Thus, the respondent is not entitled to demand holding charges from the complainant at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

H.VIII. To penalise the respondent u/sec 61 of the Act of 2016 for violation of various provisions of the Act of 2016 as mentioned in the complaint itself.

42. The complainant has not mentioned the specific provisions of the Act, 2016 being violated by the respondent accordingly, the said relief cannot be deliberated by the authority.

43. In the present case, the authority (Shri. Arun Kumar, Hon'ble Chairperson, Shri. Vijay Kumar Goyal, Member & Shri. Sanjeev Kumar Arora, Member) heard the complaint and reserved the order on 02.07.2024, the same was fixed for pronouncement of order on 01.10.2024 and 22.10.2024 respectively. The same could not be pronounced on that day and the matter was adjourned to 10.12.2024. On 16.08.2024, one of the member Shri. Sanjeev Kumar Arora got retired and has been discharged from his duties from the Authority. Hence, rest of the presiding officers of the Authority have pronounced the said order.

I. Directions of the authority:

44. 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):

    a. The respondent is directed to pay the amount of assured return as agreed in clause 32 of the agreement dated 22.08.2016 executed inter se parties till the date of issue of notice of possession of the unit i.e., till 03.10.2020.

b. The respondent has already changed the sale consideration of the unit as per the revised area as mentioned in the BBA dated 08.07.2019 therefore, the respondent cannot charge for change of area of the said unit being already agreed between the parties in BBA dated 08.07.2019.

c. The respondent is directed to quash the amount of ₹7,787/- charged from the complainants on account of labour cess.

d. The respondent cannot charge it under different heads and is directed to quash the amount of ₹ 66,416/- charged towards sinking fund as the respondent has already charged the maintenance security.

e. The CAM charges shall be payable by the lessee once the said unit is put on lease by the respondent and the complainants are not liable to pay the CAM charges since the said unit is not for the purpose of self-occupation.

f. The respondent is not entitled to demand holding charges from the complainant at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

g. The planning branch of the Authority is directed to examine the BBA executed with the complainants and the draft BBA submitted by the respondent at the time of registration with the model Buyers' agreement as per RERA Rules, 2017 and issue show cause notice and initiate penal proceedings as per the Act, 2016 for any violation of the provisions thereof, if any.

h. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

45. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

46. True certified copies of this order be placed on the case file of each matter.

47. Files be consigned to registry.

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.12.2024