BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeals No.19, 111 to 113, 115 to 130, 165 & 166 of 2019

Date of Decision: 07.01.2021

(1) Appeal No.19 of 2019

1. Astrum Value Homes Private Limited (10th Floor, C-Wing, JMD Megapolis, Sohna Road, Sector-48, Gurgaon, Haryana, 122002,

2. Stanza Developers & Infrastructure Private Limited, 189, Tarun Enclave, Pitampura-110034, Delhi.

Appellants

Versus

1. Narendra Singh Maan

2. Prithvi Singh Maan

   Flat No.H-601, Falcon View, JLPL, Sector 66-A, Mohali-160055, Punjab.

3. Real Estate Regulatory Authority, Mini Secretariat, New Office Block, 2nd & 3rd Floor, Sector-1, Panchkula, Haryana-134114, India.

Respondents

(2) Appeal No.111 of 2019

1. Astrum Value Homes Private Limited (10th Floor, C-Wing, JMD Megapolis, Sohna Road, Sector-48, Gurgaon, Haryana, 122002,

2. Stanza Developers & Infrastructure Private Limited, 189, Tarun Enclave, Pitampura-110034, Delhi.

Appellants

Versus

1. Shanti Devi

   House No.513, near Brahman Chopal, Ward No.14, Sewah (32), Panipat Beas Project, Panipat-132108, Haryana.

2. Real Estate Regulatory Authority, Mini Secretariat, New Office Block, 2nd & 3rd Floor, Sector-1, Panchkula, Haryana-134114, India.

Respondents

(3) Appeal No.112 of 2019

1. Astrum Value Homes Private Limited (10th Floor, C-Wing, JMD Megapolis, Sohna Road, Sector-48, Gurgaon, Haryana, 122002,

2. Stanza Developers & Infrastructure Private Limited, 189, Tarun Enclave, Pitampura-110034, Delhi.

Appellants

Versus

1. Piyoosh Oberoi

2. Satish Kumar Oberoi

   House no.344-R, Model Town, Panipat-132103, Haryana.

3. Real Estate Regulatory Authority, Mini Secretariat, New Office Block, 2nd & 3rd Floor, Sector-1, Panchkula, Haryana-134114, India.

Respondents

(4) Appeal No.113 of 2019

1. Astrum Value Homes Private Limited (10th Floor, C-Wing, JMD Megapolis, Sohna Road, Sector-48, Gurgaon, Haryana, 122002.

2. Stanza Developers & Infrastructure Private Limited, 189, Tarun Enclave, Pitampura-110034, Delhi.

Appellants

Versus

1. Darshan Kumar Dhingra

2. Bharat Dhingra

   House no.20, Hari Bagh Colony, Panipat, Haryana-132103.

3. Real Estate Regulatory Authority, Mini Secretariat, New Office Block, 2nd & 3rd Floor, Sector-1, Panchkula, Haryana-134114, India.

Respondents

(5) Appeal No.115 of 2019

1. Astrum Value Homes Private Limited (10th Floor, C-Wing, JMD Megapolis, Sohna Road, Sector-48, Gurgaon, Haryana, 122002,

2. Stanza Developers & Infrastructure Private Limited, 189, Tarun Enclave, Pitampura-110034, Delhi.

Appellants

Versus

1. Rekha Chauhan

   House No.24/4, Bishan Swaroop Colony, Panipat-132103, Haryana.

2. Real Estate Regulatory Authority, Mini Secretariat, New Office Block, 2nd & 3rd Floor, Sector-1, Panchkula, Haryana-134114, India.

Respondents

(6) Appeal No.116 of 2019

1. Astrum Value Homes Private Limited (10th Floor, C-Wing, JMD Megapolis, Sohna Road, Sector-48, Gurgaon, Haryana, 122002.

2. Stanza Developers & Infrastructure Private Limited, 189, Tarun Enclave, Pitampura-110034, Delhi.

Appellants

Versus

1. Vinod Chahal

   House no.1694, FF, Block D1, Ansal Sushant City, Panipat, Haryana-132103.

2. Real Estate Regulatory Authority, Mini Secretariat, New Office Block, 2nd & 3rd Floor, Sector-1, Panchkula, Haryana-134114, India.

Respondents

(7) Appeal No.117 of 2019

1. Astrum Value Homes Private Limited (10th Floor, C-Wing, JMD Megapolis, Sohna Road, Sector-48, Gurgaon, Haryana, 122002,

2. Stanza Developers & Infrastructure Private Limited, 189, Tarun Enclave, Pitampura-110034, Delhi.

Appellants

Versus

1. Naveen Goyal
2. Ritu Goyal

   House No.106-B, Bihan Sarup Colony, Panipat-132103, Haryana.

3. Real Estate Regulatory Authority, Mini Secretariat, New Office Block, 2nd & 3rd Floor, Sector-1, Panchkula, Haryana-134114, India.

Respondents

(8) Appeal No.118 of 2019

1. Astrum Value Homes Private Limited (10th Floor, C-Wing, JMD Megapolis, Sohna Road, Sector-48, Gurgaon, Haryana, 122002,
2. Stanza Developers & Infrastructure Private Limited, 189, Tarun Enclave, Pitampura-110034, Delhi.

Appellants

Versus

1. Sarla Jindal
2. J.K. Jindal

   RA-61, Inder Puri, Central Delhi, Delhi-110012.

3. Real Estate Regulatory Authority, Mini Secretariat, New Office Block, 2nd & 3rd Floor, Sector-1, Panchkula, Haryana-134114, India.

Respondents

(9) Appeal No.119 of 2019

1. Astrum Value Homes Private Limited (10th Floor, C-Wing, JMD Megapolis, Sohna Road, Sector-48, Gurgaon, Haryana, 122002,
2. Stanza Developers & Infrastructure Private Limited, 189, Tarun Enclave, Pitampura-110034, Delhi.

Appellants

Versus

1. Brij Bhushan Sharma
2. Madhu Sharma

   House No.751, HUDA Colony, Sector-17, Panipat-132103, Haryana.
3. Real Estate Regulatory Authority, Mini Secretariat, New Office Block, 2nd & 3rd Floor, Sector-1, Panchkula, Haryana-134114, India.

Respondents

(10) Appeal No.120 of 2019

1. Astrum Value Homes Private Limited (10th Floor, C-Wing, JMD Megapolis, Sohna Road, Sector-48, Gurgaon, Haryana, 122002,
2. Stanza Developers & Infrastructure Private Limited, 189, Tarun Enclave, Pitampura-110034, Delhi.

Appellants

Versus

1. Girish Kumar
2. Ritu Makkar

   House No.782, Model Town, Panipat-132103, Haryana.
3. Real Estate Regulatory Authority, Mini Secretariat, New Office Block, 2nd & 3rd Floor, Sector-1, Panchkula, Haryana-134114, India.

Respondents

(11) Appeal No.121 of 2019

1. Astrum Value Homes Private Limited (10th Floor, C-Wing, JMD Megapolis, Sohna Road, Sector-48, Gurgaon, Haryana, 122002,
2. Stanza Developers & Infrastructure Private Limited, 189, Tarun Enclave, Pitampura-110034, Delhi.

Appellants

Versus

1. Pardeep Kumar

House No.543, Railway Road, Opp. Punjab National Bank, Gharaunda, Karnal, Haryana.

2. Real Estate Regulatory Authority, Mini Secretariat, New Office Block, 2nd & 3rd Floor, Sector-1, Panchkula, Haryana-134114, India.

Respondents

(12) Appeal No.122 of 2019

1. Astrum Value Homes Private Limited (10th Floor, C-Wing, JMD Megapolis, Sohna Road, Sector-48, Gurgaon, Haryana, 122002,

2. Stanza Developers & Infrastructure Private Limited, 189, Tarun Enclave, Pitampura-110034, Delhi.

Appellants

Versus

1. Virender Kumar

   House No.101, O.H.B.C. Panipat-132103, Haryana.

2. Real Estate Regulatory Authority, Mini Secretariat, New Office Block, 2nd & 3rd Floor, Sector-1, Panchkula, Haryana-134114, India.

Respondents

(13) Appeal No.123 of 2019

1. Astrum Value Homes Private Limited (10th Floor, C-Wing, JMD Megapolis, Sohna Road, Sector-48, Gurgaon, Haryana, 122002.

2. Stanza Developers & Infrastructure Private Limited, 189, Tarun Enclave, Pitampura-110034, Delhi.

Appellants

Versus

1. Rita Somra

2. Amit Somra

   D-1667, Ansal, Panipat, Haryana.

3. Real Estate Regulatory Authority, Mini Secretariat, New Office Block, 2nd & 3rd Floor, Sector-1, Panchkula, Haryana-134114, India.

Respondents

(14) Appeal No.124 of 2019

1. Astrum Value Homes Private Limited (10th Floor, C-Wing, JMD Megapolis, Sohna Road, Sector-48, Gurgaon, Haryana, 122002,

2. Stanza Developers & Infrastructure Private Limited, 189, Tarun Enclave, Pitampura-110034, Delhi.

Appellants

Versus

1. Suman Bansal

   House No.C-294, Panipat Yamuna Enclave, Panipat-132103, Haryana.

2. Real Estate Regulatory Authority, Mini Secretariat, New Office Block, 2nd & 3rd Floor, Sector-1, Panchkula, Haryana-134114, India.

Respondents

(15) Appeal No.125 of 2019

1. Astrum Value Homes Private Limited (10th Floor, C-Wing, JMD Megapolis, Sohna Road, Sector-48, Gurgaon, Haryana, 122002,

2. Stanza Developers & Infrastructure Private Limited, 189, Tarun Enclave, Pitampura-110034, Delhi.

Appellants

Versus

1. Rohitashv Bindle

2. Shuchi Bindle

   House No.1231-A, Bindle Bhawan, 1B, School Lane, G.T. Road, Panipat-132103, Haryana.

3. Real Estate Regulatory Authority, Mini Secretariat, New Office Block, 2nd & 3rd Floor, Sector-1, Panchkula, Haryana-134114, India.

Respondents

(16) Appeal No.126 of 2019

1. Astrum Value Homes Private Limited (10th Floor, C-Wing, JMD Megapolis, Sohna Road, Sector-48, Gurgaon, Haryana, 122002,

2. Stanza Developers & Infrastructure Private Limited, 189, Tarun Enclave, Pitampura-110034, Delhi.

Appellants

Versus

1. Jagdish Malik

2. Krishna Devi

   House no.5, PWD Colony, Panipat-132103.

3. Real Estate Regulatory Authority, Mini Secretariat, New Office Block, 2nd & 3rd Floor, Sector-1, Panchkula, Haryana-134114, India.

Respondents

(17) Appeal No.127 of 2019

1. Astrum Value Homes Private Limited (10th Floor, C-Wing, JMD Megapolis, Sohna Road, Sector-48, Gurgaon, Haryana, 122002,

2. Stanza Developers & Infrastructure Private Limited, 189, Tarun Enclave, Pitampura-110034, Delhi.

Appellants

Versus

1. Arati Joshi

   Flat No.301, La-Regencia, Phase-I, Sector 19, Panipat, Haryana-132103.

2. Real Estate Regulatory Authority, Mini Secretariat, New Office Block, 2nd & 3rd Floor, Sector-1, Panchkula, Haryana-134114, India.

Respondents

(18) Appeal No.128 of 2019

1. Astrum Value Homes Private Limited (10th Floor, C-Wing, JMD Megapolis, Sohna Road, Sector-48, Gurgaon, Haryana, 122002,

2. Stanza Developers & Infrastructure Private Limited, 189, Tarun Enclave, Pitampura-110034, Delhi.

Appellants

Versus

1. Raj Kumar Sharma

   House No.513, near Brahman Chopal, Ward No.14, Sewah (32), Panipat Beas Project, Panipat -132108, Haryana.

2. Real Estate Regulatory Authority, Mini Secretariat, New Office Block, 2nd & 3rd Floor, Sector-1, Panchkula, Haryana-134114, India.

Respondents

(19) Appeal No.129 of 2019

1. Astrum Value Homes Private Limited (10th Floor, C-Wing, JMD Megapolis, Sohna Road, Sector-48, Gurgaon, Haryana, 122002,

2. Stanza Developers & Infrastructure Private Limited, 189, Tarun Enclave, Pitampura-110034, Delhi.

Appellants

Versus

1. Mahinder Midha

   House No.387/3, Insar Bazar, Indira Bazar, Panipat-132103, Haryana.

2. Real Estate Regulatory Authority, Mini Secretariat, New Office Block, 2nd & 3rd Floor, Sector-1, Panchkula, Haryana-134114, India.

Respondents

(20) Appeal No.130 of 2019

1. Astrum Value Homes Private Limited (10th Floor, C-Wing, JMD Megapolis, Sohna Road, Sector-48, Gurgaon, Haryana, 122002,

2. Stanza Developers & Infrastructure Private Limited, 189, Tarun Enclave, Pitampura-110034, Delhi.

Appellants

Versus

1. Ajay Taneja

House No.764, Model Town, near Post Office, Panipat-132103, Haryana.

2. Real Estate Regulatory Authority, Mini Secretariat, New Office Block, 2nd & 3rd Floor, Sector-1, Panchkula, Haryana-134114, India.

Respondents

(21) Appeal No.165 of 2019

1. Astrum Value Homes Private Limited (10th Floor, C-Wing, JMD Megapolis, Sohna Road, Sector-48, Gurgaon, Haryana, 122002,

2. Stanza Developers & Infrastructure Private Limited, 189, Tarun Enclave, Pitampura-110034, Delhi.

Appellants

Versus

1. Sudhir Aneja

2. Renuka Aneja

House No.135-R, Model Town, Panipat-132103, Haryana.

3. Real Estate Regulatory Authority, Mini Secretariat, New Office Block, 2nd & 3rd Floor, Sector-1, Panchkula, Haryana-134114, India.

Respondents

(22) Appeal No.166 of 2019

1. Astrum Value Homes Private Limited (10th Floor, C-Wing, JMD Megapolis, Sohna Road, Sector-48, Gurgaon, Haryana, 122002,

2. Stanza Developers & Infrastructure Private Limited, 189, Tarun Enclave, Pitampura-110034, Delhi.

Appellants

Versus

1. Prem Kumar Manocha

House no.455-R, Khali Bazar, Panipat-132103, Haryana.

2. Real Estate Regulatory Authority, Panchkula through its learned Chairman.

Respondents

CORAM:

Justice Darshan Singh (Retd.)	Chairman
Shri Inderjeet Mehta	Member (Judicial)
Shri Anil Kumar Gupta	Member (Technical)

Argued by: Shri Aashish Chopra, Advocate assisted by Shri Shobit Phutela, Advocate, learned counsel for appellants.
Ms**.** Rupali Shekhar Verma, Advocate, ld. counsel for respondents in appeals no. 111/2019 to 113 of 2019 and 115 to 120/2019, 122/2019 to 130/2019.
Shri Vishal Singal, Advocate for Shri Sanjeev Sharma, Advocate, ld. counsel for respondent Narender Singh Mann (appeal no.19 of 2019).
Shri Satyam Aneja, Advocate, ld. counsel for respondents in appeals no.165 & 166 of 2019.
Shri Ashish Chaudhary, Advocate, ld. counsel for respondent in appeal no.121 of 2019.

ORDER:

JUSTICE DARSHAN SINGH (Retd.) CHAIRMAN:

Vide this judgment we are going to dispose of all the above mentioned twenty-two appeals filed by the appellant/promoter under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') which have arisen out of the orders passed by the learned Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called 'the Authority'). All the appeals, except appeal no.121/2019, 165/2019 and 166/2019, have arisen out of the common order dated 17.10.2018. The complaints of remaining three appeals no.121, 165 and 166 of 2019 have been disposed of vide orders dated 30.10.2018 and 18.12.2018

respectively in terms of the order dated 17.10.2018 passed in complaint no.88 of 2018.

2. The facts of all the complaints filed by the respondents/allottees are almost similar. For the purpose of disposal of these appeals, we are referring the facts of complaint no.88 of 2018 titled as "Suman Bansal vs. Astrum Value Homes Pvt. Ltd. and another" (appeal no.124 of 2019).

3. The respondent/allottee had purchased the apartment from the original allottee on 15.04.2013 in the project 'La Regencia' promoted by the appellant in Sector-19, Panipat. Buyer's Agreement for apartment no. F-601 measuring 1865 sq. ft. allotted to the respondent/allottee Suman Bansal was executed on 06.06.2013. It was agreed that the possession of the unit will be handed over within 30 months. The substantial amount of the sale price was paid by the respondent/allottee. The payment plan was construction linked. No further demand was raised by the appellant/promoter after 04.07.2016, which indicates that no construction was taking place. The appellant/promoter had failed to honour the terms and conditions of the buyer's agreement. It had failed to develop the project and offer the possession of the unit to the complainant.

4. On the basis of the aforesaid allegations, the respondents/allottees sought refund of the entire amount paid by them, alongwith interest at the rate of 18% per annum along

with revocation of the registration for violating the provisions of the Act. The allottees have also sought direction to provide the complete details of the statutory approvals, details of payment of External Development Charges (EDC) and Infrastructure Development Charges (IDC) to the competent authority, correct statement of account, compensation and costs of litigation.

5. The appellant/promoter contested the complaint on the grounds inter alia that as per clause 4.1 of the buyer's agreement, the possession of the apartment was supposed to be handed over within 30 months of executing the agreement, however subject to force majeure conditions and timely payments of the instalments. It was further pleaded that the structure of the building is already complete and as per the registration certificate of the project, the project was to be completed by December, 2019. It was further pleaded that if the prayer of refund is allowed, then not only it would jeopardize the interest of the other allottees but also viability of the project as a whole would go into serious problems. The appellant/promoter also challenged the jurisdiction of the Authority to entertain and adjudicate the complaints filed by the respondents/allottees. The appellant also pleaded that the complaints are barred by the principle of acquiescence as the complainants have executed the buyer's agreement without any objection and they are bound by the terms and conditions settled therein. At this belated stage, they cannot be allowed to

challenge the said conditions. With these pleas, the appellant/promoter pleaded for dismissal of the complaint.

6. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned Authority vide impugned order disposed of the complaint with the following directions: -

> *"(i) The respondents shall strictly adhere to the undertakings given by them in respect of completing the construction activities as shown in the table and for meeting the deadlines stated above. They will incur the expenditure on the project as promised by them. Any failure on this account will invite exemplary penalty. In order to ensure that the promises are fulfilled by the respondents, a suo moto complaint no.801 of 2018 has been registered against the respondents which will be heard every two months by the Authority. This suo moto complaint shall now come up for hearing on 11.12.18.*
>
> *(ii) This Authority has taken a view with regard to the compensation to be paid to each of the allottee on account of delay in handing over possession by the developers in complaint Case No.113 of 2018-Madhu Sareen Versus M/s BPTP Ltd. In the said complaint, two members have taken a view that for the delay compensation should be payable as prescribed in Rule 15 of the HRERA Rules whereas the 3rd member has taken a different view for the reasons recorded in detail in complaint Case No.49 of 2018- Parkash Chand*

Arohi Versus M/s Pivotal Infrastructure Pvt. Ltd. while as per law, the majority view will be implemented, however, the views of the respective members shall remain as expressed in above mentioned complaints.

(iii) The respondent shall strictly abide by the super area, for which the complainant shall be charged, in accordance with the already approved plans as on this date without making any further amendments therein. Further, the super area allocated to each complainant for which he/she will be charged shall be conveyed by the respondents and the same shall not be altered.

(iv) The allottees shall be liable to pay all statutory charges; taxes and levies payable to the State Government or State Government authorities as are applicable up to the deemed date of possession calculated from the date of execution of buyer's agreement. This date will differ in each case. If any tax, levy or charge has been imposed by the State Government or its authorities after the said deemed date of possession, the same shall be borne by the respondents.

(v) The respondents shall prepare a statement of account in respect of each allottee at least two months prior to the likely date of offer of possession. In the statement of account, the amount payable by the allottees to the developers and the amount of compensation payable by the developers to the allottees shall

be duly shown. The allottees shall be asked to pay only the balance excess amount if any.

(iv) The respondent shall prepare a directory of all the allottees containing therein their addresses and phone numbers and circulate the same amongst all the allottees. He shall take steps to form an association of the allottees and hold a monthly meeting to apprise the allottees of the financial and physical progress of the project."

7. Aggrieved with the aforesaid orders, the present appeals have been preferred by the appellant/promoter. The respondents/allottees have also filed the cross-objections in all the appeals except appeals no.19/2019, 111/2019, 121/2019, 128/2019, 165/2019 and 166/2019.

8. We have heard Shri Aashish Chopra, Advocate assisted by Shri Shobit Phutela, Advocate, learned counsel for appellants; Ms**.** Rupali Shekhar Verma, Advocate, learned counsel for respondents in appeals no. 111/2019 to 113 of 2019 and 115 to 120/2019, 122/2019 to 130/2019; Shri Vishal Singal, Advocate for Shri Sanjeev Sharma, Advocate, learned counsel for respondent in appeal no.19 of 2019; Shri Satyam Aneja, Advocate, learned counsel for respondents in appeals no.165 & 166 of 2019; Shri Ashish Chaudhary, Advocate, learned counsel for respondent in appeal no.121 of 2019 and have meticulously examined the record of the case.

9. Learned counsel for the parties have also filed the written submissions.

10. At the very outset, Ms. Rupali Shekhar Verma, learned counsel for respondents has stated that the respondents do not press the application dated 31.08.2020 for placing on file the affidavit dated 31.08.2020 for withdrawal of the cross-objections. She pleaded that the cross-objections filed by the respondents may be disposed of in accordance with law. She has pleaded that the respondents/allottees were entitled for the relief of refund which was wrongly declined by the learned Authority. So, the cross-objections are maintainable.

11. We have duly considered the aforesaid contentions. Firstly, we take up the issue regarding maintainability of the cross-objections filed by the respondents. It is settled principle of law that right of appeal or the cross-objection is a statutory right which is expressly provided by the legislature in the statute itself and it cannot be impliedly inferred. In the Act or the rules framed thereunder, there is no provision for filing of the cross-objections. As per Section 44 of the Act, the only remedy available to the aggrieved person by any direction or order or decision of the Authority or the Adjudicating Officer, is to prefer an appeal before the Appellate Tribunal.

12. The right to file the cross-objections is provided in Order 41 rule 22 of the Code of Civil Procedure, 1908 (hereinafter called 'the CPC'). As per Section 53(1) of the Act,

the Appellate Tribunal is not bound to follow the procedure as provided in the CPC. The Appellate Tribunal is to be guided by the principles of natural justice.

13. As per Order 41 rule 22 CPC, there is a specific remedy for filing the cross-objections. If a person is aggrieved with any finding on any issue, even though he has not filed any appeal, he can assail those findings by filing the cross-objections, but there is no such provision in the Act or the rules framed thereunder. In the Act, there is only the remedy of appeal, if a person is aggrieved by any direction, decision or order of the Authority. So, this Tribunal cannot create any right in favour of the respondents/allottees to maintain their cross-objections as this Tribunal being the creature of the Act cannot extend the purview of Section 44 of the Act as that shall be the violence to the plain meaning of the said provision. If the respondents/allottees were really aggrieved with the denial of the refund, they could have availed the remedy of appeal which they did not avail for the reasons best known to them.

14. Thus, the cross-objections filed by the respondents in appeals no.112/2019, 113/2019, 115/2019 to 120/2019, 122/2019 to 127/2019, 129/2019 and 130/2019 are not maintainable and are hereby dismissed.

15. Initiating the arguments on the merits of the appeals, learned counsel for the appellants contended that on the date of filing the complaints there was no prescribed rate of interest in

case of delay in handing over the possession. A perusal of rule 15 of the Rules applicable at that time shows that interest for delayed possession has not been prescribed in the said rule. Thus, the learned Authority as well as this Tribunal cannot award the interest at the prescribed rate. He further contended that it is only through the notification dated 12.09.2019, the State of Haryana has amended the rules to include the prescribed rate of interest to be granted in case of delayed possession. The said amendment is prospective in nature. It cannot be stated to be procedural in nature, hence, it cannot be applied retrospectively. It is nowhere stated in the amended rules that it will be applied retrospectively. The grant the interest affects the substantive rights and are to be applied prospectively.

16. He further contended that the delayed compensation can only be calculated in terms of clause 4.5 of the agreement i.e. Rs.5/- per sq. ft. per month of the super area. The court while adjudicating the claim cannot re-write the provisions of the contract between the parties. To support his contentions, he relied upon case ***Union Territory of Pondicherry and others vs. P.V. Suresh (1994) 2 SCC 70*** *and* ***Vikram Greentech(I) Ltd. and another vs. New India Assurance Pvt. Ltd. AIR 2009 SC 2493***. Thus, he contended that the learned Authority has illegally awarded the interest for delayed possession at the prescribed rate as per rule 15 of the Act.

17. He further contended that as per clause 3.2 of the agreement, the lay out plan of the building was tentative. There could be reasonable variation in the super area of the unit at the time of completion of the project. There could be increase or decrease in the super area to the extent of 10%. The definition of the super area is also provided in Annexure-II of the agreement. Each and every component of the super area is verifiable through technical measurements by any recognised architect. He has further drawn our attention to clause 1.3 of the agreement to contend that the final super area is to be confirmed only after the construction of the building is complete and occupation certificate is granted. He further contended that the construction of the project has been done as per sanctioned building plans. Any construction which is in variance of the building plans, is a subject matter which is to be looked into by the department of Town and Country Planning. All such variations are compoundable in nature. The allottees are required to pay for the super area which is being provided to them and the appellant is entitled to recover the same from the customers. No extra charges are being realised. The direction given by the learned Authority that the super area for which the allottees shall be charged should be in accordance with the already approved plans as on the date of passing the order without making any further amendment therein, is contrary to the provisions of the agreement.

18. Learned counsel for the appellant further contended that as per clause 1.10 of the agreement, the allottees were bound to pay all the statutory taxes, charges, levies, levied or leviable in future on the said apartment, said building and/or the said project. He contended that the allottees were aware of the fact from the day one that even if any new levy or tax is levied, the same shall be payable by them. The Goods and Service Tax, 2017 (for short 'GST') as a statutory levy, is just transition of Service Tax and VAT. No new tax has been created. VAT and Service Tax were chargeable at the time of sale of apartment to the allottees. Once the regime of GST was introduced, VAT and Service Tax were abolished. Thereafter, the promoter was supposed only to charge GST. He further contended that charging of taxes was a separate head of the payment plan agreed to by the allottees wherein all such taxes, as may be incurred by the developer on the apartment, were agreed to be paid by the customers. He contended that no provision under the Act empowers the Authority to pass an order on the tax liability or to change in the incidence of tax. The direction given by the learned Authority that the allottee shall not be liable for the payment of GST is wholly illegal, without jurisdiction and is liable to be set aside. To support his contentions, he relied upon case of ***All India Federation of Tax Practitioners and Ors. V. Union of India and Ors. AIR 2007 SC 2990***.

19. He contended that the observation of the learned Authority is contrary to Article 265 of the Constitution of India which provides that no tax shall be collected except by authority of law. Once the tax/levy is imposed by an authority of law, the same has to be collected in accordance with that law and incidence of tax cannot be arbitrarily changed. He further contended that moreover, the relevant clause in the agreement between the parties clearly states that the allottee is liable to pay any and all taxes as may be incurred by the developer, whether levied or leviable in future. He further contended that the absolute exemption from payment of taxes will also amount to change the pricing of the apartment and also the terms agreed to between the parties. He further contended that had the apartment been delivered in time, the allottee would have paid full taxes. For the delay in delivery of possession, the allottee is being compensated as per the direction given by the learned Authority. Thus, the exemption from taxes is nothing but an additional compensation beyond what has already been awarded. That would be in the nature of compensation which is beyond the jurisdiction of the Authority and any such claim can only be raised before the Adjudicating Officer under Section 71 of the Act. Thus, he contended that the impugned order is illegal and is not tenable in the eyes of law.

20. Ms. Rupali Shekhar Verma, Advocate, learned counsel for the respondents contended that un-amended rule

15 has been wrongly interpreted by the appellant. She contended that the later part of rule 15 provides the rate of interest payable by the promoter to the allottee or vice-versa. This rate is not confined only to the refund of the amount and will also be payable in case of delayed possession. She further contended that the amendment of rule 15 by the Government vide notification dated 12.09.2019 is clarificatory in nature. The amended rule has substituted the un-amended rule. Such substitution will relate back to the date of promulgation of a statute, more so when the attempt of the legislature is to clarify the anomalies perceived by the stakeholders. She further contended that the powers of the Appellate Tribunal are co-extensive with that of the Court of first instance and this Tribunal can always award the interest as per the amended rules. She further contended that as per clause 1.17 of the agreement, the promoter is entitled to charge 18% interest per annum for delayed instalments. This Tribunal may award the same rate of interest to the respondents/allottees in view of Section 2 (za) of the Act.

21. She further contended that the rate of compensation for delayed delivery of possession mentioned in the agreement is arbitrary and discriminatory. The terms and conditions of the agreement were grossly unjust and unreasonable. She contended that the provisions of the Act are retroactive and thus will be applicable on the pre-RERA agreements as well. To

support her contentions, she relied upon case ***Neelkamal Realtors Suburban Pvt. Ltd. and another vs. Union of India and others, 2017 (SCC Online) Bombay 9302***. She contended that as per explanation (b) to the Model Agreement for Sale (Annexure-A), any clause of the agreement which is contrary to or inconsistent with any provision of the Act, Rules, and regulations made thereunder, would be void ab-initio. Thus, the promoter cannot claim that the respondents/allottees were only entitled to delayed compensation @ Rs.5/- per sq. ft. per month instead of the prescribed rate of interest as per rule 15 of the Act.

22. Ms. Rupali Shekhar Verma, learned counsel for the respondents further contended that the finding of the learned Authority with respect to the super area is very clear that the appellant will notify the super area as per the already approved plans without making any further amendments therein. So long there is no change in the building plans, corresponding super area cannot vary. She contended that it is not the case of the appellant that it had applied for any revised plan or has carried out the construction which is at variance with already approved building plans. So, there is no factual basis to challenge the direction of the Authority on this issue. She contended that the direction given by the learned Authority that the allottee shall be charged for the super area as per the approved building plans

without making any further amendment therein, is to check the anticipated mischief.

23. She further contended that the learned Authority has rightly held that the allottee shall be liable to pay all the statutory taxes or charges up to the deemed date of possession. If any tax or charges have been imposed thereafter, it shall be the liability of the promoter to bear. She contended that there is no change of incidence of the taxes by this direction of the learned Authority. The liability to pay the statutory taxes/charges would remain that of the allottee but shall be reimbursed or borne by the appellant/promoter by preparing final statement of accounts. This direction will also not amount to award the additional compensation as projected by learned counsel for the appellant.

24. Shri Vishal Singal, learned counsel for respondent Narender Singh Mann (appeal no.19 of 2019) also supported the contentions raised by Ms. Rupali Shekhar Verma, Advocate. He further added that the amended rule 15 shall be applicable to the pending cases as well. The amendment was only of the rules and not the substantive law. He further contended that this plea has not been raised in the grounds of appeal and cannot be agitated at this stage by learned counsel for the appellant. He further contended that the terms and conditions of the agreement were un-reasonable and unjust. Such one-sided clauses in the agreement constitute unfair trade practice and

can be ignored. To support his contentions, he relied upon case ***Pioneer Urban Land & Infrastructure Limited Vs. Govindan Raghavan, 2019(2) R.C.R. (Civil) 738*** and contended that the allottees have been rightly awarded the interest at the prescribed rate instead of mentioned in the buyer's agreement.

25. He further contended that clause 3.2 of the agreement with respect to the super area is unfair and arbitrary. So, the learned Authority has rightly rejected the said clause. He contended that till date, the project is nowhere near completion and it is highly improbable that at the stage of internal plastering the plea of increase in super area can be raised. In fact, the demand of increase in the super area is fictional and illegal as no actual increase in the super area has taken place. The appellant/promoter is demanding the illegal charges by claiming the artificial increase in the super area.

26. He further contended that the liability to pay the future taxes as per clause 1.10 of the agreement, can be presumed to be till the date of handing over the possession as per the terms of the agreement and in case there is any delay beyond the agreed date of handing over the possession, the allottees cannot be fastened with additional taxes.

27. Shri Satyam Aneja, Advocate, learned counsel for respondents in appeals no.165 & 166 of 2019 and Shri Ashish Chaudhary, Advocate, learned counsel for respondent in appeal no.121 of 2019, have also endorsed the aforesaid contentions

raised by Ms. Rupali Shekhar Verma and Shri Vishal Singal, Advocates.

28. We have duly considered the aforementioned contentions raised by learned counsel for the parties. At the time of arguments, learned counsel for the appellant has attacked the impugned orders on the following three grounds: -

i) Firstly, that the learned Authority was not justified to award the interest on delayed possession at the prescribed rate as per rule 15 of the Rules. The delayed possession could only have been calculated in terms of clause 4.5 of the agreement i.e. at the rate of Rs.5/- per sq. ft. per month of the super area.

ii) Secondly, the direction given by the learned Authority to charge for the super area in accordance with the already approved plans as on that date without making any further amendment therein.

iii) Thirdly, the direction given by the learned Authority that the allottees shall be liable to pay the statutory charges, taxes and levies as applicable up to the deemed date of possession. If any tax, levy or tax has been imposed by the State Government or its authority after the said

date, the same shall be borne by the appellant/promoter.

29. Let us firstly take the issue regarding the interest on delayed possession. Learned counsel for the appellant has vehemently contended that the original rule 15 of the Rules was not applicable to the cases to delay in delivery of possession and was only applicable to refund cases. Rule 15 of the Rules has been amended by the Government of Haryana vide notification dated 12.09.2019 and as per the amended rule, the interest at the prescribed rate can also be awarded in cases of delayed possession. Even if for the sake of arguments, the plea raised by learned counsel for the appellant that as the substantive right to claim interest for delayed possession on the prescribed rate has been created for the first time by way of said amendment of the rules, so the amended rule 15 shall be applicable prospectively and not retrospectively, is taken on its face value without any formal expression of opinion by this Tribunal, but still this Tribunal is required to consider whether the rate of interest awarded by the learned Authority is unjustified or unreasonable or not.

30. As per clause 4.5 of the agreement, the delayed compensation was payable at the rate of Rs.5/- per sq. ft. per month of the super area. The learned Authority has awarded the delayed compensation payable as prescribed in rule 15 of the Rules. Rule 15 of the Rules provides for grant of interest at

the State Bank of India highest marginal cost of lending rate+2%. At the time of filing these complaints, SBI MCLR was 8.35% and thus by adding two percent, the rate of interest awarded by the learned Authority comes to 10.35% per annum.

31. The Act is a beneficial legislation. The prime objective of the Act was for the sale of the real estate project in an efficient and transparent manner and to protect the interest of customers in the real estate sector. Thus, as per the object and reasons of the Act, the function of the Authority established under the provisions of the Act is to safeguard the interest of the consumers in the real estate sector. The Authority is duty bound to see that the promoter and the allottee are at equal level. The rights of the parties are to be equitably balanced. In view of the vital financial disparity, the promoters shall always be in dominant and commanding position. The promoters cannot be allowed to take any undue advantage of their dominant position and to exploit the needs of the home buyers. The learned Authority as well as this Tribunal is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. If it is found that the terms of the agreement are ex facie one sided, unfair and unreasonable which constitute the unfair trade practice on the part of the promoter, those terms can be ignored and cannot adversely affect the rights of the allottees as they have to sign on the dotted lines of the contract being the needy

home buyers who had already parted with the substantial amount. The Hon'ble Apex Court in case ***Pioneer Urban Land & Infrastructure Limited Vs. Govindan Raghavan*** (Supra) has laid down as under:

> *"6. A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder.*
>
> *The contractual terms of the Agreement dated 08.05.2012 are ex-facie one-sided, unfair, and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per section 2(r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the Builder.*
>
> *7. In view of the above discussion, we have no hesitation in holding that the terms of the Apartment Buyer's Agreement dated 08.05.2012 were wholly one-sided and unfair to the Respondent-Flat Purchaser. The appellant-Builder could not seek to bind the Respondent with such one-sided contractual terms.*
>
> *8. We also reject the submission made by the Appellant-Builder that the National Commission was not justified in awarding interest @ 10.7% S.I. p.a. for the period commencing from the date of payment of each instalment, till the date on which the amount was paid, excluding only the period during which the stay of cancellation of the allotment was in operation."*

In the aforesaid judgments, the Hon'ble Apex Court finding the terms and conditions of the agreement to be one sided unfair

and unreasonable has upheld the award of the National Commission awarding the interest as per Rule 15 of the Rules at the rate of 10.7 % per annum and not in the contractual rate.

32. From the perusal of the buyer's agreement it comes out that as per clause 1.14 of the agreement 20% of the amount of the basic sale price was to be treated as earnest money and the said amount was liable to be forfeited in case of any default on the part of the allottee. As per judicial precedents, the forfeiture of earnest money more than 10% is held to be excessive and unreasonable. In case of delayed payment as per clause 1.17 of the agreement, the appellant/promoter was entitled to charge the interest @ 18% at the time of every succeeding instalment from the due date of instalment, as per the schedule of payment, till the date of payment. It is further provided in this clause that if there are arrears of more than two instalments, the allotment shall stand cancelled, earnest money shall be forfeited and the balance amount shall be refunded without any interest, that too after the re-sale of the unit. It is further provided that in exceptional cases, finding the genuine circumstances, the delay can be condoned on payment of the interest on delayed payment @ 24% per annum to restore the allotment, whereas as per clause 4.5 of the agreement, the promoter was liable to pay only Rs.5/- per sq.ft. per month of the super area which comes merely 2.76% (in Suman Bansal's case). Similar is the position in the other connected cases.

33. As per clause 3.4 of the agreement, if the promoter has to go into litigation due to any legislation, rule and/or regulation, the money paid by the allottee shall remain with the promoter and the allottee will not move or obtain specific performance of the contract. Vide this clause, a clog has been put on the legal right of the allottee which is in violation of Section 28 of the Indian Contract Act, 1872. Clause 4.4 of the agreement provides that after taking the possession, the allottee shall not make any claim against the promoter in respect of any item or any of the work in the said apartment, which is again the curtailment of the legal rights of the allottee. Similarly, as per clause 6.2 of the agreement, in case of cancellation of the allotment on the request of the allottee, the earnest money shall stand forfeited and the balance amount shall be refunded without any interest within 30 days of the re-sale of the unit. It shows that the promoter has assumed vast powers by way of the terms and conditions provided in the buyer's agreement.

34. The manner in which the terms and conditions of the agreement have been drafted and its tenor clearly demonstrate that clause 4.5 of the agreement for payment of compensation/interest on delayed possession is @ Rs.5/- per sq. ft. per month of the super area is ex-facie discriminatory, one-sided, unfair and un-reasonable which constitute the unfair trade practice on the part of the appellant/promoter. The respondents/allottees had no option but to sign the agreement

on the dotted lines in view of their need of the houses having already parted with handsome amount of their hard-earned money and the promoter being in dominant position. As per ratio of law laid down by the Hon'ble Apex Court in ***Pioneer Urban Land & Infrastructure Limited Vs. Govindan Raghavan*** (Supra), these discriminatory terms and conditions of the agreement will not be final and binding. Consequently, we do not find any substance in the plea raised by learned counsel for the appellant that the allottees were entitled only to the interest for delayed possession @ Rs.5/- per sq. ft. per month of the super area.

35. Admittedly, in the original rule 15 of the Rules, it was not specifically mentioned that interest for delayed possession will also be paid at the prescribed rate, but at the same time we are of the opinion that even in case of delayed possession, the allottee is entitled to interest at the reasonable rate on his hard-earned money which remained with the promoter. The appropriate Government after due deliberation has determined the prescribed rate to be SBI MCLR+2%. The rate so provided by the appropriate government in the rules is reasonable and justified. The learned Authority as well as this Tribunal in order to determine the reasonable rate of interest can take the advantage and aid of the rate of interest provided in rule 15 of the Rules, which is the result of due deliberation and consideration at the government level. This will also help the

learned Authority and this Tribunal to maintain the uniformity in its order to be passed in such cases. Thus, the respondents/allottees have rightly been awarded the interest by the learned Authority at SBI MCLR+2% which comes to 10.35% per annum at the time of filing the complaints. Consequently, the award of interest passed by the learned Authority does not call for any interference.

36. The learned Authority with respect to the super area has given the following direction: -

> "*(iii) The respondent shall strictly abide by the super area, for which the complainant shall be charged, in accordance with the already approved plans as on this date without making any further amendments therein. Further, the super area allocated to each complainant for which he/she will be charged shall be conveyed by the respondents and the same shall not be altered.*"

The relevant clauses of the agreement with respect to the super area read as under: -

> *"1.1 Price of said apartment-inclusions and exclusions: In pursuance to the application of the Allottee, the Company agrees to sell and the Allottee agrees to purchase/acquire from the Company the Said Apartment, more particularly detailed in the Schedule herein under, having a Super Area of 1865 sq. ft. (the definition of Super Area is given in 'Annexure II'), which comprises*

of apartment area of the Said Apartment together with undivided proportionate share in common areas and facilities within the Said Building only, calculated in the ratio which the Super Area of the Said Apartment bears to the total Super Area of all the apartments in the Said Building, in accordance with the terms and conditions set out in this Agreement and mutually agreed to between the Parties, at a Basic Sales Price of Rs.48,49,000/- (Rupees forth eight lacs forty-nine thousands only) calculated @Rs.2600/- per sq. ft. of the Super Area of the Said Apartment (hereinafter referred to as 'Basic Sales Price')."

"1.3 Basis of Calculation of Basic Sales Price: It is made clear by the Company that the Basic Sales Price of the Said Apartment has been calculated on the basis of its Super Area and that the Super Area of the Said Apartment as stated in the Agreement is tentative and subject to change till the construction of the Said Building is complete. The final Super Area of the Said Apartment shall be confirmed by the Company only after construction of the Said Building is complete and occupation certificate is granted by the competent authorities. The total consideration 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 Basic Sale Price per sq. ft. as agreed in this Agreement between the Parties.

If there shall be an increase in 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 shall be adjusted by the Company from the final instalment as set forth in the Schedule of Payments in "Annexure III"."

"3.2 Variation in Super Area: The dimensions/size/Super Area of the Said Apartment is subject to variations within reasonable limits and may vary up to 10% of the size as stated above.

In case of any alterations/modifications resulting in less than 10% change in the size/Super Area of the Said Apartment any time prior to and upon the grant of completion certificate, the Company shall intimate to the Allottee, in writing, the change thereof and the resultant change, if any, in the price of the Said Apartment. Any increase in price consequent to increase in the size/Super Area of the Said Apartment shall be apaid by the Allottee without any interest and any reduction in the price due to decrease in size/Super Area of the Said Apartment shall be refunded to the Allottee without any interest. For the sake of removal of doubts and clarity, it is stated that the increase or decrease shall be at the Basic Sale Price per sq. ft. as agreed between the Parties in this Agreement for the allotment of Said Apartment.

In case of any alterations/modification resulting in more than 10% change in the size/Super Area

of the Said Apartment any time prior to and upon the grant of completion certificate, the Company shall intimate to the Allottee, in writing, the change thereof and the resultant change, if any in the price of the Said Apartment. The Allottee agrees that in the event of such increase or decrease in Super Area, if the Allottee has nay objection to the same, the Allottee shall intimate the same to the Company, in writing, within 30 days of the date of dispatch of such notice by the Company through Registered Post AD, failing which the Allottee shall be deemed to have given his/her/it absolute consent to such increase/decrease in the Super Area and/or any alteration/modifications and for payments, if any, to be paid in consequence thereof. However, in case any demand is made for refund of the monies deposited by the Allottee towards the Said Apartment, then in such case this Agreement shall be cancelled and the Company shall refund the money(ies) received from the Allottee without any interest within 30 days from further sale of the said Apartment to any third Party. On payment of money by the Company, the Allottee and the Company shall be released and discharged from all of his obligations and liabilities under this Agreement. It being specifically agreed that irrespective of any outstanding amount payable by the Company to the Allottee, the Allottee shall have no right, lien or charge on the Said Apartment in respect of which refund as contemplated by this Agreement is payable."

Annexure-II Definition of Super Area: 'Super Area' of the Said Apartment, shall mean the entire area enclosed by its periphery walls including area under walls, columns, balconies, cupboards and lofts etc and common walls with other premises/apartments which from integral part of the Said Apartment and common areas shall include all such parts/areas in the Said Building which the Allottee shall use by sharing with other occupants of the Said building including entrance lobby at ground floor, electrical shafts, fire shafts and walls of plumbing shafts on all floors, common corridors and passages, staircases, mumties, service areas including but not limited to overhead water tanks, maintenance stores etc architectural features, if provided, and security/fire control rooms."

37. The dispute between the parties is with respect to the variance of the super area and consequent calculation of the price. The direction given by learned Authority is with respect to variation in the super area and not the manner of its measurement. As per clause 1.3 of the buyer's agreement, the super area of the apartment as stated in the agreement was tentative and subject to change till the construction of the said building is complete. It is further categorically provided that the final super area of the said apartment shall be confirmed by the Company only after construction of the said building is

complete and occupation certificate is granted by the competent authority.

38. Clause 3.2 of the agreement provides for variation in the super area. As per this clause, the reasonable limit for variation of the super area is 10% either side. It is further provided that if there is any alterations or modification resulting in less than 10% change in the size/super area of the said apartment any time prior to and upon the grant of completion certificate, the promoter shall intimate in writing the change thereof and the resultant change in the price, and the said increase in price shall be paid by the allottee without any interest and in case of reduction in the super area, the corresponding amount shall be refunded to the allottee without any interest. However, if the variation is more than 10%, the intimation shall be sent in writing to the allottee to obtain his consent. The allottee can file the objections within 30 days. In case the allottee demands the refund of money deposited by him, the money received from the allottee shall be returned within 30 days from the date of re-sale of the said apartment.

39. Thus, as per the afore-mentioned clauses of the agreement, at the initial stage the super area was only tentative. The final measurement of the super area was to be determined on completion of the building. It is an admitted fact that on the date of passing the impugned order the building was not complete. So, the learned Authority was not justified to give

direction that the promoter will abide by the super area in accordance with the plans approved on the date of passing the order. The terms and conditions of the agreement provide for variation of the super area. The variation up to 10% of the size/super area is permissible even without the consent of the allottees and in that case the promoter was only obliged to give the intimation to the allottee in writing. However, in case of variation of more than 10%, the promoter was required to invite the objections of the allottees and the allottees were free to get the amount refunded if they were not agreeable to such variation.

40. The variation in the super area and the mode of its calculation are two different and distinct aspects. As per the impugned direction, we are concerned only with the variation of the super area and its chargeability and not the mode or manner of its calculation. In view of the aforesaid terms and conditions if the variation of the dimensions/size/super area of the apartment is within reasonable limits of 10% of the size of the apartment mentioned in clause 1.1 of the agreement, the respondents/allottees will be liable to pay for the actual area being made available to them at the site which has been compounded by the competent authority. The total area including the compounded area of the unit may vary up to 10% of the super area mentioned in clause 1.1 of the agreement for which the allottee can be charged. So, the learned Authority

was not justified to impose restrictions upon the rights of the appellants to charge for the super area only in accordance with the already approved plans as on the date of order without making any further amendment therein. In our view the appellant is entitled to charge subject to the revision of the plans and composition of such variation in the dimensions/size/super area of the apartment within the permissible limits with intimation to the allottees on completion of the building.

41. The learned Authority has given the following direction with respect to the tax and levies: -

> *"(iv) The allottees shall be liable to pay all statutory charges; taxes and levies payable to the State Government or State Government authorities as are applicable up to the deemed date of possession calculated from the date of execution of buyer's agreement. This date will differ in each case. If any tax, levy or charge has been imposed by the State Government or its authorities after the said deemed date of possession, the same shall be borne by the respondents."*

42. There is no dispute qua the contention raised by the learned counsel for the appellant that the learned Authority has no jurisdiction to change the incidence of tax. But at the same time, it can be seen as to whether the allottees can be burdened

with the increased liability of the tax or it is to be borne by the promoter. It is an admitted fact that the Goods and Service Act, 2017 has become applicable w.e.f. 01.07.2017. Clause 1.10 of the agreement reads as under: -

> *"1.10 Taxes & Levies: The Allottee(s) shall be responsible for payment of all taxes, levies, assessments, demands or charges including but not limited to service tax, VAT, if applicable, levied or leviable in future on the Said Apartment, Said Building or any part of the Said Project.*
>
> *Further, the Allottee(s) shall be liable to pay from the date of his application house tax/property tax, fire fighting tax or any other fee, cess or tax as applicable and as and when levied by any local body or authority and so long as the Said Apartment is not separately assessed to such taxes, fees or cess, the same shall be paid by the Allottee in proportion to the Super Area of the Said Apartment to the Super Area of all the apartments in the Said Project."*

As per the above clause, the allottees were responsible for payment of all the taxes, levies etc. already levied or to be levied in future with respect to the said apartment, building or any part of the project.

43. We do not find any illegality in the direction of the learned Authority that the allottee will be liable to bear the tax

liability up to the deemed date of delivery of possession. The agreement for sale in this case was executed in the year 2013. The possession was to be delivered within 30 months of the date of the agreement. The date of agreement is different in all the cases. So, the deemed date of delivery of possession shall be determined taking into consideration the date of agreement plus thirty months in each case. Clause 1.10 of the agreement take care of the taxes and levies which were already applicable or to be levied in future. But the increased tax liability cannot be imposed upon the allottees beyond the deemed date of possession as per the agreement. The learned Authority has directed that if any tax, levy or charge has been imposed by the State Government or its authorities after the said deemed date of possession, the same shall be borne by the appellant/promoter.

44. But in our opinion, this absolute direction is not justified. But at the same time, under the garb of clause 1.10 of the agreement, the respondents/allottees cannot be made liable to bear the increased tax liability due to the default of the promoter. The appellant/promoter cannot take the benefit of its own wrong by prolonging the completion of the building. If the promoter is directed to bear the increased tax liability due to its own default, that will not amount to grant the additional compensation to the respondents/allottees and will also not amount to change the incidence of taxes as it is the

appellant/promoter who is the assessee having liability to pay the tax by realising the same from the respondents/allottees being the service recipients. In case of default on the part of the promoter, it cannot be allowed to claim reimbursement of the tax liability and has to bear the increased liability from its own sources.

45. Thus, keeping in view our aforesaid discussion, we conclude as under: -

(i) The rate of interest for delay in delivery of possession granted by the learned Authority at SBI MCLR+2% i.e., 10.35% per annum prevalent on the date of filing the complaint till the offer of possession on the amount deposited by the respondents/allottees respectively is reasonable and justified.

(ii) As per clause 3.2 of the agreement, the dimensions/site/super area of the apartment is subject to variation within reasonable limits of 10% of the size mentioned in clause 1.1 of the agreement. Thus, the respondents/allottees are liable to pay for the actual area made available to them at the site on completion of the building including the increased super area within the permissible limits subject to revision of the plan and composition of such variation in the dimensions/size/super area by competent authority with intimation to the allottees/respondents.

(iii) If there is any increase in the tax liability after the deemed date of possession of the apartment,

the appellant/promoter shall be responsible to bear the increased tax liability. However, the respondents/allottees shall remain liable to bear the tax liability to the extent already prevalent. Thus, the appellant/promoter can be asked to bear only the increased liability of tax after the deemed date of possession.

46. With the above said clarification and modification in the impugned orders, all these appeals stand dismissed. The parties are left to bear their own costs.

47. The original order be attached with appeal no.124 of 2019 and certified copies be attached with the remaining twenty-one appeals.

48. Copy of this order be communicated to the learned counsel for the parties/parties and the learned Haryana Real Estate Regulatory Authority, Panchkula for compliance.

49. File be consigned to the records.

Announced:
January 07, 2021

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)