

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

Complaint no. : 1106 of 2019
Date of First hearing: 20.08.2019
Date of decision : 20.08.2019

1. Mr. Pradeep Kumar Bhatia
2. Mrs. Deepti Dua

R/o. F 604, F Block, Ardee Residency,
Ardee City, Gate no. 2, Sector 52,
Gurugram (Haryana)- 122003.

Complainants.

Versus

M/s Orris Infrastructure Pvt. Ltd.,
Regd. Office at:- RZ- D5, Mahavir Enclave,
New Delhi - 110054.

Respondent.

CORAM:

N. K. Goel

(Former Additional District and Sessions Judge)

Registrar -cum- Administrative Officer (Petition)

Haryana Real Estate Regulatory Authority, Gurugram

(Authorised by resolution no. HARERA, GGM/Meeting/2019/Agenda
29.2/Proceedings/16th July 2019)

EXPARTE ORDER

1. The present complaint relates to an apartment buyer's agreement dated 07.07.2011 executed between one Mr. Gaurav Suryavanshi and Mrs. Silky Suryavanshi (hereinafter referred to as "first allottees") and the respondent promoter,

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registered with this Authority vide registration no. 19 of 2018 dated 13.10.2018, in respect of a 2BHK apartment measuring 1250 sq. ft. super area bearing no. T 2A- 802, 16th floor, Tower 2A of the project, namely "Orris Aster Court" situated in Sector 85, Gurugram for a total price of Rs. 37,81,250/-. The said flat was later on transferred/sold in favour of complainants vide agreement to sell dated 23.07.2011 executed between the first allottees and the complainants which was duly endorsed by the respondent in favour of the complainant vide allotment letter dated 07.07.2011.

2. According to the complainants, the abovementioned apartment was further shifted to apartment no. 906, 9th floor in Tower 2A (in short, the subject apartment) with the same measuring area and in this regard supplementary apartment buyer agreement dated 15.11.2013 was executed between the complainants and the respondent for a total price of Rs. 38,43,750/-. The complainants have opted for construction linked payment plan.

3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Orris Aster Court", Sector 85, Gurugram.
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2.	DTCP license no.	39 of 2009 dated 24.07.2009 and 99 dated 17.11.2011
3.	Nature of real estate project	Group housing colony.
4.	Total area of the project	25.018 acres.
5.	Apartment/unit no.	906, 9 th floor, Tower 2A (Shifted from A2-802, 8 th floor in tower A2)
6.	Measuring super area of the allotted flat	1,375 sq. ft. (Annx 28)
7.	RERA Registered/ unregistered	Registered vide no. 19 of 2018.
8.	Date of completion as per RERA registration certificate.	30.06.2020
9.	(i) Date of execution of agreement between first allottees and respondent (ii) Date of execution of supplementary apartment buyer agreement in respect of subject apartment between the complainant and respondent	07.07.2011 (Annx 2) 15.11.2013 (Annx 25)
10.	Date of agreement to sell between the complainants and first allottee	23.07.2011 (Annx 7)
11.	Payment Plan	Construction linked payment plan
12.	Basic sale price of the allotted apartment/ unit	Rs.32,34,000/- and other charges (Annx 41)*
13.	Total consideration as per statement of account dated 21.02.2019	Rs. 41,98,125/- (Annx 41)
14.	Total amount paid by the complainants till date	Rs. 46,06,684/- (as per SOA - Annx 41)*
15.	Due date of delivery of possession as per clause 10.1 of the agreement dated 15.11.2013	15.05.2017 (Note -Due date has been calculated from the date of execution of agreement)

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	(Note - 36 months plus 6 months' grace period from the date of execution of agreement or sanction of plans or commencement of construction, whichever is later)	
16.	Date of receipt of occupation certificate	18.10.2018 (Annx 34)
17.	Date of offer of fit out possession letter	18.04.2018 (Annx 33)
18.	Delay in handing over possession	continuous

**kindly note that the above IDC & EDW charge is revised @ 272 per sq.ft. And same has been reflected through credit note in your SOA.*

4. According to the complainants, they have obtained a home loan from Axis bank Limited to purchase the subject apartment in question vide sanction letter dated 02.09.2011. It is stated by the complainants that the respondent raised the demand out of the agreement value on account of apartment area increase (revised area charges) on 22.08.2013 for Rs. 1,77,943/- payable by 05.09.2013 and the complainants raised their concerns about this illegal demand in response to which the respondent stated that they are entitled to increase the apartment area upto 10% as per clause no. 1.4 of the apartment buyer agreement. As per clause 1.4 of the agreement any such increase in the apartment area can be charged by the respondent at the time of possession.

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5. According to the complainants, since the demand for revised area was premature, so the Axis Bank refused to pay the same but the respondent, on the other hand, issued reminder letter on 10.09.2013 for the same demand to the complainants by putting the pressure that in case of delay in payment interest will be charges @ 18% per annum.
6. The complainants have alleged that the respondent has failed to provide the justification of the increased area. It is further alleged by the complainants that the officials of the respondent influenced and coerced them to shift the allotment to higher floor (apartment no. 906 from 802 for lesser value) with the threat of cancelling the allotment and forfeiture of earnest money.
7. It is further alleged by the complainants that new apartment no. 906 is south west facing apartment having lesser property valuation in terms of sales because of bad facing as per Vaastu in comparison to other apartments having facing other than south west.
8. The complainants have stated that the respondent instead of compensating the respondent has charged extra PLC @ Rs. 50/- per sq.ft. on account of corner location of the apartment

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in the building though according to them all the apartments constructed in Tower 2 A are having corner location and this PLC was not payable for apartment no. 906 while 802 is also corner facing.

9. It is further stated by the complainants that on 25.01.2014, respondent further raised the revised demand of Rs. 4,36,003/- on account of revised area charges (increase) by stating that the area of said apartment stood increased from 1250 sq.ft. to 1375 sq.ft. Complainants asked the calculation and justification but the respondent has failed to provide the same. The revised area could be easily captured in the Supplementary apartment buyer agreement but respondent remained silent on this part during swapping/exchange of apartments. According to the complainants, respondent has collected 95% of the sales consideration as per apartment buyer agreement dated 07.07.2011 from the complainants by October,2014.
10. The complainants have stated that the respondent offered possession of the apartment no. 906 for fitouts on 18.04.2018 and asked the complainants to pay Rs. 18.04.2018 with the demand of Rs. 5,90,315/- under various heads.

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11. According to the complainants the occupation certificate for Tower 2 A was granted by DTCP on 18.10.2018. It is alleged by the complainants that on visiting the project site it was found that neither the project is completed nor the apartment is ready for possession but still then after discussion with the officials of respondent the complainants paid the entire sales consideration amount as per apartment buyer agreement for apartment no. 906 but the possession of the subject apartment has not been handed over to them till date.
12. As per apartment buyer agreement dated 07.07.2011 the possession of the apartment was agreed to be delivered within the period of 36 months plus grace period of 6 months from the date of execution of agreement or sanction of plans or commencement of construction whichever is later.
13. It is stated that upon asking about the possession formalities officials of the respondent stated that they will take 45 days' time to complete the apartment for possession post receipt of all the amounts demanded by the respondent. Officials of the respondent also asked the complainants to furnish an indemnity bond- cum- undertaking in desired format prior to

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possession handover date failing which the possession of the apartment will not be delivered to the complainants.

14. It is further stated by the complainants that respondent is also putting undue pressure on complainants to pay the heavy amount on account of Electricity Installation Charges, which is the project cost component already built-in/include in the basic sale price of the apartment. Hence, this complaint.

15. The following issues have been raised to be decided by the Authority: -

1. Whether the respondent has demanded money more than agreed in the agreement without providing any justification?
2. Whether the facilities and amenities as agreed upon in the agreement have not been provided in the project?
3. Whether the Electricity Installation Charges (EIC) amounting to Rs. 2,06,250/- (Rupees Two Lakh Six Thousand Two Hundred Fifty Only) is being demanded by the respondent illegally, unjustified and are excessive in nature, while the same is a project cost?
4. Whether the apartment area can be increased without increase in carpet area and without sanctioning of revised

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- building plans? Whether there is deliberate or otherwise misrepresentation on the part of the respondent in this regard?
5. Whether respondent is liable to increase the density/number of occupants in Tower 2 A with the same amenities like lifts, etc. which was planned for lesser population?
 6. Whether respondent has failed to obtain the NOC from complainants prior to modify/revise/change the layout plan of apartment no. 802 (initially allotted to complainants)?
 7. Whether complainants are entitled for compensation on account of South West Facing Apartment, which is having vastu defects/reasons?
 8. Whether the respondent has failed to handover the possession of the apartment no. 906 within stipulated time and/or failed to fulfil their obligation under section 18 of the Act?
 9. Whether the respondent to pay interest on delay in handing over of possession for each and every month from the date of possession as per the agreement for

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apartment no. 906 till actual date of possession at the prescribed rate under section 18 of the Act?

10. Whether the respondent is liable to deliver one independent open car parking space and one independent covered car parking space to the complainants as per the agreement?
11. Whether complainants are under any obligation to furnish an indemnity bond to the respondent to take over the possession of the apartment as forced by respondent? Does respondent is also liable to furnish the reciprocal indemnity bond to complainants?
12. Whether the respondent is liable to refund Rs. 3,58,153/- (Rupees Three Lakh Fifty Eight Thousand One Hundred and Fifty Three only) collected from complainants on account of Revised Area charges (increase)?
13. Whether the respondent is liable to refund Rs. 1,52,565/- (Rupees One Lakh Fifty Two Thousand Five Hundred and Sixty Five Only) charged from complainants on account of PLC due to non-existence of the park/greenery, as shown in the project brochure around Tower 2 A?
14. Whether the quality of construction is sub-standard?



15. Whether the respondent is liable to refund Rs. 77,248/- (Rupees Seventy-Seven Thousand Two Hundred Forty Eight Only) collected from complainants on account of PLC towards corner located apartment while all the apartments situated in the building i.e. Tower 2A have corner location?

16. Apartment no. 906 was forcibly allocated in lieu of apartment no. 802 which did not have corner location PLC (exchange happened due to change in the layout plan of sold apartment no. 802 without the consent of complainants)?

16. The reliefs sought are detailed as under: -

1. Direct the respondent to handover the possession of apartment no. 906, Tower 2A to the complainants with all the amenities promised.
2. Set aside the illegal demand raised by the respondent on account of Electricity Installation Charges (EIC).
3. Direct the respondent to handover the possession of apartment no. 906, Tower 2 A to the complainants without execution of any indemnity bond.

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4. Direct the respondent to provide the complainants with prescribed rate of interest on delayed possession from the scheduled date of possession i.e. 07.0.2015 till the actual date of possession.
5. Direct the respondent to refund Rs. 1,54,495/- (Rupees One Lakh Fifty Four Thousand Four Hundred and Ninety Five Only) for not providing green area in the project as shown in the brochure.
6. Direct the respondent to refund Rs. 77,248/- (Rupees Seventy- Seven Thousand Two Hundred Forty Eight Only) charged by the respondent for corner PLC, while the same was not agreed in the agreement dated 07.07.2011. Apartment no. 906 was forcibly allocated in lieu of apartment no. 802, which did not have corner location PLC (exchange happened due to change in the layout plan of sold apartment no. 802 without the consent of complainants).
7. Direct the respondent to pay/reimburse Rs. 70,000/- (Rupees Seventy Thousand Only) towards the litigation cost/expenses.

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17. Notice of the complaint sent to the respondent and served upon them through the speed post on 20.03.2019 and at the given email address cmd@orris.in on 19.03.2019 with a direction to file the reply within 21 days. However the respondent neither put the appearance nor file any reply within stipulated period or thereafter. Notice to the respondent has also been sent for today and delivered on the given email addresses cmd@orris.in and mail@orris.in but of no avail. Respondent is accordingly proceeded ex parte.

18. Arguments on behalf of the complainant are heard.

Issue wise findings of the Authority: -

19. **All issues:** - Clause 1.2, 1.3 and 1.4 of the apartment buyer agreement are material. They are reproduced as hereinbelow :-

"1.2 The sale consideration as mentioned herein below is escalation -free, save and except increases which the Allottee hereby agrees to pay, due to change in Super Area (as explained in Clause (1.4), increase in External Development Charges and Infrastructure Development Charges [as explained in clauses (1.8)], increases on account of additional fire safety measures undertaken (as explained in clause 1.10), increases in all types of securities to be paid by the Allottee, deposits and charges and increases thereof for bulk supply of electrical energy, if obtained [as explained in clause (14.3)], services or any other taxes, maintenance security, IFMS charges payable under maintenance agreement, and all other increases in cost/charges, specifically provided for in this Apartment Buyer Agreement and/or any other charges which may be levied or

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HARERA
GURUGRAM

Complaint No. 1106 of 2019

imposed by the Government/Statutory Authority from time to time.

Basic Sale Price @ Rs.2352 per sq.ft. X Super Area(sq.ft.)Rs. 29,40,000/-
Utility Charges Rs. 2,50,000/-
Preferential Location Charges as applicable Rs. 1,87,500/-
External Development Work (EDW)and
Infrastructure Development Charges (IDC) Rs. 4,16,250/-
Club Membership Rs. 50,000/-
Total Price payable for the Said Apartment Rs. 38,43,750/-

1.3 The Allottee (s) hereby agrees to pay Preferential Location Charges (PLC) as applicable for the said apartment having preferential location (as mentioned in Annexure -I) to be paid in a manner and within the time as stated in the schedule of Payments given in Annexure-I. However, the Allottee(s) has specifically agreed that if due to a change in the layout/building plan, the said Apartment ceases to be in a preferential location, the Company shall be liable to refund only the amount of Preferential Location Charges paid by the Intending Allottee and such refund shall be adjusted in the last instalment as stated in the Schedule of Payments given in Annexure- I. If due to any change in the layout/building plan, the said Apartment becomes preferentially located, then the Allottee(s) agrees to pay additional Preferential Location Charges to the Company calculated at the rate applicable for such preferential location (s) in the manner as stated in the Schedule of Payments given in Annexure-I of this Agreement or as demanded by the Company. If for any reason whatsoever, the Company is not in a position or unable to provide a particular preferential location to an Allottee who will be free to cancel the booking and seek refund of all the monies deposited by him/her with the Company without any interest subject to deduction of interest on account of delayed payments and non-refundable deposits.

1.4. It is made clear by the Company and the Allottee agrees that the sale price of the said Apartment shall be calculated on the basis of its Super Area and that the Super Area stated in this Apartment Buyer Agreement tentative and is subject to change till the construction of the said project is complete. The final Super Area

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of the said Apartment shall be confirmed by the Company only after the construction of the said project is complete and occupation certificate is granted by the competent authority. The total price payable for the said apartment shall be recalculated upon confirmation by the Company of the final Super Area of the said Apartment and any increase or reduction in the Super Area of the said apartment shall be payable or refundable, as the case may be, without any interest, at the same rate per square feet as agreed in clause (1.2) of the Apartment Buyer Agreement. If there shall be an increase in the Super Area, the Allottee agrees and undertakes to pay for the increase in Super Area immediately on demand by the Company and if there shall be a reduction in the Super Area, then the refundable amount, due to the Allottee shall be adjusted by the Company from the final and last instalment as set forth in the Schedule of Payments in Annexure-I.

The definition of Super Area, Apartment area, as on the date of this Apartment Buyer Agreement (the percentage of Apartment area to Super Area shall be subject to change till the construction of the said building/ safety norms) are clearly described by the Company in Annexure- II which forms part of this Apartment Buyer Agreement and is hereby accepted by the Allottee. The Allottee confirms that he/she has read, understood and agrees to this definition and that he/she has no objection to the same and the Allottee has assured the Company that after having agreed to the definition of Super Area given in Annexure-II as the basis for the purchase and payment of price of the said Apartment, he/she shall not raise any dispute or make any claims etc. at a later date in this regard."

From a perusal of clause 1.2 read with clauses 1.3 and 1.4 of the apartment buyer agreement, there is evidence on the record to show that the complainants agreed to pay the increased amount due to change in Super Area due to one of the reasons mentioned therein.

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20. Clause 1.4 of the ABA interalia provides the super area described in the apartment buyer agreement is tentative and is subject to change till the construction of the said project is complete. The respondent had allotted an approximate super area of 1250 sq.ft. approx. to the complainant and the areas *were tentative and were subject to change till the construction of the project was complete and grant of the occupation certificate by the competent authority.* Therefore, by virtue of clause 1.2 read with clauses 1.3 and 1.4 of the ABA, the complainants had themselves been made to understand and had also agreed that what had been offered to them was only a tentative area which was subject to change till the completion of the project and the grant of occupation certificate by the competent authority (as per the tentative layout plan attached with the agreement). This agreement with respect to the subject apartment has been executed between the complainants and the respondent. This is nothing on the record to even show that the complainants had been forced to execute this agreement or the whole terms and conditions of the agreement were not made known to them. Therefore, in the considered opinion of this Authority it is too

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late in the day for the complainants to say that the said agreement was forced upon them.

21. It is correct that section 14(2)(i) of the Real Estate (Regulation and Development) Act, 2016 casts upon a legal duty on the respondent- promoter not to make any additions and alterations in the sanctioned plan, layout plans and specifications in respect of the apartments without the previous consent in writing of the allottees. However, the said provisions of section 14(2)(i) of the Act came into force with the coming into force of the Act which must be considered "on going" project. But the ABA in question had already been executed between the parties much prior to the coming into force of the Act. The Act cannot have retrospective effect. By agreeing to accept the addition/subtraction in the super area the complainant had given their consent to the alteration in the plans. Above all, this is not the case of the complainants that they are not ready to accept the increased super area. Clause 9.2 is relevant. The same reads as under:-

"9.2 In case of any major alteration/modification resulting in excess of $\pm 10\%$ change in the Super Rea of the said Apartment or material/substantial change, in the sole option of and as determined by the Company, in the specifications of the material to be used in the said Building/said Apartment any time prior to and upon the grant of occupation certificate, the Company shall

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intimate the Allottee in writing the changes thereof and the resultant change, if any, in the price of the said Apartment to be paid by him/her and the Allottee agrees to deliver to the Company his/her written consent or objection to the change within Thirty (30) days from the date of dispatch, by the company, of such notice failing which the Allottee shall be deemed to have given his/her full and unconditional consent to all such alteration/modifications as intimated by the Company to the Allottee, then, in such case, the alteration/modifications as intimated by the Company to the Allottee, then. In such case, the Company alone, may at its sole option and discretion decide to cancel this Allotment without further notice and in such event the Company shall refund the entire money received from the Allottee excluding interests on delayed payments and non-refundable deposits with simple interest @ 9% per annum within one hundred eighty (180) days from the date of intimation received by the Company from the Allottee and upon dispatch of such refund by registered post, the Company shall be released and discharged from all its obligations and liabilities under this Apartment Buyer Agreement and the space, if any, thereafter in any manner whatsoever at the Company's sole discretion."

It is too clear to explain. Therefore, in the considered opinion of this Authority, the complainants are not entitled to raise this grievance before this Authority at this stage. Therefore, it is held that the demand for additional charges due to the increase in the super area is perfectly justified.

22. Relevant portion of clause 1.10 of the apartment buyer agreement reads as under:-

"1.10 The basic sale price of the said Apartment mentioned in the schedule of payments in Annexure I of this Apartment Buyer Agreement is inclusive of the cost of apartment including electric wiring and switches in the said apartment, fire detection and

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firefighting equipment in the common areas within the said building/Said Complex as prescribed in the existing firefighting code/regulation under National Building Code 1983 amendment no. 3 of January 1997. Power back-up of 2KVA for 2 BHK, provided from standby generators subject to timely payment of maintenance charges and shall be in addition to normal power back up for the common area and common services within the said complex."

23. From perusal of clause of clause 1.10 it becomes crystal clear that the basic sale price of the subject apartment inter alia included electrical wirings and switches in the apartment. It is a matter of common knowledge that for providing electrical wiring and switches in an apartment or residence there has to be an electrical wiring from the main switch upto the apartment. After a very careful perusal of the ABA in question we find that there is no such stipulation in the agreement that the complainant(s) or allottee (s) shall have to pay some charges towards the electricity and installation charges. It is for the first time that the electricity and installation charges for an amount of Rs. 2,06,250/- have been shown in the final statement of accounts as on 18.04.2018 (Pg. 137 of the complaint). Therefore, we fail to understand as to how and under what clause of apartment buyer agreement and the

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provision of law has the respondent demanded the said electricity installation charges from the complainants.

Hence, this Authority holds that the demand of Rs. 2,06,250/- towards electricity installation charges raised by the respondent and to be paid by the complainants is against the terms and conditions of ABA in question and hence also contravenes the provisions of the Act.

24. So far as PLC charges are concerned, we are of the considered opinion that the demand towards PLC is neither against the conditions of ABA nor contravenes any provisions of the Act.

25. Copy of ABA in question dated 15.11.2013 has been filed as Annexure A25 (Pg. 100 of the complaint) wherein a reference has been made to the preferential location charges as applicable (Rs. 1,87,500/-). This is the agreement which was executed between the complainants and the respondent in respect to the subject apartment and the said agreement had been executed between the complainants and the respondent after the complainant had purchased the provisionally allotted flat from the first purchaser. There is no whisper of evidence brought on the record by the complainants which can even remotely show that the complainants had not executed the

said agreement out of their free will and consent or the respondent had exercised some element of force on the complainants to execute the said agreement. Hence, it is clear that while executing this agreement the complainants must have satisfied themselves that the subject apartment was infact situated in a place where the respondent could charge PLC. Therefore, we hold that the demand raised by the respondent towards PLC is within the four corners of the terms and conditions of the ABA in question and hence is justified.

26. On the perusal of the documents including the ABA, the final statement of accounts dated 18.04.2018 and the intimation-cum-demand letter dated 25.01.2018 and other documents, we find that the respondent did not raise any demand towards green area charges and also that the ABA is also silent about the fact whether the respondent is liable to provide any green area near the subject apartment.

27. As per issue no. 5 the respondent has not provided the green area in the project as shown in the brochure. We must say here at once here that the complainants have not filed the copy of the brochure on the record. Therefore, in the absence of there

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being any documentary evidence on the record brought by the complainants the Authority holds that the respondent is not liable to refund of any such charges to the complainants.

28. As per the complainants, the respondent has asked them to execute an indemnity bond before taking possession of the subject apartment. The copy of the indemnity bond to be executed by the complainants has been filed by them as Annexure 31. The Authority has gone through the said proforma and does not find anything contained therein which may be said to be against the terms and conditions of the ABA or contravening or violating the provisions of the Act and/or the Rules framed thereunder. Rather the proposed indemnity-cum-undertaking is an innocuous document which has very balanced clauses and will also benefit the complainants/allottee (s). Therefore, the complainants should execute the indemnity bond as asked for by the respondent.

29. As discussed above, the demand for additional charges due to the increased in super area without corresponding increase in the carpet area has been held to be perfectly justified. Therefore, the demand for additional charges cannot be struck

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down and is also not unjustified or arbitrary nor is an act of unfair trade practice on the part of the respondent.

30. Therefore, in the opinion of this Authority the complainants are entitled to interest on delayed offer of possession. Accordingly, it is held that the complainants are entitled for delayed possession charges at the prevalent prescribed rate of interest of 10.65% per annum as prescribed under section 18 (1) proviso of the Act read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017. The respondent is also liable to refund the electricity installation charges (EIC) of Rs. 2,06,250/- to the complainants.

Findings of the Authority: -

31. The Authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all

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purposes for promoter projects 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.

32. Suffice is to say that the award of payment of compensation is outside the jurisdiction of the Authority and the complainants are at liberty to file an application before the adjudicating officer under section 71 of the Act alongwith the enabling sections/rules, if they so desire.

Decision and directions of the Authority:-

33. The Authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby directs the respondent to pay delayed possession charges at the prevalent prescribed rate of interest of 10.45% per annum with effect from the due date of delivery of possession i.e. 15.05.2017 till the date of this order within the period of 90 days and continue to pay charges month by month interest at the prescribed rate of interest @ 10.45% per annum on or before the 10th day of each subsequent English calendar month till actual handing over of possession of the subject apartment

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to the complainants. The respondent is also directed to refund the electricity installation charges (EIC) of Rs. 2,06,250/- to the complainants within the same period of 90 days from the date of this order.

34. The complaint stands disposed of accordingly.

35. The case file be consigned to the registry.

N. K. Goel

(Former Additional District and Sessions Judge)

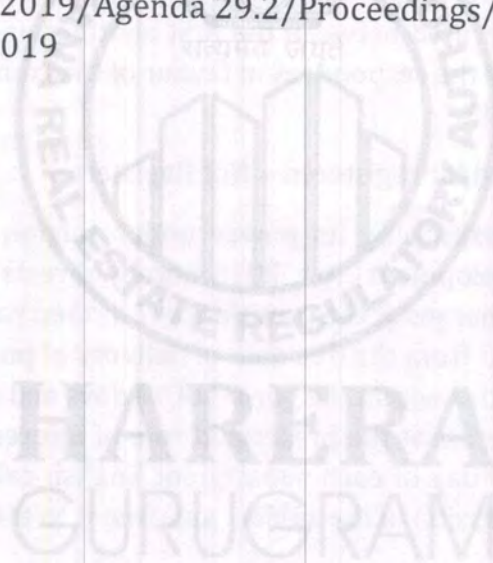
Registrar -cum- Administrative Officer (Petition)

Haryana Real Estate Regulatory Authority, Gurugram

(Authorised by resolution no. HARERA,
GGM/Meeting/2019/Agenda 29.2/Proceedings/16th July 2019)

Dated: -20.08.2019

20-8-19



Complaint No. 1106/2019

Sub: Rectification in the order dated 20.08.2019 passed in complaint No. 1106/2019 titled as Shri Pardeep Kumar Bhatia & Anr. Vs. M/s Orris Infrastructure Pvt. Ltd. by the Registrar-cum-Administrative Officer (petitions) Haryana Real Estate Regulatory Authority, Gurugram (Authorised by resolution no. HARERA, GGM/Meeting/2019/Agenda 29.2/Proceedings/16th July 2019).

Para No. 1 and para 33 of the order dated 20.08.2019 are rectified and the same shall now be read as under: -

"1. The present complaint relates to an apartment buyer's agreement dated 07.07.2011 executed between one Mr. Gaurav Suryavanshi and Mrs. Silky Suryavanshi (hereinafter referred to as "first allottees") and the respondent promoter, in respect of a 2BHK apartment measuring 1250 sq. ft. super area bearing no. T2A-802, 16th floor, Tower 2A of the project, namely "Orris Aster Court" situated in Sector 85, Gurugram for a total price of Rs. 37,81,250/-. The said flat was later on transferred/sold in favour of complainants vide agreement to sell dated 23.07.2011 executed between the first allottees and the complainants which was duly endorsed by the respondent in favour of the complainant vide allotment letter dated 07.07.2011."

"3(7) RERA Registered/unregistered = Not Registered

"33. The Authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby directs the respondent to pay delayed possession charges at the prevalent prescribed rate of interest of 10.45% per annum with effect from the due date of delivery of possession i.e. 15.05.2017 till the date of this order within the period of 90 days and continue to pay charges month by month interest at the prescribed rate of interest @10.45% per annum on or before the 10th day of each subsequent English calendar month till actual handing over of possession of the subject apartment to the complainants."

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Administrative Officer (Petitions)-cum-Registrar

We ratify order dated 20.08.2019 and the rectification order dated 31.01.2020.

Subhash
Subhash Chander Kush
(Member)

K.K. Khandelwal
K.K. Khandelwal
(Chairman)

Samir
Samir Kumar
(Member)

Corrected judgement uploaded on 25.02.2020.

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

Complaint no. : 1106 of 2019
Date of First hearing: 20.08.2019
Date of decision : 20.08.2019

1. Mr. Pradeep Kumar Bhatia
2. Mrs. Deepti Dua

R/o. F 604, F Block, Ardee Residency,
Ardee City, Gate no. 2, Sector 52,
Gurugram (Haryana)- 122003.

Complainants.

Versus

M/s Orris Infrastructure Pvt. Ltd.,
Regd. Office at:- RZ- D5, Mahavir Enclave,
New Delhi - 110054.

Respondent.

CORAM:

N. K. Goel

(Former Additional District and Sessions Judge)

Registrar -cum- Administrative Officer (Petition)

Haryana Real Estate Regulatory Authority, Gurugram

(Authorised by resolution no. HARERA, GGM/Meeting/2019/Agenda
29.2/Proceedings/16th July 2019)

EXPARTE ORDER

1. The present complaint relates to an apartment buyer's agreement dated 07.07.2011 executed between one Mr. Gaurav Suryavanshi and Mrs. Silky Suryavanshi (hereinafter referred to as "first allottees") and the respondent promoter,

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Complaint No. 1106 of 2019

registered with this Authority vide registration no. 19 of 2018 dated 13.10.2018, in respect of a 2BHK apartment measuring 1250 sq. ft. super area bearing no. T 2A- 802, 16th floor, Tower 2A of the project, namely "Orris Aster Court" situated in Sector 85, Gurugram for a total price of Rs. 37,81,250/-. The said flat was later on transferred/sold in favour of complainants vide agreement to sell dated 23.07.2011 executed between the first allottees and the complainants which was duly endorsed by the respondent in favour of the complainant vide allotment letter dated 07.07.2011.

2. According to the complainants, the abovementioned apartment was further shifted to apartment no. 906, 9th floor in Tower 2A (in short, the subject apartment) with the same measuring area and in this regard supplementary apartment buyer agreement dated 15.11.2013 was executed between the complainants and the respondent for a total price of Rs. 38,43,750/-. The complainants have opted for construction linked payment plan.

3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Orris Aster Court", Sector 85, Gurugram.
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2.	DTCP license no.	39 of 2009 dated 24.07.2009 and 99 dated 17.11.2011
3.	Nature of real estate project	Group housing colony.
4.	Total area of the project	25.018 acres.
5.	Apartment/unit no.	906, 9 th floor, Tower 2A (Shifted from A2-802, 8 th floor in tower A2)
6.	Measuring super area of the allotted flat	1,375 sq. ft. (Annx 28)
7.	RERA Registered/ unregistered	Registered vide no. 19 of 2018.
8.	Date of completion as per RERA registration certificate.	30.06.2020
9.	(i) Date of execution of agreement between first allottees and respondent (ii) Date of execution of supplementary apartment buyer agreement in respect of subject apartment between the complainant and respondent	07.07.2011 (Annx 2) 15.11.2013 (Annx 25)
10.	Date of agreement to sell between the complainants and first allottee	23.07.2011 (Annx 7)
11.	Payment Plan	Construction linked payment plan
12.	Basic sale price of the allotted apartment/ unit	Rs.32,34,000/- and other charges (Annx 41)*
13.	Total consideration as per statement of account dated 21.02.2019	Rs. 41,98,125/- (Annx 41)
14.	Total amount paid by the complainants till date	Rs. 46,06,684/- (as per SOA - Annx 41)*
15.	Due date of delivery of possession as per clause 10.1 of the agreement dated 15.11.2013	15.05.2017 (Note -Due date has been calculated from the date of execution of agreement)

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	(Note - 36 months plus 6 months' grace period from the date of execution of agreement or sanction of plans or commencement of construction, whichever is later)	
16.	Date of receipt of occupation certificate	18.10.2018 (Annx 34)
17.	Date of offer of fit out possession letter	18.04.2018 (Annx 33)
18.	Delay in handing over possession	continuous

**kindly note that the above IDC & EDW charge is revised @ 272 per sq.ft. And same has been reflected through credit note in your SOA.*

4. According to the complainants, they have obtained a home loan from Axis bank Limited to purchase the subject apartment in question vide sanction letter dated 02.09.2011. It is stated by the complainants that the respondent raised the demand out of the agreement value on account of apartment area increase (revised area charges) on 22.08.2013 for Rs. 1,77,943/- payable by 05.09.2013 and the complainants raised their concerns about this illegal demand in response to which the respondent stated that they are entitled to increase the apartment area upto 10% as per clause no. 1.4 of the apartment buyer agreement. As per clause 1.4 of the agreement any such increase in the apartment area can be charged by the respondent at the time of possession.

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5. According to the complainants, since the demand for revised area was premature, so the Axis Bank refused to pay the same but the respondent, on the other hand, issued reminder letter on 10.09.2013 for the same demand to the complainants by putting the pressure that in case of delay in payment interest will be charges @ 18% per annum.
6. The complainants have alleged that the respondent has failed to provide the justification of the increased area. It is further alleged by the complainants that the officials of the respondent influenced and coerced them to shift the allotment to higher floor (apartment no. 906 from 802 for lesser value) with the threat of cancelling the allotment and forfeiture of earnest money.
7. It is further alleged by the complainants that new apartment no. 906 is south west facing apartment having lesser property valuation in terms of sales because of bad facing as per Vaastu in comparison to other apartments having facing other than south west.
8. The complainants have stated that the respondent instead of compensating the respondent has charged extra PLC @ Rs. 50/- per sq.ft. on account of corner location of the apartment

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in the building though according to them all the apartments constructed in Tower 2 A are having corner location and this PLC was not payable for apartment no. 906 while 802 is also corner facing.

9. It is further stated by the complainants that on 25.01.2014, respondent further raised the revised demand of Rs. 4,36,003/- on account of revised area charges (increase) by stating that the area of said apartment stood increased from 1250 sq.ft. to 1375 sq.ft. Complainants asked the calculation and justification but the respondent has failed to provide the same. The revised area could be easily captured in the Supplementary apartment buyer agreement but respondent remained silent on this part during swapping/exchange of apartments. According to the complainants, respondent has collected 95% of the sales consideration as per apartment buyer agreement dated 07.07.2011 from the complainants by October,2014.

10. The complainants have stated that the respondent offered possession of the apartment no. 906 for fitouts on 18.04.2018 and asked the complainants to pay Rs. 18.04.2018 with the demand of Rs. 5,90,315/- under various heads.

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11. According to the complainants the occupation certificate for Tower 2 A was granted by DTCP on 18.10.2018. It is alleged by the complainants that on visiting the project site it was found that neither the project is completed nor the apartment is ready for possession but still then after discussion with the officials of respondent the complainants paid the entire sales consideration amount as per apartment buyer agreement for apartment no. 906 but the possession of the subject apartment has not been handed over to them till date.
12. As per apartment buyer agreement dated 07.07.2011 the possession of the apartment was agreed to be delivered within the period of 36 months plus grace period of 6 months from the date of execution of agreement or sanction of plans or commencement of construction whichever is later.
13. It is stated that upon asking about the possession formalities officials of the respondent stated that they will take 45 days' time to complete the apartment for possession post receipt of all the amounts demanded by the respondent. Officials of the respondent also asked the complainants to furnish an indemnity bond- cum- undertaking in desired format prior to

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possession handover date failing which the possession of the apartment will not be delivered to the complainants.

14. It is further stated by the complainants that respondent is also putting undue pressure on complainants to pay the heavy amount on account of Electricity Installation Charges, which is the project cost component already built-in/include in the basic sale price of the apartment. Hence, this complaint.

15. The following issues have been raised to be decided by the Authority: -

1. Whether the respondent has demanded money more than agreed in the agreement without providing any justification?
2. Whether the facilities and amenities as agreed upon in the agreement have not been provided in the project?
3. Whether the Electricity Installation Charges (EIC) amounting to Rs. 2,06,250/- (Rupees Two Lakh Six Thousand Two Hundred Fifty Only) is being demanded by the respondent illegally, unjustified and are excessive in nature, while the same is a project cost?
4. Whether the apartment area can be increased without increase in carpet area and without sanctioning of revised

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building plans? Whether there is deliberate or otherwise misrepresentation on the part of the respondent in this regard?

5. Whether respondent is liable to increase the density/number of occupants in Tower 2 A with the same amenities like lifts, etc. which was planned for lesser population?
6. Whether respondent has failed to obtain the NOC from complainants prior to modify/revise/change the layout plan of apartment no. 802 (initially allotted to complainants)?
7. Whether complainants are entitled for compensation on account of South West Facing Apartment, which is having vastu defects/reasons?
8. Whether the respondent has failed to handover the possession of the apartment no. 906 within stipulated time and/or failed to fulfil their obligation under section 18 of the Act?
9. Whether the respondent to pay interest on delay in handing over of possession for each and every month from the date of possession as per the agreement for

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apartment no. 906 till actual date of possession at the prescribed rate under section 18 of the Act?

10. Whether the respondent is liable to deliver one independent open car parking space and one independent covered car parking space to the complainants as per the agreement?
11. Whether complainants are under any obligation to furnish an indemnity bond to the respondent to take over the possession of the apartment as forced by respondent? Does respondent is also liable to furnish the reciprocal indemnity bond to complainants?
12. Whether the respondent is liable to refund Rs. 3,58,153/- (Rupees Three Lakh Fifty Eight Thousand One Hundred and Fifty Three only) collected from complainants on account of Revised Area charges (increase)?
13. Whether the respondent is liable to refund Rs. 1,52,565/- (Rupees One Lakh Fifty Two Thousand Five Hundred and Sixty Five Only) charged from complainants on account of PLC due to non-existence of the park/greenery, as shown in the project brochure around Tower 2 A?
14. Whether the quality of construction is sub-standard?

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15. Whether the respondent is liable to refund Rs. 77,248/-

(Rupees Seventy-Seven Thousand Two Hundred Forty Eight Only) collected from complainants on account of PLC towards corner located apartment while all the apartments situated in the building i.e. Tower 2A have corner location?

16. Apartment no. 906 was forcibly allocated in lieu of apartment no. 802 which did not have corner location PLC (exchange happened due to change in the layout plan of sold apartment no. 802 without the consent of complainants)?

16. The reliefs sought are detailed as under: -

1. Direct the respondent to handover the possession of apartment no. 906, Tower 2A to the complainants with all the amenities promised.
2. Set aside the illegal demand raised by the respondent on account of Electricity Installation Charges (EIC).
3. Direct the respondent to handover the possession of apartment no. 906, Tower 2 A to the complainants without execution of any indemnity bond.

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4. Direct the respondent to provide the complainants with prescribed rate of interest on delayed possession from the scheduled date of possession i.e. 07.0.2015 till the actual date of possession.
5. Direct the respondent to refund Rs. 1,54,495/- (Rupees One Lakh Fifty Four Thousand Four Hundred and Ninety Five Only) for not providing green area in the project as shown in the brochure.
6. Direct the respondent to refund Rs. 77,248/- (Rupees Seventy- Seven Thousand Two Hundred Forty Eight Only) charged by the respondent for corner PLC, while the same was not agreed in the agreement dated 07.07.2011. Apartment no. 906 was forcibly allocated in lieu of apartment no. 802, which did not have corner location PLC (exchange happened due to change in the layout plan of sold apartment no. 802 without the consent of complainants).
7. Direct the respondent to pay/reimburse Rs. 70,000/- (Rupees Seventy Thousand Only) towards the litigation cost/expenses.

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17. Notice of the complaint sent to the respondent and served upon them through the speed post on 20.03.2019 and at the given email address cmd@orris.in on 19.03.2019 with a direction to file the reply within 21 days. However the respondent neither put the appearance nor file ^{for} any reply within stipulated period or thereafter. Notice to the respondent has also been sent for today and delivered on the given email addresses cmd@orris.in and mail@ orris.in but of no avail. Respondent is accordingly proceeded ex parte.

18. Arguments on behalf of the complainant are heard.

Issue wise findings of the Authority: -

19. **All issues:** - Clause 1.2, 1.3 and 1.4 of the apartment buyer agreement are material. They are reproduced as hereinbelow :-

"1.2 The sale consideration as mentioned herein below is escalation -free, save and except increases which the Allottee hereby agrees to pay, due to change in Super Area (as explained in Clause (1.4), increase in External Development Charges and Infrastructure Development Charges [as explained in clauses (1.8)], increases on account of additional fire safety measures undertaken (as explained in clause 1.10), increases in all types of securities to be paid by the Allottee, deposits and charges and increases thereof for bulk supply of electrical energy, if obtained [as explained in clause (14.3)], services or any other taxes, maintenance security, IFMS charges payable under maintenance agreement, and all other increases in cost/charges, specifically provided for in this Apartment Buyer Agreement and/or any other charges which may be levied or

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imposed by the Government/Statutory Authority from time to time.

*Basic Sale Price @ Rs.2352 per sq.ft. X Super Area(sq.ft.)Rs. 29,40,000/-
Utility Charges Rs. 2,50,000/-
Preferential Location Charges as applicable Rs. 1,87,500/-
External Development Work (EDW)and
Infrastructure Development Charges (IDC) Rs. 4,16,250/-
Club Membership Rs. 50,000/-
Total Price payable for the Said Apartment Rs. 38,43,750/-*

1.3 The Allottee (s) hereby agrees to pay Preferential Location Charges (PLC) as applicable for the said apartment having preferential location (as mentioned in Annexure -I) to be paid in a manner and within the time as stated in the schedule of Payments given in Annexure-I. However, the Allottee(s) has specifically agreed that if due to a change in the layout/building plan, the said Apartment ceases to be in a preferential location, the Company shall be liable to refund only the amount of Preferential Location Charges paid by the Intending Allottee and such refund shall be adjusted in the last instalment as stated in the Schedule of Payments given in Annexure- I. If due to any change in the layout/building plan, the said Apartment becomes preferentially located, then the Allottee(s) agrees to pay additional Preferential Location Charges to the Company calculated at the rate applicable for such preferential location (s) in the manner as stated in the Schedule of Payments given in Annexure-I of this Agreement or as demanded by the Company. If for any reason whatsoever, the Company is not in a position or unable to provide a particular preferential location to an Allottee who will be free to cancel the booking and seek refund of all the monies deposited by him/her with the Company without any interest subject to deduction of interest on account of delayed payments and non-refundable deposits.

1.4. It is made clear by the Company and the Allottee agrees that the sale price of the said Apartment shall be calculated on the basis of its Super Area and that the Super Area stated in this Apartment Buyer Agreement tentative and is subject to change till the construction of the said project is complete. The final Super Area

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of the said Apartment shall be confirmed by the Company only after the construction of the said project is complete and occupation certificate is granted by the competent authority. The total price payable for the said apartment shall be recalculated upon confirmation by the Company of the final Super Area of the said Apartment and any increase or reduction in the Super Area of the said apartment shall be payable or refundable, as the case may be, without any interest, at the same rate per square feet as agreed in clause (1.2) of the Apartment Buyer Agreement. If there shall be an increase in the Super Area, the Allottee agrees and undertakes to pay for the increase in Super Area immediately on demand by the Company and if there shall be a reduction in the Super Area, then the refundable amount, due to the Allottee shall be adjusted by the Company from the final and last instalment as set forth in the Schedule of Payments in Annexure-I.

The definition of Super Area, Apartment area, as on the date of this Apartment Buyer Agreement (the percentage of Apartment area to Super Area shall be subject to change till the construction of the said building/ safety norms) are clearly described by the Company in Annexure- II which forms part of this Apartment Buyer Agreement and is hereby accepted by the Allottee. The Allottee confirms that he/she has read, understood and agrees to this definition and that he/she has no objection to the same and the Allottee has assured the Company that after having agreed to the definition of Super Area given in Annexure-II as the basis for the purchase and payment of price of the said Apartment, he/she shall not raise any dispute or make any claims etc. at a later date in this regard."

From a perusal of clause 1.2 read with clauses 1.3 and 1.4 of the apartment buyer agreement, there is evidence on the record to show that the complainants agreed to pay the increased amount due to change in Super Area due to one of the reasons mentioned therein.

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20. Clause 1.4 of the ABA interalia provides the super area described in the apartment buyer agreement is tentative and is subject to change till the construction of the said project is complete. The respondent had allotted an approximate super area of 1250 sq.ft. approx. to the complainant and the areas *were tentative and were subject to change till the construction of the project was complete and grant of the occupation certificate by the competent authority.* Therefore, by virtue of clause 1.2 read with clauses 1.3 and 1.4 of the ABA, the complainants had themselves been made to understand and had also agreed that what had been offered to them was only a tentative area which was subject to change till the completion of the project and the grant of occupation certificate by the competent authority (as per the tentative layout plan attached with the agreement). This agreement with respect to the subject apartment has been executed between the complainants and the respondent. This is nothing on the record to even show that the complainants had been forced to execute this agreement or the whole terms and conditions of the agreement were not made known to them. Therefore, in the considered opinion of this Authority it is too

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late in the day for the complainants to say that the said agreement was forced upon them.

21. It is correct that section 14(2)(i) of the Real Estate (Regulation and Development) Act, 2016 casts upon a legal duty on the respondent- promoter not to make any additions and alterations in the sanctioned plan, layout plans and specifications in respect of the apartments without the previous consent in writing of the allottees. However, the said provisions of section 14(2)(i) of the Act came into force with the coming into force of the Act which must be considered "on going" project. But the ABA in question had already been executed between the parties much prior to the coming into force of the Act. The Act cannot have retrospective effect. By agreeing to accept the addition/substraction in the super area the complainant had given their consent to the alteration in the plans. Above all, this is not the case of the complainants that they are not ready to accept the increased super area. Clause 9.2 is relevant. The same reads as under:-

"9.2 In case of any major alteration/modification resulting in excess of \pm 10% change in the Super Rea of the said Apartment or material/substantial change, in the sole option of and as determined by the Company, in the specifications of the material to be used in the said Building/said Apartment any time prior to and upon the grant of occupation certificate, the Company shall

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intimate the Allottee in writing the changes thereof and the resultant change, if any, in the price of the said Apartment to be paid by him/her and the Allottee agrees to deliver to the Company his/her written consent or objection to the change within Thirty (30) days from the date of dispatch, by the company, of such notice failing which the Allottee shall be deemed to have given his/her full and unconditional consent to all such alteration/modifications as intimated by the Company to the Allottee, then, in such case, the alteration/modifications as intimated by the Company to the Allottee, then. In such case, the Company alone, may at its sole option and discretion decide to cancel this Allotment without further notice and in such event the Company shall refund the entire money received from the Allottee excluding interests on delayed payments and non-refundable deposits with simple interest @ 9% per annum within one hundred eighty (180) days from the date of intimation received by the Company from the Allottee and upon dispatch of such refund by registered post, the Company shall be released and discharged from all its obligations and liabilities under this Apartment Buyer Agreement and the space, if any, thereafter in any manner whatsoever at the Company's sole discretion."

It is too clear to explain. Therefore, in the considered opinion of this Authority, the complainants are not entitled to raise this grievance before this Authority at this stage. Therefore, it is held that the demand for additional charges due to the increase in the super area is perfectly justified.

22. Relevant portion of clause 1.10 of the apartment buyer agreement reads as under:-

"1.10 The basic sale price of the said Apartment mentioned in the schedule of payments in Annexure I of this Apartment Buyer Agreement is inclusive of the cost of apartment including electric wiring and switches in the said apartment, fire detection and

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firefighting equipment in the common areas within the said building/Said Complex as prescribed in the existing firefighting code/regulation under National Building Code 1983 amendment no. 3 of January 1997. Power back-up of 2KVA for 2 BHK, provided from standby generators subject to timely payment of maintenance charges and shall be in addition to normal power back up for the common area and common services within the said complex."

23. From perusal of clause of clause 1.10 it becomes crystal clear that the basic sale price of the subject apartment inter alia included electrical wirings and switches in the apartment. It is a matter of common knowledge that for providing electrical wiring and switches in an apartment or residence there has to be an electrical wiring from the main switch upto the apartment. After a very careful perusal of the ABA in question we find that there is no such stipulation in the agreement that the complainant(s) or allottee (s) shall have to pay some charges towards the electricity and installation charges. It is for the first time that the electricity and installation charges for an amount of Rs. 2,06,250/- have been shown in the final statement of accounts as on 18.04.2018 (Pg. 137 of the complaint). Therefore, we fail to understand as to how and under what clause of apartment buyer agreement and the

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provision of law has the respondent demanded the said electricity installation charges from the complainants.

Hence, this Authority holds that the demand of Rs. 2,06,250/- towards electricity installation charges raised by the respondent and to be paid by the complainants is against the terms and conditions of ABA in question and hence also contravenes the provisions of the Act.

24. So far as PLC charges are concerned, we are of the considered opinion that the demand towards PLC is neither against the conditions of ABA nor contravenes any provisions of the Act.

25. Copy of ABA in question dated 15.11.2013 has been filed as Annexure A25 (Pg. 100 of the complaint) wherein a reference has been made to the preferential location charges as applicable (Rs. 1,87,500/-). This is the agreement which was executed between the complainants and the respondent in respect to the subject apartment and the said agreement had been executed between the complainants and the respondent after the complainant had purchased the provisionally allotted flat from the first purchaser. There is no whisper of evidence brought on the record by the complainants which can even remotely show that the complainants had not executed the



said agreement out of their free will and consent or the respondent had exercised some element of force on the complainants to execute the said agreement. Hence, it is clear that while executing this agreement the complainants must have satisfied themselves that the subject apartment was in fact situated in a place where the respondent could charge PLC. Therefore, we hold that the demand raised by the respondent towards PLC is within the four corners of the terms and conditions of the ABA in question and hence is justified.

26. On the perusal of the documents including the ABA, the final statement of accounts dated 18.04.2018 and the intimation-cum-demand letter dated 25.01.2018 and other documents, we find that the respondent did not raise any demand towards green area charges and also that the ABA is also silent about the fact whether the respondent is liable to provide any green area near the subject apartment.

27. As per issue no. 5 the respondent has not provided the green area in the project as shown in the brochure. We must say here at once here that the complainants have not filed the copy of the brochure on the record. Therefore, in the absence of there

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being any documentary evidence on the record brought by the complainants the Authority holds that the respondent is not liable to refund of any such charges to the complainants.

28. As per the complainants, the respondent has asked them to execute an indemnity bond before taking possession of the subject apartment. The copy of the indemnity bond to be executed by the complainants has been filed by them as Annexure 31. The Authority has gone through the said proforma and does not find anything contained therein which may be said to be against the terms and conditions of the ABA or contravening or violating the provisions of the Act and/or the Rules framed thereunder. Rather the proposed indemnity-cum-undertaking is an innocuous document which has very balanced clauses and will also benefit the complainants/allottee (s). Therefore, the complainants should execute the indemnity bond as asked for by the respondent.

29. As discussed above, the demand for additional charges due to the increased in super area without corresponding increase in the carpet area has been held to be perfectly justified. Therefore, the demand for additional charges cannot be struck

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down and is also not unjustified or arbitrary nor is an act of unfair trade practice on the part of the respondent.

30. Therefore, in the opinion of this Authority the complainants are entitled to interest on delayed offer of possession. Accordingly, it is held that the complainants are entitled for delayed possession charges at the prevalent prescribed rate of interest of 10.65% per annum as prescribed under section 18 (1) proviso of the Act read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017. The respondent is also liable to refund the electricity installation charges (EIC) of Rs. 2,06,250/- to the complainants.

Findings of the Authority: -

31. The Authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all

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purposes for promoter projects 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.

32. Suffice is to say that the award of payment of compensation is outside the jurisdiction of the Authority and the complainants are at liberty to file an application before the adjudicating officer under section 71 of the Act alongwith the enabling sections/rules, if they so desire.

Decision and directions of the Authority:-

33. The Authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act,2016 hereby directs the respondent to pay delayed possession charges at the prevalent prescribed rate of interest of 10.45% per annum with effect from the due date of delivery of possession i.e. 15.05.2017 till the date of this order within the period of 90 days and continue to pay charges month by month interest at the prescribed rate of interest @ 10.45% per annum on or before the 10th day of each subsequent English calendar month till actual handing over of possession of the subject apartment

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to the complainants. The respondent is also directed to refund the electricity installation charges (EIC) of Rs. 2,06,250/- to the complainants within the same period of 90 days from the date of this order.

34. The complaint stands disposed of accordingly.
35. The case file be consigned to the registry.

N. K. Goel

(Former Additional District and Sessions Judge)

Registrar -cum- Administrative Officer (Petition)

Haryana Real Estate Regulatory Authority, Gurugram

(Authorised by resolution no. HARERA,
GGM/Meeting/2019/Agenda 29.2/Proceedings/16th July 2019)

Dated: -20.08.2019

Judgement uploaded on 21.08.2019

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