BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Order reserved on: 15.03.2021
Order pronounced on: 12.08.2021

NAME OF THE BUILDER		EMAAR MGF LAND LIMITED (Now known as Emaar India Limited)	
PROJECT NAME		PALM GARDEN	APPEARANCE
1	CR/4031/2019	Varun Gupta Vs. Emaar MGF Land Limited	Sh. Swarnendu Chatterjee Ms. Kanika Gomber
2	CR/3989/2019	Richa Rana and Harendra Singh Rana Vs. Emaar MGF Land Limited	Sh. K. K. Kohli Sh. J.K. Dang along with Sh. Ishaan Dang
3	CR/1227/2019	Surender Jit Singh Bhalla and Sudesh Bhalla (Through Attorney) Vs. Emaar MGF Land Limited (Now known as Emaar India Limited)	Sh. Pradeep Sharma Sh. J.K. Dang along with Sh. Ishaan Dang
4	CR/813/2020	Mrs. Kamlesh Mittal Vs. Emaar MGF Land Limited	Sh. Davinder Singh Sh. J.K. Dang along with Sh. Ishaan Dang
5	CR/2322/2019	Saurabh Virmani (Through Attorney) and Nikhil Virmani Vs. Emaar MGF Land Limited	Sh. Pradeep Sharma Sh. J.K. Dang along with Sh. Ishaan Dang
6	CR/5561/2019	Kanav Sagar Dhingra Vs. Emaar MGF Land Limited	Ms. Prerna Arora Sh. J.K. Dang along with Sh. Ishaan Dang
7	CR/6053/2019	Aman Monga and Roma Monga Vs. Emaar MGF Land Limited	Sh. Gaurav Bhardwaj Sh. J.K. Dang along with Sh. Ishaan Dang
8	CR/357/2020/ 3111/2019	Mukteshwar Kumar Vs. Emaar MGF Land Limited	Sh. Gaurav Bhardwaj Sh. Dheeraj Kapoor
9	CR/31/2020 /3830/2019	Sunjay Pathak and Radesh Pathak Vs. Emaar MGF Land Limited	Sh. Gaurav Bhardwaj

			Sh. J.K. Dang along with Sh. Ishaan Dang
10	CR/5991/2019	Jaspal Singh Monga Vs. Emaar MGF Land Limited	Sh. Gaurav Bhardwaj Sh. J.K. Dang along with Sh. Ishaan Dang
11	CR/6709/2019	Kapil Mehrotra Vs.Emaar MGF Land Limited	Sh. Gaurav Bhardwaj Sh. J.K. Dang along with Sh. Ishaan Dang
12	CR/4343/2020	Arun Kumar Anand Vs. Emaar MGF Land limited	Sh. Gulab Singh Jarodia Ms. Kanika Gomber
13	CR/4409/2020	Arun Yadav Vs. Emaar MGF Land limited	Complainant in Person Ms. Kanika Gomber
PROJECT NAME		**EMERALD FLOORS PREMIER**	**APPEARANCE**
14	CR/1457/2019	Rohit Kumar Tripathi and Rhitu Priya Vs. Emaar MGF Land Limited	Sh. K.K. Kohli Sh. J.K. Dang along with Sh. Ishaan Dang
15	CR/2626/2019	Richa Rana and Harendra Singh Rana Vs. Emaar MGF Land Limited	Sh. K.K. Kohli Sh. J.K. Dang along with Sh. Ishaan Dang
16	CR/1532/2018	Manish Sultania and Neha Sultania Vs. Emaar MGF Land Limited	Sh. Sanjeev Sharma Sh. Dheeraj Kapoor
17	CR/869/ 2018	Navneet Singh and Suman Singh Vs. Emaar MGF Land Limited	Sh. Animesh Goyal Sh. J.K. Dang along with Sh. Ishaan Dang
18	CR/157/2020	Rajiv Ranjan Verma and Ritu Verma Vs. Emaar MGF Land Limited	Ms. Vridhi Sharma Sh. J.K. Dang along with Sh. Ishaan Dang
19	CR/858/2020	Yogender Singh Verma and Vedna Verma Vs. Emaar MGF Land Ltd.	Sh. Sushil Yadav Sh. J.K. Dang along with Sh. Ishaan Dang
20	CR/2722/2020	Nand Kishore Upadhyay Vs. Emaar MGF Land Limited	Sh. Varun Chugh Sh. J.K. Dang along with Sh. Ishaan Dang

21	CR/2847/2020	Prashant Puri and Ayesha Desai Vs. Emaar MGF Land Limited	Sh. Varun Chugh Ms. Kanika Gomber
22	CR/2880/2020	Ajay Gandotra and Nishi Gandotra Vs. Emaar MGF Land Limited	Sh. Sanjeev Sharma Sh. J.K. Dang along with Sh. Ishaan Dang
23	CR/5532/2019	Deepak Jindal Vs. Emaar MGF Land Limited	Sh. Sanjeev Sharma Sh. Dheeraj Kapoor
24	CR/2849/2020	Sumesh Mahendra Vs. Emaar MGF Land Limited	Sh. Varun Chugh Sh. J.K. Dang along with Sh. Ishaan Dang
25	CR/4731/ 2020	Ghanshyam Datt Joshi and Fuhar Chhanga Singh Pandher Vs. Emaar MGF Land Limited	Sh. Manish Yadav Sh. J.K. Dang along with Sh. Ishaan Dang
26	CR/4754/ 2020	Vivek Mohan and Puja Kaushal Vs. Emaar MGF Land Limited	Sh. Varun Chugh Sh. J.K. Dang along with Sh. Ishaan Dang
PROJECT NAME		**MARBELLA**	**APPEARANCE**
27	CR/5567/2019	N S Exports Pvt. Ltd. Vs. Emaar MGF Land Limited	Sh. Nishant Bhardwaj Sh. J.K. Dang along with Sh. Ishaan Dang
28	CR/670/2020	Anuranjita Kumar Vs. Emaar MGF Land Limited	Sh. Sukhbir Yadav Sh. J.K. Dang along with Sh. Ishaan Dang
PROJECT NAME		**THE PALM DRIVE**	**APPEARANCE**
29	CR/3202/2019	Neel Kamal Jha and Bidya Nand Jha Vs. Emaar MGF Land Limited	Sh. Venket Rao Sh. J.K. Dang along with Sh. Ishaan Dang
30	CR/591/2019	V K Vaidh and Sons HUF Vs. Emaar MGF Land Limited	Sh. Sanjeev Sharma Sh. J.K. Dang along with Sh. Ishaan Dang
31	CR/319/2019	Sushma Sharma Mahender Kumar Sharma Vs. Emaar MGF Land Limited	Sh. Venket Rao and Complainant no. 2 in person Sh. J.K. Dang along with Sh. Ishaan Dang

32	CR/3956/2020	Minu Abrol Vs. Emaar MGF Land Limited	Sh. Mahinder Singh Sh. J.K. Dang along with Sh. Ishaan Dang
PROJECT NAME		**THE PALM TERRACES**	**APPEARANCE**
33	CR/152/2019	Anubhav Guglani Vs. Emaar MGF Land Limited	Sh. Anil Saxena Sh. J.K. Dang along with Sh. Ishaan Dang
34	CR/3165/2020	Hewa Private Limited Vs. Emaar MGF Land Limited	Sh. Jaivardhan Jeph Sh. J.K. Dang along with Sh. Ishaan Dang
35	CR/3366/2020	Bhisham Tanwar Vs. Emaar MGF Land Limited	Sh. Mahinder Singh Sh. J.K. Dang along with Sh. Ishaan Dang
PROJECT NAME		**THE PALM TERRACES SELECT**	**APPEARANCE**
36	CR/837/2019	Krishna Damarla Vs. Emaar MGF Land Limited	Sh. Anurag Upadhyaya Sh. J.K. Dang along with Sh. Ishaan Dang
37	CR/283/2019	Vineet Mehendiratta and Neha Mehendiratta Vs. Emaar MGF Land Limited	Ms. Medhya Ahluwalia Sh. J.K. Dang along with Sh. Ishaan Dang
38	CR/4495/2019	Sachin Jain Vs. Emaar MGF Land Limited	Sh. Sukhbir Yadav Sh. Dheeraj Kapoor
39	CR/5605/2019	Madhusudan Gupta and Ashima Gupta Vs. Emaar MGF Land Limited	Sh. Santosh Pandey Sh. J.K. Dang along with Sh. Ishaan Dang
40	CR/5271/2019	Prampreet Singh Sarai and Preeti Macker Vs. Emaar MGF Land Limited	Sh. Rohitt Sharma Sh. J.K. Dang along with Sh. Ishaan Dang
41	CR/250/2020	Prem Sarup Narula and Meera Narula Vs. Emaar MGF Land Limited	Sh. Sanjeev Sharma Sh. J.K. Dang along with Sh. Ishaan Dang
42	CR/687/2020	Rohit Kohli and Ruchi Kohli Vs. Emaar MGF Land Limited	Sh. Rohitt Sharma Sh. J.K. Dang along with Sh. Ishaan Dang

43	CR/3722/2020	Anurag Malhotra and Archana Malhotra Vs. Emaar MGF Land Limited	Sh. Dharmender Sehrawat Sh. J.K. Dang along with Sh. Ishaan Dang
PROJECT NAME		**PALM HILLS**	**APPEARANCE**
44	CR/1847/ 2019	Ravinder Kumar Saraogi Vs. Emaar MGF Land Limited	Sh. Sanjeev Sharma Sh. J.K. Dang along with Sh. Ishaan Dang
45	CR/5761/ 2019	Karuna Chauhan Vs. Emaar MGF Land Limited	Sh. Garv Malhotra Sh. J.K. Dang along with Sh. Ishaan Dang
46	CR/4113/ 2020	Bhuvnesh Chandra Varshney and Anita Varshney Vs. Emaar MGF Land limited	Sh. Manoj Yadav Sh. J.K. Dang along with Sh. Ishaan Dang
47	CR/4317/ 2020	Saurav Kumar Vs. Emaar MGF Land limited	Sh. Pawan Kumar Ray Ms. Kanika Gomber
48	CR/801/ 2018	Yogesh Chhabra and Yogita Chhabra Vs. Emaar MGF Land Limited	Sh. Sanjeev Sharma Sh. J.K. Dang along with Sh. Ishaan Dang
49	CR/4941/2020	Brij Lata Gulati and Sunita Lal Vs. Emaar MGF Land Limited	Sh. Tushar Bahmani Sh. J.K. Dang along with Sh. Ishaan Dang

CORAM:
Dr. K.K. Khandelwal — Chairman
Shri Samir Kumar — Member

ORDER

1. This order shall dispose off all the 49 complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules"). Since the core issues emanating from them are similar in nature and the complainant(s) in the above referred

matters are allottees of the projects, namely, Palm Gardens; Emerald Floors Premier; Marbella; The Palm Drive; The Palm Terraces; The Palm Terraces Select and Palm Hills being developed by the same respondent promoter i.e. Emaar MGF Land limited (now known as 'Emaar India Limited' vide Certificate of Incorporation dated 07.10.2020). The terms and conditions of the builder buyer's agreements that had been executed between the parties *inter se* are also almost similar with some additions or variation. The fulcrum of the issue involved in all these cases pertains to failure on the part of the respondent/promoter to deliver timely possession of the units in question, seeking award for delayed possession charges. The core issue also pertains to award of the said charges where conveyance deed or indemnity-cum-undertaking with waiver clause had been executed and includes cases where the complainant is a subsequent allottee and while transferring/issuing of nomination letter/endorsement on builder buyer's agreement, indemnity-cum-undertaking has been executed by both original/previous allottee and subsequent allottee thereby relinquishing or waiving or giving up their future rights arising out of the builder buyer's agreement. In several complaints, the complainants have refuted various charges like preferential location charges (PLC); holding charges; VAT & GST demanded by the promoter; increase in super area; electricity, water and sewerage charges; bulk supply of electricity; power backup; maintenance charges; sale deed registration and administration charges, etc.

2. With reference to complaints no. 31/2020(Sr. No. 9), 5991/2019 (Sr. No. 10) and 6709/2019 (Sr. No. 11), the complainants have already approached the Hon'ble National Consumer Disputes Redressal Commission (hereinafter to be referred as NCDRC) for seeking the relief of delay possession compensation. The relief of delay possession charges has not been pressed in the said complaints and the same fact has been affirmed by the complainants

vide applications dated 05.10.2020. The complainants in these complaints are pressing upon other contractual obligations arising out of the builder buyer's agreements. Therefore, the authority is not going into merits of the delay caused by the promoter in handing over the possession in these complaints [i.e. complaints no. 31/2020(Sr. No. 9), 5991/2019 (Sr. No. 10) and 6709/2019 (Sr. No. 11)].

3. With reference to complaint no. 250/2020 titled as Prem Sarup Narula and Meera Narula Vs. Emaar MGF Land Ltd. (Sr. No. 41), the complainants have already filed a complaint before NCDRC bearing no. 428 of 2016 and the same is still pending before the NCDRC. In the light of the pendency of complaint before NCDRC on the same subject matter and same reliefs, the complaint before the authority bearing no. 250/2020 is hereby dismissed.

4. The details of the complaints, reply status, unit no., date of allotment letter, date of agreement, date of start of construction, due date of possession, offer of possession and relief sought are given in the table below:

EMAAR MGF LAND LIMITED PALM GARDEN									
Possession Clause 10(a): 'Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the unit within **36 (thirty six) months from the date of start of construction**, subject to timely compliance of the provisions of the buyer's agreement by the allottee. The allottee(s) agrees and understands that the company shall be entitled to a grace period of **3 (three) months**, for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the project.' **Dates of occupation certificates obtained in the project "Palm Garden":** **17.10.2019** [For towers 1, 2, 11 and 12] **10.01.2018** [For towers 3, 5, 4 and 7] **02.05.2019** [For towers 6,8,9 and 10] **Note:** Grace period is not included while computing due date of possession.									
Sr. No	**Complaint No./Title/ Date of filing**	**Reply status**	**Unit no.**	**Date of allotment letter**	**Date of execution of builder buyer's agreement**	**Date of start of construction [As per statement of account placed on record]**	**Due date of possession**	**Offer of possession**	**Relief sought**

1	CR/4031/2019/ Varun Gupta Vs. Emaar MGF Land Limited 06.09.2019	24.01.2020	PGN-06-1206, 12th floor Tower no. 6	28.02.2011 **SA-** 24.05.2013 (NL)	28.04.2011	09.08.2012	09.08.2015	08.05.2019 **OC-** 02.05.2019 **CD-** 19.08.2019 **TC**- Rs. 92,34,474/- **AP**- Rs. 92,35,661/-	1. DPC 2. Declare the waiver clause in indemnity bond as unfair and unjust
2	CR/3989/2019 Richa Rana and Harendra Singh Rana Vs. Emaar MGF Land Limited 13.09.2019	06.03.2020	PGN-06-1505, 15th floor Tower no. 6	24.05.2012	05.07.2012	09.08.2012	09.08.2015	21.05.2019 **OC-** 02.05.2019 **TC**- Rs. 1,15,96,083 **AP**- Rs. 91,93,036	1. Possession and DPC 2. Waive HVAT and other taxes paid by the respondent and quash new demand of HVAT 3. Waive PLC charges 4. Direct respondent to give interest on IFMS 5. Safeguard the interest of the complainants by directing the respondent to give the calculations of GST (amounts with dates due), HVAT (what has been paid and what is pending and justification for demanding high provisional HVAT) and registration charges and rationale for advance maintenance charges as a precondition to handover.
3	CR/1227/2019 Surender Jit Singh Bhalla and Sudesh Bhalla (Through Attorney) Vs. Emaar MGF Land Limited 11.04.2019	23.01.2020	PGN-04-1206, 12th floor Tower no. 4	07.05.2011	22.06.2011	09.08.2012	09.08.2015	19.03.2018 **OC-** 10.01.2018 **UHL-** 11.08.2018 **CD-** 27.09.2018 **TC**- Rs. 1,00,82,299 **AP**- Rs. 1,02,40,724	1. DPC
4	CR/813/2020	19.10.2020	PGN-12-0605,	04.11.2011	23.11.2011	30.11.2012	30.11.2015	22.10.2019	1. DPC

	Mrs. Kamlesh Mittal Vs. Emaar MGF Land Limited 27.02.2020		6th floor Tower no. 12					**OC-** 17.10.2019 **UHL-** 07.12.2019 **CD-** 03.01.2020 **TC**- Rs. 1,07,28,435 **AP**- Rs. 1,07,33,119	
5	CR/2322/2019 Saurabh Virmani (Through Attorney) and Nikhil Virmani Vs. Emaar MGF Land Limited 29.05.2019	23.01.2020	PGN-06-1102, 11th floor Tower no. 6	02.07.2011 **SA-** 26.07.2013 (NL)	14.07.2011	09.08.2012	09.08.2015	03.05.2019 **OC-** 02.05.2019 **TC**- Rs. 96,33,499/- **AP**- Rs. 97,98,419/-	1. Possession 2. DPC
6	CR/5561/2019 Kanav Sagar Dhingra Vs. Emaar MGF Land Limited 19.11.2019	24.09.2020	PGN-08-0702, 7th floor Tower no. 08	21.04.2011 **SA-** 02.04.2014 (NL)	28.04.2011	09.08.2012	09.08.2015	04.05.2019 **OC-** 02.05.2019 **UHL-** 30.07.2019 **CD-** 21.08.2019 **TC**- Rs. 92,37,993/- **AP**- Rs. 92,76,452/-	1. DPC
7	CR/6053/2019 Aman Monga and anr. Vs. Emaar MGF Land Limited 03.12.2019	18.09.2020	PGN-12-0901, 09th floor Tower no. 12	25.01.2012	05.03.2012	30.11.2012	30.11.2015	22.10.2019 **OC-** 17.10.2019 **TC**- Rs. 91,02,088/- **AP**- Rs. 89,80,632/-	1. DPC 2. Direct the respondent to return green view preferential location charge (PLC) of Rs.2,58,000/- that had been wrongly demanded by the respondent. 3. Direct the respondent not to charge any holding charges upon the unit in question till the final decision in the case.
8	CR/357/2020/3111/2019 Mukteshwar	06.12.2019	PGN-10-0802, 8th floor	28.05.2011 **SA-**	28.06.2011	09.08.2012	09.08.2015	07.05.2019 **OC-** 02.05.2019	1. DPC 2. Refund the excess amount charged to the tune of

	Kumar Vs. Emaar MGF Land Limited 29.07.2019		Tower no. 10	08.08.2012 (NL)				**TC**- Rs. 99,71,888/- **AP**- Rs. 1,01,42,247	Rs.2,05,687/- by the respondent on account of intimation of possession 3. Refund the excess amount collected to the tune of Rs.1,64,745/- by the respondent.
9	CR/31/2020/3830/2019 Sunjay Pathak and Radesh Pathak Vs. Emaar MGF Land Limited 25.09.2019	18.09.2020	PGN-10-12A05, 12A floor Tower no. 10	09.06.2011	29.07.2011	09.08.2012	09.08.2015	07.05.2019 **OC-** 02.05.2019 **UHL-** 08.08.2019 **CD-** 21.08.2019 **TC**- Rs. 1,03,99,883 **AP**- Rs. 1,04,00,053	1. Direct the respondent to return the excess amount of Rs.2,68,756/- along with the interest which had been wrongly demanded and got deposited on account of sale price for 53 sq. ft. less of super area (from 1900 Sq. ft. to 1847 Sq. ft.) of the allotted unit. 2. Direct the respondent to return central greens PLC of Rs. 6,65,000/-.
10	CR/5991/2019 Jaspal Singh Monga Vs. Emaar MGF Land Limited/ 29.11.2019	21.09.2020	PGN-03-0503, 05th floor Tower no. 3	21.03.2011	10.05.2011	09.08.2012	09.08.2015	22.03.2018 **OC-** 10.01.2018 **UHL-** 27.01.2019 **CD-** 05.02.2019 **TC**- Rs. 1,07,94,858 **AP**-Rs. 1,07,97,846	1. Direct the respondent to return the excess amount of Rs. 2,49,600/- along with the interest which had been wrongly demanded and got deposited on account of sale price for 52 sq. ft. less of super area (from 1900 Sq. ft. to 1848 Sq. ft.) of the allotted unit. 2. Direct the respondent to return Central Greens PLC of Rs.6,65,000/.
11	CR/6709/2019 Kapil Mehrotra Vs. Emaar MGF Land Limited 01.01.2020	06.03.2020	PGN-07-0901, 9th floor Tower no. 7	12.04.2011	15.06.2011	09.08.2012	09.08.2015	22.03.2018 **OC-** 10.01.2018 **TC**- Rs. 86,51,444/- **AP**- Rs. 89,59,573/-	1. Direct the respondent to return the excess amount of Rs. 6,63,948.028/- taken from the complainant, on account of difference between the actual area of the unit, i.e. 1588 sq. ft. and area promised in the agreement, i.e. 1720sq.ft.

									2. To return PLC of Rs. 2,58,000/- for 'green view'. 3. Direct the respondent to return holding charges of Rs.2,53,227/- 4. Direct the respondent to return maintenance charges paid as that can be charged only from the date of handing over possession and not prior to that.
12	CR/4343/2020 Arun Kumar Anand Vs. Emaar MGF Land limited 21.12.2020	01.02.2021	PGN-10-0901, 9th floor Tower no. 10	N/A **SA-** 19.07.2012 (NL)	13.06.2011	09.08.2012	09.08.2015	07.05.2019 **OC-** 02.05.2019 **UHL-** 10.08.2019 **CD-** 11.09.2019 **TC**- Rs. 90,23,720/- **AP**- Rs. 90,24,539/-	1. Possession and DPC
13	CR/4409/2020 Arun Yadav Vs. Emaar MGF Land limited 23.12.2020	01.02.2021	PGN-11-0506, 5th floor Tower no. 11	10.10.2011	01.11.2011	30.11.2012	30.11.2015	19.10.2019 **OC-** 17.10.2019 **UHL-** 07.02.2020 **CD-** 22.05.2020 **TC**- Rs. 1,04,85,736 **AP**- Rs. 1,05,36,507	1. DPC 2. Return of administrative charges of Rs. 12,000/- 3. To direct the respondent company to return back the amount of Rs.203,906/- with upto date interest which is lying with the respondent company in the form of fixed deposit (FD) on account of VAT security.

EMAAR MGF LAND LIMITED
EMERALD FLOORS PREMIER

Possession Clause 11(a): "Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within **36 months from the date of execution of Buyer's Agreement**. The Allottee(s) agrees and understands that the Company shall be entitled to a **grace period of 3 months**, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project."

Note: Grace period is not included while computing due date of possession.									
14	CR/1457/2019 Rohit Kumar Tripathi and Rhitu Priya Vs. Emaar MGF Land Limited 11.04.2019	23.01.2020	EFP-II-50-0102, 1st floor, tower no. 50	28.06.2010 **SA-** 05.03.2015 (NL)	16.08.2010	N/A	16.08.2013	Not offered **TC**- Rs. 87,47,225/- **AP**- Rs. 77,07,197/-	1. Possession 2. DPC.
15	CR/2626/2019 Richa Rana and Harendra Singh Rana Vs. Emaar MGF Land Limited 04.07.2019	24.01.2020	EFP-25-0401, 4th floor, tower no. 25	01.12.2011	29.12.2011	N/A	29.12.2014	22.05.2020 **OC-** 15.05.2020 **TC**- Rs. 1,42,24,462 **AP**- Rs. 1,18,47,242	1. Possession 2. DPC. 3. Direct the respondent to quash the demand of HVAT. 4. Adjust the amount of Rs.5,92,129.68/- towards PLC.
16	CR/1532/2018 Manish Sultania and Neha Sultania Vs. Emaar MGF Land Limited 30.10.2018	30.11.2018	EFP-19-0001, ground floor, tower no. 19	02.11.2009 **SA-** 21.11.2017 (NL)	18.01.2010	N/A	18.01.2013	Not offered **TC**- Rs. 99,20,938/- **AP**- Rs. 94,84,137/-	1. DPC 2. To refund the excess amount collected on account of any area in excess of carpet area, as the respondent has sold the super area to the complainant which also includes the common areas and the sale of common area is in total contravention of the Act. 3. To refund the amount of GST service tax etc. collected from the complainants 4. Any common area car parking including basement car park, which is not garage if sold then the amount so collected shall be refunded along with interest.
17	CR/869/2018 Navneet Singh and Suman Singh Vs. Emaar MGF Land	26.10.2018	EFP-29-0502, 5th floor, tower no. 29	N/A **SA-** 25.04.2011 (NL)	24.03.2010	N/A	24.03.2013	Not offered **TC**- Rs. 72,84,108/- **AP**- Rs. 69,19,232/-	1. Possession 2. Direct the respondent to pay interest @ 24% per annum on the entire payment made by the complainants to

	Limited 18.09.2018								the respondent from the due date of handing over possession till the flat is transferred in the name of the complainants.
18	CR/157/2020 Rajiv Ranjan Verma and Ritu Verma Vs. Emaar MGF Land Limited 16.01.2020	06.03.2020	EFP-15-0102, 1st floor, tower no. 15	29.10.2009	09.02.2010	N/A	09.02.2013	06.11.2019 **OC-** 05.03.2019 **TC**- Rs. 91,42,890/- **AP**- Rs. 91,95,642/-	1. Possession of the flat along with all the promised amenities and facilities + DPC. 2. Direct the respondent to waive off the illegal demand of Rs. 6,42,487/- made in the letter dated 06.11.2019 (offer of possession towards HVAT, eStamp paper, registration charges, advance maintenance charges) from the complainants.
19	CR/858/2020 Yogender Singh Verma and Vedna Verma Vs. Emaar MGF Land Ltd. 19.02.2020	18.09.2020	EFP-32-0001, Ground floor, tower no. 32	21.10.2009 **SA-** 28.01.2013 (Agreement to sell)	01.02.2010	N/A	01.02.2013	29.01.2020 **OC-** 05.03.2019 **TC**- Rs. 86,86,653/- **AP**- RS. 83,23,860/-	1. Possession 2. DPC
20	CR/2722/2020 Nand Kishore Upadhyay Vs. Emaar MGF Land Limited 01.10.2020	09.12.2020	EFP-01-0201, 2nd floor, tower no. 1	16.11.2009	20.02.2010	N/A	20.02.2013	13.02.2020 **OC-** 05.03.2019 then 15.05.2020 **TC**- RS. 79,04,207/- **AP**- RS. 80,61,627/-	1. Possession of the unit along with servant room. 2. DPC 3. Direct the respondent to return a sum of Rs. 3,41,150/- towards PLC for open space along with interest. 4. To pay Rs.14,900/- towards the excess EDC/IDC. 5. Not to any levy delayed interest on the payment due and holding charges till the pendency and decision of the present
21	CR/2847/2020 Prashant Puri Vs.	21.12.2020	EFP-17-0502, 5th floor,	03.11.2009	25.01.2010	N/A	25.01.2013	21.05.2020 **OC-** 1505.2020	1. DPC. 2. Direct the respondent not to levy any delayed interest

	Emaar MGF Land Limited 05.10.2020		tower no. 17					**UHL-** 05.11.2020 **TC-** 87,81,060/- **AP-** Rs. 88,86,578/-	on the payment due and holding charges till the pendency and decision of the present
22	CR/2880/2020 Ajay Gandotra and Nishi Gandotra Vs. Emaar MGF Land Limited 05.10.2020	14.12.2020	EFP-16-0502, 5th floor, tower no. 16	09.12.2009 **SA-** 22.05.2015 (NL)	13.01.2010	N/A	13.01.2013	21.05.2020 **OC-** 15.05.2020 **TC-** Rs. 88,13,017/- **AP-** Rs. 85,15,251/-	1. DPC 2. Direct the respondent that if extra charge for parking without providing garage and on common areas or basements than it is illegal shall be refunded to the complainants. 3. Direct the respondent to get the conveyance deed in the name of the association of allottees for common area etc and handover the complex to them in 3-month time. 4. Direct the respondent to reimburse the amount charged on account of VAT.
23	CR/5532/2019 Deepak Jindal Vs. Emaar MGF Land Limited 04.12.2019	15.09.2020	EFP-II-35-0002, Ground floor, tower no. 35	08.06.2010 **SA-** 07.12.2012 (NL)	10.12.2010	N/A	10.12.2013	Not offered **TC-** Rs. 1,12,07,113 **AP-** Rs. 1,07,58,876	1. Possession + DPC
24	CR/2849/2020 Sumesh Mahendra Vs. Emaar MGF Land Limited 05.10.2020	14.12.2020	EFP-II-51-0002, 51st floor, tower no. 51	01.07.2010	06.01.2011	N/A	06.01.2014	Not offered **OC-** 11.11.2020 **TC-** Rs. 1,07,37,618 **AP-** Rs. 94,76,075	1. Possession 2. DPC 3. Direct the respondent to return Rs. 2,50,000/- charged towards car parking space, along with interest.
25	CR/4731/2020 Ghanshyam Datt Joshi and Fuhar Chhanga Singh Pandher Vs.	02.02.2021	EFP-III-38-0002, ground floor, tower no. 38	13.09.2011 **SA-** 01.06.2012 (NL)	29.05.2012	N/A	29.05.2014 24 months from agreement	17.11.2020 **OC-** 11.11.2020 **TC-** Rs. 1,39,74,054	1. Possession + DPC 2. Not to charge PLC and other administrative charges 3. Not to levy holding charges 4. Allow complainant to

	Emaar MGF Land Limited 23.12.2020							**AP**- Rs. 1,40,63,358	visit and inspect the subject apartment
26	CR/4754/2020 Vivek Mohan and Puja Kaushal Vs. Emaar MGF Land Limited 22.12.2020	02.02.2021	EFP-II-50-0401, 4th floor, tower no. 50	08.06.2010 **SA-** 10.09.2010 (Agreement to sell)	04.09.2010	N/A	04.09.2013	16.11.2020 **OC-** 11.11.2020 **TC**- Rs. 84,78,090/- **AP**- Rs. 85,50,742/-	1. DPC
EMAAR MGF LAND LIMITED MARBELLA									
Possession clause 10(a): " Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Villa within **30 (thirty) months from commencement of development work.** The Allottee(s) agrees and understands that the Company shall be entitled to a **grace period of 3 (three) months**, for applying and obtaining the occupation certificate in respect of the Villa.**"** **Note:** Grace period is not included while computing due date of possession.									
27	CR/5567/2019 N S Exports Pvt. Ltd. Vs. Emaar MGF Land Limited 18.11.2019	16.09.2020	MAR-MD-056 Change in the unit as per 'Unit Shifting Confirmation Letter' dated 28.07.2015 to MAR-BL-020 N/A	23.11.2010	18.03.2011	27.04.2012	27.10.2014	14.11.2018 **OC-** 09.02.2018 **UHL-** 01.04.2019 **CD-** 12.04.2019 **TC**- Rs. 6,99,84,865 **AP**- Rs. 7,05,66,828	1. To pay Rs.4,29,38,934/- towards interest on amounts paid at the rate of 24% p.a. for the period of delay. 2. To pay Rs. 5,64,492/- [Rs.5,31,962/- (excess amount paid by the complainant) + Rs.32,530/- (interest @ 24%)] against the extra amount collected by respondent along with interest @ 24% p.a. 3. Refund amount of Rs.4,24,482 [Rs.2,00,000/- (club house charges) + interest @24%] wrongfully taken towards club house (which has not

									been operationalised till date) 4. Refund Rs.5,00,0000 to carry out the repair the defects in the building as per the snag list.
28	CR/670/2020 Anuranjita Kumar Vs. Emaar MGF Land Limited 12.02.2020	11.11.2020	MAR-MD-034 N/A	19.11.2010	27.04.2011	27.04.2012	27.10.2014	16.11.2018 **OC-** 15.10.2018 **TC**- Rs. 5,67,41,284 **AP**- Rs. 5,32,22,328	1. DPC 2. Direct the respondent to provide valid occupation certificate (without any pre-conditions) 3. Refrain the respondent from charging holding charges 4. Direct the respondent to refund GST levied on the payment made by the complainant. 5. Direct the respondent to complete the construction of other villas in complex and other promised amenities. 6. Direct the respondent to provide electricity connection to villa of complainant.
EMAAR MGF LAND LIMITED THE PALM DRIVE									
Possession Clause 14(a): "Subject to terms of this clause and subject to the Apartment Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Apartment/Villa/Penthouse by **December 2010.** The Apartment Allottee agrees and understands that the Company shall be entitled to a **grace period of 90 days**, for applying and obtaining the occupation certificate in respect of the Group Housing Complex." **Note:** Grace period is not included while computing due date of possession.									
29	CR/3202/2019 Neel Kamal Jha Bidya Nand Jha Vs. Emaar MGF Land Limited	16.09.2020	TPD-J-F-11-1101, 11th floor, tower J The area of	08.10.2007	12.02.2008	N/A	31.12.2010	24.03.2017 **OC-** 13.02.2017 **UHL-** 05.05.2017	1. DPC 2. Direct the respondent to refund the amount of additional EDC/IDC of Rs.3,90,521

	02.08.2019		the unit stands **increased to 2666.14** sq. ft. from the earlier area of 2625 sq. ft.					**CD-** 28.07.2017 **TC**- Rs. 1,36,56,159 **AP**- Rs. 1,36,77,364	taken on 28.12.2010 3. Direct the respondent to refund the extra amount collected by showing the larger area and handing over smaller area
30	CR/591/2019 V K Vaidh and Sons HUF Vs. Emaar MGF Land Limited 13.02.2019	15.09.2020	TPD-F-F14-1403, 14th floor, tower F The area of the unit stands **increased to 1996.17 sq. ft.** from the earlier area of 1950 sq. ft.	18.02.2008 **SA-** 06.02.2012 (NL)	11.03.2008	N/A	31.12.2010	09.03.2018 **OC-** 25.01.2018 **UHL-** 24.05.2018 **CD-** 25.05.2018 **TC**- Rs. 1,15,40,563 **AP**- Rs. 1,15,44,181	1. DPC 2. To refund the excess amount charged on account of increase in the area by 46 sq. ft. without consent of complainant. 3. To refund the amount of GST, service tax etc collected from the complainant, which accrued for the reason of delayed offer of possession. 4. To refund along with interest any charges for common area car parking including basement car park, which is not garage. 5. The excess amount on account of any area in excess of carpet area of the unit be ordered to refunded back to the complainant with interest.
31	CR/319/2019 Sushma Sharma Mahender Kumar Sharma Vs. Emaar MGF Land Limited 04.02.2019	15.09.2020	TPD H-F05-503, 5th floor, tower no. H The area of the unit stands **increased to 2202.0**	05.01.2008	05.03.2008	N/A	31.12.2010	23.02.2018 **OC-** 25.01.2018 **UHL-** 09.05.2018 **CD-** 13.08.2018 **TC**- Rs. 1,22,06,293 **AP**- Rs. 1,22,08,326	1. DPC. 2. To refer to Adjudicating Officer for ascertaining compensation.

			9 sq. ft. from the earlier area of 2125 sq. ft.						
32	CR/3956/2020 Minu Abrol Vs. Emaar MGF Land Limited 11.11.2020	17.12.2020	TPD G-F04-406, 4th floor, tower G The area of the unit stands **increased to 2202.09 sq. ft.** from the earlier area of 2125 sq. ft.	26.10.2007	12.02.2008	N/A	31.12.2010	06.03.2018 **OC-** 25.01.2018 **UHL-** 26.04.2018 **TC**- Rs. 1,21,29,841 **AP**- Rs. 1,21,29,842	1. DPC 2. To provide Golf range as promised in brochure. 3. To pay interest on IBMS of Rs.2,12,500/-
EMAAR MGF LAND LIMITED THE PALM TERRACES									
Possession Clause 14(a): 'Subject to terms of this clause and the Allottee(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and upon complying with all provisions, formalities, documentation etc., as prescribed by the Developer**, t**he Developer shall make all efforts to handover possession of the Unit (which falls within ground plus four floors tower/building) within a period of thirty (30) months from the date of commencement of construction, and for the Unit (which falls within ground plus thirteen floors tower/building) within a period of **thirty six (36) months from the commencement of construction**, subject to certain limitations as may be provided in this Agreement and timely compliance of the provisions of this Agreement by the Allottee(s). the Allottee(s) agrees and understands that the Developer shall be entitled to a **grace period of three (3) months**, for applying and obtaining the occupation certificate in respect of the Unit and/or the Project.' **Note:** Grace period is not included while computing due date of possession.									
33	CR/152/2019 Anubhav Guglani Vs. Emaar MGF Land Limited 31.01.2019	15.09.2020	PTF-16-0401, 4th floor, tower no. 16	18.05.2010 **SA-** 24.05.2012 (NL)	06.09.2010	13.09.2011	13.09.2014	21.02.2018 **OC-** 25.01.2018 **UHL-** 26.04.2018 **CD-** 28.05.2018 **TC**- Rs. 1,53,44,268 **AP**- Rs. 1,54,53,431	1. DPC
34	CR/3165/2020	17.12.2020	PTF-1E-0101,	21.05.2010 **SA-**	13.10.2010	11.06.2012	11.06.2015	16.03.2017	1. Possession 2. DPC

	Hewa Private Limited Vs. Emaar MGF Land Limited 07.10.2020		1st floor, tower no. 1E	12.10.2010 (Agreement to sell)				**OC-** 13.02.2017 **TC**- Rs. 1,42,60,199 **AP**- Rs. 1,17,75,050	3. Direct the respondent to withdraw the fraudulent demand of delayed payment charges and any other charges.
35	CR/3366/2020 Bhisham Tanwar Vs. Emaar MGF Land Limited 21.10.2020	17.12.2020	PTT-08-12A01, 12th floor, tower no. 8	04.06.2010 **SA-** 01.02.2013 (NL)	10.07.2010	24.06.2011	24.06.2014	13.08.2019 **OC-** 08.08.2019 **UHL-** 06.02.2020 **TC**- Rs. 1,30,72,623 **AP**- Rs. 1,31,34,268	1. DPC
EMAAR MGF LAND LIMITED THE PALM TERRACES SELECT									
Possession Clause 14(a): "Subject to terms of this clause and the allottee(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this buyer's agreement and upon complying with all provisions, formalities, documentation etc. as prescribed by the developer, the developer shall make all efforts to hand over the possession of the unit (which falls within ground plus four floors tower/building) within a period of thirty (30) months from the date of commencement of construction, and for the unit (which falls within ground plus thirteen floors tower/building) within a period of **thirty six (36) months from the date of commencement of construction**, subject to certain limitations as may be provided in this agreement and timely compliance of the provisions of this agreement by the allottee(s). The allottee(s) agrees and understands that the developer shall be entitled to a **grace period of three (3) months,** for applying and obtaining the occupation certificate in respect of the unit and/or the project.**"** **Note:** Grace period is not included while computing due date of possession.									
36	CR/837/2019 Krishna Damarla Vs. Emaar MGF Land Limited 13.03.2019	16.09.2020	PTS-01-0202, 2nd floor, tower no.1	15.12.2010	30.12.2010	31.07.2012	31.07.2015	09.03.2018 **OC-** 25.01.2018 **UHL-** 12.11.2018 **CD-** 30.11.2018 **TC**- Rs. 1,89,09,819 **AP**- Rs. 1,90,03,309	1. DPC
37	CR/283/2019 Vineet Mehendiratta and Neha Mehendiratta Vs. Emaar MGF	15.08.2019	PTS-01-0902, 9th floor, tower no.1	06.08.2010 **SA-** 04.12.2013 (NL)	06.12.2010	31.07.2012	31.07.2015	09.03.2018 **OC-** 25.01.2018 **UHL-** 23.05.2018	1. DPC 2. Direct the respondent to take appropriate steps to remove all the defects in quality which

	Land Limited 01.02.2019							**CD-** 13.06.2018 **TC**- Rs. 1,94,30,858 **AP**- Rs. 1,94,49,568	have come up in the flat after taking possession.
38	CR/4495/2019 Sachin Jain Vs. Emaar MGF Land Limited 25.09.2019	18.10.2019	PTS-11-0402, 4th floor, tower no.11	02.08.2010 **SA-** 12.06.2012 (NL)	12.10.2010	31.07.2012	31.07.2015	16.08.2019 **OC-** 08.08.2019 **TC**- Rs. 1,81,63,725 **AP**- Rs. 1,90,70,615	1. DPC 2. To withdraw the following demands: a. Administrative charges (Rs.12,000/-) b. Water connection charges (Rs.4,242/-) c. Sewerage connection charges (Rs.2,097/-) d. Electrification charges (Rs.6,531/-) e. Electricity connection charges (Rs.68,589/-) f. Miscellaneous expenses (Rs.2,500/) g. Advance monthly charges for 12 months (Rs.1,01,220/-)
39	CR/5605/2019 Madhusudan Gupta and Ashima Gupta Vs. Emaar MGF Land Limited 04.12.2019	15.09.2020	PTS-12-0702, 7th floor, tower no.12	13.09.2010 **SA-** 28.02.2013 (NL)	08.11.2010	31.07.2012	31.07.2015	16.08.2019 **OC-** 08.08.2019 **TC**- Rs. 1,67,93,908 **AP**- Rs. 1,64,13,565	1. DPC 2. Restrain the respondent from charging holding charges and monthly maintenance bills until full and final/ adjustment of DPC.
40	CR/5271/2019 Prampreet Singh Sarai and Preeti Macker Vs. Emaar MGF Land	16.09.2020	PTS-01-0702, 7th floor, tower no.1	10.08.2010	04.10.2010	31.07.2012	31.07.2015	09.03.2018 **OC-** 25.01.2018 **UHL-** 01.03.2019	1. Possession + DPC 2. HVAT should be deposited by the respondent. 3. Refund of Advance maintenance

	Limited 06.12.2019							**CD-** 22.03.2019 **TC**-Rs. 1,75,09,276 **AP**- Rs. 1,75,14,760	charges for 12 months i.e. the year 2018-2019 (Rs.1,19,440/-)
41	CR/250/2020 Prem Sarup Narula and Meera Narula Vs. Emaar MGF Land Limited 24.01.2020	16.09.2020	PTS-08-0002, ground floor, tower no.8	02.08.2010	29.07.2011	31.07.2012	31.07.2015	11.03.2019 **OC-** 08.03.2019 **UHL-** 23.08.2019 **TC**- Rs. 2,20,79,482 **AP**- Rs. 2,21,24,229	1. DPC 2. Recalculate interest on equitable basis and reimburse, if charged extra 3. Parking, if charged extra, without providing garage and on common area and basement is illegal and should be refunded 4. Developer has charged Rs.156144/- as VAT under amnesty scheme is illegal + security of Rs.332550/- should also be refunded 5. Refund of extra charged service tax 6. Refrain from demanding holding charges, common area electricity and maintenance till the handover of apartment.
42	CR/687/2020 Rohit Kohli and Ruchi Kohli Vs. Emaar MGF Land Limited 10.02.2020	24.09.2020	PTS-10-0501, 5th floor, tower no. 10	06.08.2010	18.10.2010	31.07.2012	31.07.2015	14.08.2019 **OC-** 08.08.2019 **UHL-** 10.01.2020 **TC**- Rs. 1,82,03,108 **AP**- Rs. 1,82,06,152	1. DPC 2. HVAT should be deposited by the respondent. 3. Refund of Advance Maintenance charges for 12 months i.e. the year 2018-2019 (Rs.1,19,440/-)
43	CR/3722/2020 Anurag Malhotra and Archana Malhotra	17.12.2020	PTS-07-0802, 8th floor, tower no.7	10.08.2010 **SA-** 27.08.2012 (NL)	17.08.2012	17.08.2012	17.08.2015	14.08.2019 **OC-** 08.08.2019 **TC**- Rs. 1,73,57,969	1. Possession 2. DPC

	Vs. Emaar MGF Land Limited 10.11.2020							**AP**- Rs. 1,79,59,656	

EMAAR MGF LAND LIMITED
PALM HILLS

Possession Clause 11(a): "Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the company proposes to hand over the possession of the unit within **33 months from the date of start of construction**, subject to timely compliance of the provisions of the buyer's agreement by the allottee. The allottee(s) agrees and understands that the company shall be entitled to a **grace period of 3 months**, for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the project."

Note: Grace period is not included while computing due date of possession.

44	CR/1847/2019 Ravinder Kumar Saraogi Vs. Emaar MGF Land Limited 26.04.2019	23.01.2020	PH3-15-0702, 7th floor, tower no. 15	08.04.2010 **SA-** 31.08.2012 (NL)	20.07.2010	25.02.2011	25.11.2013	Not offered **TC**- Rs. 62,71,273 **AP**- Rs. 60,29,925	1. Possession 2. DPC
45	CR/5761/2019 Karuna Chauhan Vs. Emaar MGF Land Limited 25.11.2019	24.01.2020	PH4-30-0102, 1st floor, tower no. 30	06.04.2010 **SA-** 20.07.2012 (Agreement to sell)	21.12.2010	28.02.2011 February 2011 Respondent has admitted that the constructio n started in February 2011 at page 6 of reply	28.11.2013	06.03.2019 **OC-** 05.03.2019 **TC**- Rs. 74,34,214 **AP**- Rs. 77,06,238	1. Possession 2. DPC 3. Direct the respondent to allot at least one stilt car parking out of two car parking already paid by the complainant.
46	CR/4113/2020 Bhuvnesh Chandra Varshney and Anita Varshney Vs. Emaar MGF Land limited 11.11.2020	22.01.2021	PH3-82-0502, 5th floor, tower no. 82	01.12.2010 **SA-** 02.08.2013 (NL)	13.01.2011	20.03.2011	20.12.2013	03.01.2020 **OC-** 24.12.2019 **TC**- Rs. 76,35,251 **AP**- Rs. 76,50,261	1. Possession 2. DPC
47	CR/4317/2020 Saurav Kumar Vs. Emaar MGF Land limited 07.12.2020	23.01.2021	PH3-19-0502, 5th floor, tower no. 19	10.06.2010 **SA-** 09.10.2013 (NL)	20.07.2010	25.02.2011	25.11.2013	03.01.2020 **OC-** 24.12.2019 **TC**- Rs. 62,50,598 **AP**- Rs. 58,52,317	1. Possession 2. DPC 3. To cancel the intimation of offer of possession dated 03.01.2020 being invalid and illegal and

									to issue fresh offer of possession adjusting the DPC 4. Not to charge holding charges for delay in taking over possession
48	CR/801/2018 Yogesh Chhabra and Yogita Chhabra Vs. Emaar MGF Land Limited 22.08.2018	03.07.2019	PH4-77-0901, 9th floor, tower no. 77	02.07.2010 **SA**-05.12.2012 (NL)	20.08.2010	22.05.2011	22.02.2014	Not offered **TC**- Rs. 92,00,932 **AP**- Rs. 88,38,774	1. Possession 2. DPC
49	CR/4941/2020 Brij Lata Gulati and Sunita Lal Vs. Emaar MGF Land Limited 14.01.2021	22.02.2021	PH3-66A-0602, 6th floor, Tower 66A	06.10.2010	06.03.2012	25.02.2011	25.11.2013	03.01.2020 **OC**-24.12.2019 **TC**- Rs. 73,27,965 **AP**- Rs. 50,05,201	1. Possession 2. DPC

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	**Full form**
CD	Conveyance deed
DPC	Delayed possession charges
OC	Occupation certificate
NL	Nomination letter
SA	Subsequent allottee
UHL	Unit hand over letter
TC	Total consideration
AP	Amount paid by the allottee/s

5. The aforesaid complaints were filed under section 31 of the Act read with rule 28 of the rules by the complainants against the promoter M/s Emaar MGF Land Limited on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said units for not handing over possession by the due date which is an obligation on the part of the promoter under section 11(4)(a) of the Act ibid apart from contractual obligation. In some of the complaints, issues other than delay possession

charges in addition or independent issues have been raised and consequential reliefs have been sought.

6. Since, the builder buyer's agreements have been executed prior to the commencement of the Act ibid, therefore, the penal proceedings cannot be initiated retrospectively on account of failure of the promoter to give possession by the due date and violation of provisions of section 11(4)(a) of the Act. Delay possession charges to be paid by the promoter is positive obligation under proviso to section 18 of the Act in case of failure of the promoter to hand over possession by the due date as per builder buyer's agreement.

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

8. In most of the complaints a plea has been taken by the respondent regarding registrability of the project under the Act, exclusion of the project from the purview of the on-going project as per the rules, deemed occupation certificate of the project before coming into force of the rules, non-applicability of the provisions of the Act in respect of un-registered projects, retrospective applicability of the Act to the on-going projects, abandonment or substitution or scaling down the claim at any stage of the proceedings, applicability of the amended rules to the pending cases and delayed possession charges/interest as per the builder buyer's agreement ibid. The authority is of the view that the provisions of the Act shall become applicable even to the un-registered projects or the projects which do not require registration with respect to the fulfilment of the obligations as per the

provisions of the Act, the rules and the regulations framed thereunder. The relevant determinations are dealt in succeeding paras which do not require reiteration in individual cases.

9. **Only that project shall be excluded from the purview of the 'ongoing project' which had received the completion certificate prior to the commencement of the Act and such project will not require registration.**

The first proviso to section 3(1) of the Act provides that the projects which were 'ongoing' on the date of commencement of the Act and for which the completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of the Act. The position further becomes clear from section 3(2)(b) of the Act that the registration of the real estate project shall not be required where the promoter had received the completion certificate for the said project prior to the commencement of the Act. Thus, if we read section 3 of the Act, between the lines, it is evident that only that project shall be excluded from the purview of the 'ongoing project' which had received the completion certificate prior to the commencement of the Act and such project will not require registration.

10. **Rules 2(1)(o)(i) and 2(1)(o)(ii) of the rules are apparently inconsistent with section 3 of the Act.**

In the rules, the purview of 'ongoing project' has been restricted. It has been provided in explanation (i) of rule 2(1)(o) that those projects for which after completion of development works, an application under rule 16 of 1976 Rules (Haryana Development and Regulation of Urban Areas Rules, 1976) or under sub-code 4.10 of the Haryana Building Code was made to the competent authority on or before publication of the rules would not be 'ongoing project'. Rules 2(1)(o)(ii) of the rules further provides that the

'ongoing project' does not include any part of any project for which part completion/completion, occupancy certificate or part thereof had been granted on or before publication of these rules. Rules 2(1)(o)(i) and 2(1)(o)(ii) are apparently inconsistent with section 3 of the Act.

11. **The provisions of section 3 of the Act will prevail over the explanations appended to rule 2(1)(o) of the rules**

Section 3(2) of the Act provides that no registration shall be required for the projects mentioned therein. This is the only provision regarding exemption of real estate projects from the requirement of registration but under the Haryana Real Estate (Regulation and Development) Rules, 2017 rules 2(1)(o)(i) and 2(1)(o)(ii) provide additional two categories to be taken out of purview of on-going projects and accordingly attempted to exempt these categories of projects from the requirement of registration.

We are conscious of the fact that this authority has no jurisdiction to declare any rule ultra vires but at the same time Article 254 of the Constitution of India mandates that the law made by the Parliament shall prevail. Article 254 of the Constitution becomes applicable in case of inconsistency between the law enacted by the Parliament and the law made by the State. Here in this case the Act has been enacted by the Parliament. The rules are subordinate legislation by the appropriate government i.e. State of Haryana. The subordinate legislation is also a legislation of the State according to Section 84 of the Act; thus, it cannot be stated that the provisions of Article 254 of the Constitution of India will not apply to subordinate legislation. Therefore, we are of the opinion that the provisions of section 3 of the Act will prevail over the explanations appended to rule 2(1)(o) of the rules. The Act is intended to apply even to 'ongoing' real estate projects. The expression 'ongoing project' has not been defined under the Act but under rule 2(o) of the rules which reads as under:

"ongoing project" means a project for which a license was issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on or before the 1st May, 2017 and where development works were yet to be completed on the said date, but does not include:

(i) any project for which after completion of development works, an application under Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 or under sub code 4.10 of the Haryana Building Code 2017, as the case may be, is made to the Competent Authority on or before publication of these rules and

(ii) that part of any project for which part completion/completion, occupation certificate or part thereof has been granted on or before publication of these rules.

Rule 3 of the rules talks of application for registration and rule 4 provides for 'additional disclosure by promoters of ongoing projects.' Therefore, all 'ongoing projects' i.e. those that commenced prior to the Act, and in respect of which no completion certificate is yet issued, are covered under the Act. It is plain that the legislative intent was to make the Act applicable to not only to the projects which were to commence after the Act became operational but also to ongoing projects. The issue that arises is whether this is permissible in law? The hon'ble Bombay High Court in **Neelkamal Realtors Suburban Pvt. Ltd. and Anr. Versus Union of India and Ors. [2018(1) RCR (Civil) 298]** has dealt with this issue quite extensively. The conclusion of the hon'ble Bombay High Court that this retroactive application of the Act, as distinguished from retrospective effect, in relation to ongoing project is consistent with the legal position in this regard. A very conscious decision was taken that the Act should apply not only to new projects but to existing projects as well.

The very concept of 'ongoing project' is unique to the Act. The legislature was conscious of the impact that the Act would have on such 'ongoing projects'. A collective reading of section 3 with section 2(o) and 2(zn) indicates that care

was taken to specify which of the projects would stand exempted. Section 3(2)(b) of the Act is categorical that no registration of the project would be required where "the promoter has received completion certificate for real estate project prior to the commencement of this Act." It cannot thus be argued that without satisfying the above requirement or the other two contingencies in Sections 3(2)(a) and 3(2)(c) of the Act, a promoter can avoid registering an 'ongoing' project under the Act. The Act was consciously made applicable to 'ongoing projects' i.e. those for which a CC has yet not been received by the promoter.

Only those projects which had got the completion certificate before the commencement of the Act will not require registration and will certainly fall beyond the purview of the 'ongoing project'. Thus, as per section 3(2)(b) of the Act, the registration of a project will not be required where the promoter has already received the completion certificate for the project prior to the commencement of the Act. It is pertinent to mention here that completion certificate as defined in section 2(q) and occupancy certificate as defined in section 2(zf) of the Act are entirely for different purposes. It was further laid down that without satisfying the above requirement or the other two contingencies provided in sub-section 3(2)(a) and 3(2)(c) of the Act, a promoter cannot avoid registering an 'ongoing project'. Consequently, only those projects which had got the completion certificate before the commencement of the Act will not require registration and will certainly fall beyond the purview of the 'ongoing project'. All other projects will require registration and will be squarely covered by the definition of the 'ongoing project'. Hence, it is held that the mandate contained in section 3 of the Act will have supremacy over rule 2(1)(o) of the rules so far as the same is inconsistent with section 3. It is a well settled principle of law that the Act is

always the creator of the rules i.e. rules are always framed by virtue of there being a provision in the Act with regard to framing of rules.

12. **In view of the deficiency in the application, the promoter cannot claim the deemed issuance of the occupancy certificate.**

The application for issuance of occupancy certificate shall be moved in the prescribed form and accompanied by the documents mentioned in sub-code 4.10(1) of the Haryana Building Code, 2017. If the application submitted is not in prescribed form or the requisite documents as mentioned therein has not been submitted along with application, then application for issuance of occupation certificate cannot be said to be complete. If there are certain prerequisite those are to be met with before considering application for issuance certificate, then also in absence of such requisites being fulfilled, the application cannot be said to complete. If there is a provision of deemed issuance of occupation certificate in case no response is received from the competent authority, then such deemed issuance of occupation certificate clause shall be applicable once the application for issuance of occupation certificate is moved in prescribed form and accompanied by documents mentioned in code 4.10 of the Haryana Building Code, 2017 and also prerequisite for applying occupation certificate has been met with. The occupancy certificate has been issued for this project (Palm Gardens) on 10.01.2018, 02.05.2019 and 17.10.2019 and the application submitted by the promoter was not accompanied with the fire NOC which has been issued only on 27.11.2017, 27.03.2019 and 05.07.2019 respectively. By that time, the rules had already become applicable.

We do not find any substance in the plea raised by learned counsel for the promoter that the authority had no jurisdiction to see as to whether the application moved by the promoter was complete or incomplete as this function falls within the administrative jurisdiction of the Director Town &

Country Planning, because once the promoter was claiming issuance of deemed occupancy certificate before the authority on the basis of the provisions of the Building Code, the authority could not be a silent spectator to the deficiency in the application submitted by the promoter for issuance of the occupancy certificate. Thus, in view of the deficiency in the application, the promoter cannot claim the deemed issuance of the occupancy certificate. There is no applicability of deemed occupation certificate in case of deficient application, application not being in prescribed form, application not accompanied by prescribed documents or without meeting the prerequisite for applying for occupation certificate. The incomplete application is no application in eyes of law. Therefore, this project was neither issued occupancy certificate nor the completion certificate on or before the date of enforcement of the Act. So, there is no escape from the conclusion that the project in question required registration under section 3 of the Act. Once it is found that the project in question required registration, it will certainly be considered to be the 'ongoing project' and provisions of the Act, the rules and the regulations framed thereunder will become applicable.

13. **There is no classification of registered or un-registered projects in the definition of the real estate projects.**

The definitions of project and real estate project as defined in section 2(zj) and 2(zn) respectively will cover all the projects where the development of a building or the land into plots is carried out for the purpose of sale of the said apartment or the plot or the building. There is no classification of registered or unregistered projects in the definition of the real estate projects. The necessity to enact the present Act was felt as there was no special statute to provide effective remedy for redressal of the grievances of the home buyers. Keeping in view the background of the Act, it has to be looked from the perspective harmony with the aim and objects for which it was enacted. The

entire Act came into force w.e.f. 01.05.2017. The preamble of the Act reads as under:

> *"An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto."*

It is well settled principle that the preamble of the statute has a guide light to ascertain the legislative intent. The preamble of the Act reproduced above shows that the Real Estate Regulatory Authority has been established for regulation and promotion of the real estate sector and to protect the interest of the consumers in real estate sector.

The project has been defined in section 2(zj) of the Act as under:

> *"(zj) "Project" means the real estate project as defined in clause (zn);"*

Section 2(zn) of the Act defines the real estate project as under:-

> *"(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or [apartments], as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;"*

The definitions reproduced above will cover all the projects where the development of a building or the land into plots is carried out for the purpose of sale of the said apartment or the plot or the building. There is no

classification of registered or unregistered projects in the definition of the real estate projects.

14. **Functions and duties of the promoters have been delineated in sub-section (4) of section 11, also do not distinguish between registered and un-registered projects.**

Section 11 of the Act provides for the functions and duties of the promoters. Sub-section 4 of section 11 of the Act reads as under: -

> ***"11. Functions and duties of promoter.***
>
> *(1) xxx*
>
> *(2) xxx*
>
> *(3) xxx*
>
> *(4) The promoter shall—*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:*
>
> *Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.*
>
> *(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;*
>
> *(c) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid,*

and to make the lease certificate available to the association of allottees;

(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;

(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:

Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;

(f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;

(g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project):

Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person;

(h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not

mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be;"

In the aforesaid provision various responsibilities, obligations and functions have been described which are to be fulfilled by the promoter. In this provision also there is no distinction of registered or unregistered projects as far as responsibilities, obligations and functions which are to be fulfilled by the promoter are concerned. Also, section 17 of the Act deals with the transfer of the title, and it requires the promoter to execute the registered conveyance-deed in favour of the allottee. Again, section 17 of the Act provides no reference that the provisions of section 17 will apply only to the registered projects.

15. **The provision under section 18 also nowhere states that the remedies provided therein will be applicable only to the allottees of the registered projects.**

Section 18 of the Act relates to obligation of the promoter regarding return of amount and compensation. The promoter shall be liable in case an allottee wishes to withdraw from the project to return the amount received by him with interest at the prescribed rate including compensation. In case, an allottee does not intend to withdraw from the project, he shall be paid interest at the prescribed rate for every month of delay till handing over of the possession. This provision also nowhere states that the remedies provided therein will be applicable only to the allottees of the registered projects. Section 18 of the Act reads as under: -

"18. Return of amount and compensation.

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building, —

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."

The aforesaid provision grants the remedy to the allottee for return of the amount, compensation and interest for delayed possession in case the promoter fails to complete or is unable to deliver possession of an apartment, plot or building in terms of the agreement for sale. This provision also nowhere states that the remedies provided therein will be applicable only to the allottees of the registered projects.

16. **The aggrieved person may file a complaint under section 31 in respect of both registered projects as well as un-registered projects.**

The provisions under section 31 entitles any aggrieved person to file a complaint with the authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and the regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be. In this provision also, there is no classification that the aggrieved person must be of the registered project. So, even if the allottee of an un-registered project has any grievance, he can avail the remedy provided under section 31 of the Act. Similarly, both the amended as well as un-amended rules 28 and 29 of the rules also provide remedy to the aggrieved person to file the complaint before the authority or the adjudicating officer, as the case may be, without any reference to registered or unregistered project. Section 31 of the Act reads as under: -

> *"**31. Filing of complaints with the Authority or the adjudicating officer. —** (1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.*
>
> *Explanation. —For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.*
>
> *(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be prescribed."*

The aforesaid provision entitles any aggrieved person to file a complaint with the authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be. In this provision also, there is no classification that the aggrieved person must be of the registered project. So, even if the allottee of an un-

registered project has any grievance, he can avail the remedy provided under section 31 of the Act.

17. **The provisions of the Act shall become applicable even to the un-registered projects or the projects which do not require registration with respect to the fulfilment of the obligations as per the provisions of the Act, the rules and the regulations framed thereunder.**

The authority is competent to deal with the complaints filed by the aggrieved persons/consumers irrespective of the fact whether the project being registered or unregistered. The reference of the aforesaid provisions of the Act and the rules shows the scheme of the Act and legislative intent. The authority has been burdened with the responsibilities to regulate the real estate projects within its territorial jurisdiction. To conclude that the authority shall only have control over the projects which have been registered with it and not over the projects which have not been deliberately or otherwise got registered with it, would be an interpretation nugatory to the objects sought to be achieved by the Act in its letter and spirit. As already mentioned, there is no distinction in the Act or the rules made thereunder between the registered and unregistered projects. Moreover, such type of artificial classification to bring out the unregistered projects from the purview of the Act may violate the legislative intent and will not stand the touchstone of equality as provided under Article 14 of the Constitution of India qua the consumers in the registered and unregistered projects.

If the plea raised by learned counsel for the respondent that the authority has no jurisdiction over the unregistered projects is accepted, the very purpose of the Act would be frustrated. The consumers of such projects will be deprived of the remedies provided under the provisions of the Act, even though they are also the consumers of the real estate projects. Such an absurd interpretation would defeat the very purpose, policy, aim and object of the

Act. It was felt that the consumers/home buyers were being exploited by the promoters/developers and they were helpless to get their grievances redressed effectively and expeditiously which necessitated the enactment of the Act. Thus, the plea raised by learned counsel for the respondent that the authority had no jurisdiction as the project of the respondent was not registered with it, is without any substance.

Similar view has been taken by the **Hon'ble Real Estate Appellate Tribunal Jaipur, Rajasthan in appeal no.RAJ-RERA-C-2018-2370 titled as Jain Realtors (P) Ltd. Vs. The Registrar of Real Estate Regulatory Authority, Jaipur, Rajasthan and others,** decided on 09.10.2018 and by the **Hon'ble Real Estate Appellate Tribunal, Punjab, SAS Nagar (Mohali) in appeal no.49 of 2018 titled as M/s Silver City Construction Ltd. versus State of Punjab and others**, decided on July 24, 2019. The Division Bench of the Hon'ble Bombay High Court in case **Mohammed Zain Khan Vs. Maharashtra Real Estate Regulatory Authority and others, Writ Petition (Lodging) No.908 of 2018 decided on July 31st, 2018** has given direction in the complaint tendered online by the petitioner and other similarly situated complaints, in respect of unregistered projects would be entertained and same will be dealt with in accordance with the procedure being adopted by the Maharashtra Real Estate Regulatory Authority in respect of disposal of complaints in relation to registered projects. This direction issued by the Division Bench of Hon'ble Bombay High Court clinches the matter and makes it clear that the authority is competent to deal with the complaints filed by the aggrieved persons/consumers irrespective of the project being registered or unregistered."

18. **The complainant being *dominus litis* can choose to abandon the relief of compensation and to claim the alternative/substituted relief for grant of interest for delayed possession at any stage.**

The claim can be abandoned or substituted or scaled down at any stage of the *lis*. No doubt, initially some of the complaints were filed by the complainants for grant of compensation and interest, but during the pendency of the complaint, learned counsel for the complainant had stated that the complaints be considered for compliance of obligations by the promoter under section 18(1) keeping in view the fact that the promoter had failed to give possession on the due date as per agreement for sale. Thus, the complainant had claimed the interest for every month of delay till handing over of the possession. It cannot be disputed that the claim regarding interest for delayed possession will squarely fall within the jurisdiction of the authority. Various pronouncements of the appellate tribunal and also of Hon'ble Punjab and Haryana High Court clearly establish that at any time after the institution of the suit, the plaintiff may abandon his suit or a part of his claim against all or any of the defendants. Though the strict provisions of the Code of Civil Procedure, 1908 (hereinafter called the 'C.P.C.') are not applicable to the proceedings under the Act, yet the principles provided therein are the important guiding factors. Order XXIII Rule 1(1) of the C.P.C. reads as under:

"ORDER XXIII

WITHDRAWAL AND ADJUSTMENT OF SUITS

[1. Withdrawal of suit or abandonment of part of claim— (1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court."

Thus, the complainant being *dominus litis* can choose to abandon the relief of compensation and to claim the alternative/substituted relief for grant of interest for delayed possession at any stage, which is clearly an exercise by the

complainant in conformity and within the purview of Order XXIII rule 1(1) C.P.C. and is legally permissible.

19. **The amended rules shall be applicable to the pending cases**

The Haryana Real Estate (Regulation and Development) Rules, 2017 were notified on 28.07.2017 in exercise of the powers conferred by sub-section (1) read with sub-section (2) of section 84 of the Act and with reference to the Haryana Government, Town and Country Planning Department, Notification No. MISC-107(A)/ED(R)/1/55/2016-ITCP dated the 28.04.2017. These rules were amended by the Haryana Real Estate (Regulation and Development) Amendment Rules, 2019 – No. Misc-862/1/83/2019/1TCP, dated 12.09.2019. Time and again, questions have been raised whether the amended rules shall be applicable to the pending complaints which were instituted prior to the notification of the amended rules. Here, the settled legal proposition is that a change of forum would be 'procedural'. The same position regarding applicability of the amended rules was reaffirmed by the Hon'ble Supreme Court in the matter of ***Securities and Exchange Board of India*** **Vs. Classic Credit Ltd. (2018) 13 SCC 1** wherein it was held that forum of trial is a procedural matter and therefore, an amendment in respect of trial of offences under any law will apply to pending cases. The relevant paras are reproduced below:

> *"34. We will now deal with the legality of the propositions canvassed, at the hands of learned counsel for the rival parties. In our considered view, the legal position expounded by this Court in a large number of judgments including New India Insurance Co. Ltd. v. Shanti Misra, (1975) 2 SCC 840; Securities and Exchange Board of India v. Ajay Agarwal, (2010) 3 SCC 765; and Ramesh Kumar Soni v. State of Madhya Pradesh, (2013) 4 SCC 696, is clear and unambiguous, namely, that procedural amendments are presumed to be retrospective in nature, unless the amending statute expressly or impliedly provides otherwise.*
>
> *And also, that generally change of 'forum' of trial is procedural, and normally following the above proposition, it is presumed to be*

retrospective in nature, unless the amending statute provides otherwise.

This determination emerges from the decision of this Court in Hitendra Vishnu Thakur v. State of Maharashtra (1994) 4 SCC 602; Ranbir Yadav v. State of Bihar (1995) 4 SCC 392, and Kamlesh Kumar v. State of Jharkhand, (2013) 15 SCC 460, as well as, a number of further judgments noted above.

35. *We have also no doubt, that alteration of 'forum' has been considered to be procedural, and that, we have no hesitation in accepting the contention advanced on behalf of the SEBI, that change of 'forum' being procedural, the amendment of the 'forum' would operate retrospectively, irrespective of whether the offence allegedly committed by the accused, was committed prior to the amendment."*

In view of the settled legal position, the position that emerges is this. As long as the complaint is yet to be decided as on the date of the notification publishing the Haryana Amendment Rules 2019, that will now be decided consistent with the procedure outlined under the amended rules 28 and 29 of the rules. Accordingly, the amended rule shall be applicable to the pending cases.

20. **Rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.**

In most of the builder buyer's agreements, the allottee is entitled to delayed possession charges/ interest only at the nominal rate ranging from Rs. 5/- to Rs.15/- per square feet per month for the period of such delay depending upon projects; whereas the promoter is entitled to exorbitant interest ranging from 18% to 24% per annum on account of delay in making payments by the allottees. Time and again, the Hon'ble Supreme Court and various High Courts as well as the NCDRC have declared these types of discriminatory terms and conditions of the builder buyer's agreement not final and binding. The Act has provided a level playing field in this regard and has mandated that the rate of interest chargeable from the allottee by the

promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The legislature in its wisdom in the subordinate legislation i.e. the rules, has determined the prescribed rate of interest as per rule 15 of the rules. So, the rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award interest, it will ensure uniform practice in all the cases.

To support this view reference can be made to case ***Pioneer Urban Land & Infrastructure Limited Vs. Govindan Raghavan, 2019(2) R.C.R. (Civil) 738*** wherein the Hon'ble Apex Court 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 judgment, 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 on the contractual rate.

The rule 15 of the rules has determined the prescribed rate of interest and it provides that for the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 12.08.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

21. **If the terms of the buyer's agreement are oppressive and wholly one sided, it would constitute an unfair trade practice**

A common contention raised by the respondent-promoter is that the terms and conditions of an agreement executed prior to the coming into force of the Act cannot be altered or modified since it is binding on both the parties. With regards to the same, the authority observes that sub-section (2) of section 13 provides that the promoter will not accept a sum more than 10% of the cost of the apartment without first entering into an agreement for sale. Further, sub-section (2) of section 13 provides that the agreement for sale referred to in sub-section (1) shall be in such format as may be prescribed. The definition of the term "prescribed" given in section 2(zi) of the Act is that it means prescribed by the rules made under this Act. The State Government has accordingly prescribed the format for entering into the agreements by the parties. Clause (a) of the explanation of the draft agreement prescribed in the rules is reproduced hereunder:

> *"(a) The promoter shall disclose the existing Agreement for Sale entered between Promoter and the Allottee in respect of ongoing project along with the application for registration of such ongoing project. However, such disclosure shall not affect the validity of such existing agreement (s) for sale between Promoter and Allottee in respect of apartment, building or plot, as the case may be, executed prior to the stipulated date of due registration under Section 3(1) of the Act."*

22. Accordingly, as per explanation (a) quoted above, the agreements executed prior to the stipulated due date of registration under section 3(1) of the Act cannot be reopened. Further, it is a general principle of law that unless an Act specifically provides for its coming into force with retrospective effect, it is to be ordinarily construed to be effective with prospective effect.

23. The Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. The numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** which provides as under:

> *"122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

24. Accordingly, a law can be even framed to affect subsisting/existing contractual rights between the parties in the larger public interest as has been done in this Act where specific remedy has been provided under section 18 of the Act, in case of failure of promoter to handover possession as per

agreement for sale and this specific remedy abrogates provisions of the agreement to that extent.

25. Thus, a law can be even framed to affect subsisting/existing contractual rights between the parties in the larger public interest. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. The poor and hapless allottee is forced to sign on the dotted lines of the agreement. By no stretch of imagination, this agreement can be said to have been executed with free will by the allottee. It is a pre-printed document with no choice to the allottee to suggest and alter any of the terms and conditions or clauses where the allottee thinks that this is against his interest. The authority has perused large number of builder-buyer agreements of this project (almost all agreements of the complainants whose matters are being dealt herewith). There is not even a single agreement where there is variation from the pre-printed document which is unequivocal and explicit conclusion regarding agreement being biased and prejudiced against the interest of allottees. This partisan agreement is preferential to the builder, discriminatory to the allottee, colored, inequitable, unjust slanted in favour of developer and cannot be said anything but an unfair trade practice apart from being non-transparent and lopsided. This type of skewed, unbalanced and disproportionate clauses of the agreement cannot and shall not be allowed to be enforced. This is squarely misuse of dominant position by the developer who is at the controlling and commanding place.

26. The Hon'ble Supreme Court of India in various judgments (supra) has very categorically concluded that when the terms of the agreement authored by the developer don't maintain a level platform between the developer and the

flat purchaser and the stringent terms imposed on the flat purchaser are not in consonance with the obligation of the developer to meet the timelines for construction and handing over the possession and therefore do not reflect an even bargain, it would amount to unfair trade practice under the provisions of the Consumer Protection Act, which inter alia, means that this would also amount to unfair trade practice under the provisions of the Real Estate (Regulation and Development) Act, 2016, as the definition of the unfair trade practice is same in both the Acts and the same has been used by the Hon'ble Supreme Court of India in respect of real estate projects where clauses reflect wholly one-sided terms of the builder buyer's agreement which are entirely loaded in favour of the promoter and against the interests of the flat purchaser/allottee at every step. Therefore, such terms of the builder buyer's agreement would constitute an unfair trade practice under the Consumer Protection Act, 1986 as held by the Hon'ble Supreme Court and accordingly on the same analogy would constitute an unfair trade practice under the RERA Act, 2016. The Hon'ble Supreme Court of India in civil appeal no. 5785 of 2019 titled as **IREO Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors. dated 11.01.2021** has held as under:

> *"……*
>
> ***The terms of the Apartment Buyer's Agreement are oppressive and wholly one sided and would constitute an unfair trade practice** under the Consumer Protection Act, 1986. 19.3 Section 2(1)(c) of the Consumer Protection Act, 1986 defines a 'complaint' as:*
>
> *"2.(1)(c) "complaint" means any allegation in writing made by a complainant that –*
>
> *(i) any unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;*
>
> *(ii) the goods bought by him or agreed to be bought by him suffer from one or more defects. …. " (emphasis supplied)"*

27. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the

agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments and are not in contravention of any Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

LEAD CASES

28. The facts of all the complaints filed by the complainants/allottees are almost similar. Out of the above referred matters, the particulars of the lead complaint no. 4031 of 2019 titled as ***Varun Gupta Vs. Emaar MGF Land Limited*** are taken into consideration for determining the right of delayed possession charges of allottees post the execution of conveyance deed and indemnity-cum-undertaking with waiver clause and includes cases where complainant is the subsequent allottee; the facts of complaint no. 31 of 2020 titled as **Sanjay Pathak *Vs. Emaar MGF Land Limited*** and no. 591 of 2019 titled as **V.K. Vaidh and Sons Vs. Emaar MGF Land Ltd.** are being considered for ascertaining whether the area mentioned as super area is actually being allotted to the allottee and whether increase in super area is justified without giving any basis; and complaint no. 3989 of 2019 titled as ***Richa Rana and Anr. Vs. Emaar MGF Land Ltd.*** is being taken into consideration for determining other contractual rights. The facts of these four sets of complaints are considered for disposal of this bunch of matters (49 in number) and the ratio of these complaints shall be applicable in the rest of the complaints. Accordingly, this order shall consist of three parts which are as follows:

i. **Part A:** For determining the right of delayed possession charges of complainant post execution of conveyance deed and unit handover letter/indemnity-cum-undertaking for taking possession. Also, where complainant is the subsequent allottee and has executed an indemnity-

cum -undertaking with waiver clause while getting the unit transferred in his/her/their name/s.

ii. **Part B:** To ascertain whether the area mentioned as super area is actually being allotted to the allottee and increase in super area is justified without giving any basis.

iii. **Part C:** For determining other contractual rights not covered in Part A and B supra.

PART A

Brief facts of the lead complaint (4031/2019)

29. The particulars of the lead complaint are given below:

The present complaint dated 06.09.2019 has been filed by the complainant/allottee in Form CRA under section 31 of the Act read with the rule 28 of the rules for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible to fulfil all obligations, responsibilities and functions to the allottee as per the agreement for sale executed between them.

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

Sr. No.	Heads	Information
1.	Project name and location	Palm Gardens, Sector 83, Gurugram.
2.	Total licensed project area	21.90 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	108 of 2010 dated 18.12.2010 valid/renewed up to 17.12.2020
5.	HRERA registered/ not registered	Registered vide no. 330 of 2017 dated 24.10.2017 for towers 1,2,6,8

		to 12 and other facilities and amenities
	HRERA registration valid up to	31.12.2018
	Extension of HRERA registration certificate vide no.	02 of 2019 dated 02.08.2019
	Extension valid up to	31.12.2019
6.	Occupation certificate granted on	02.05.2019 [Page 92 of reply]
7.	Date of provisional allotment letter	28.02.2011 [Page 46 of complaint]
8.	Unit no.	PGN-06-1206, 12th floor, building no. 6 [Page 53 of complaint]
9.	Unit measuring (super area)	1850 sq. ft.
10.	Date of execution of builder buyer's agreement	28.04.2011 [Page 51 of complaint]
11.	Payment plan	Construction linked payment plan [Page 68 of complaint]
12.	Total consideration as per statement of account dated 13.08.2019 (Page 47 of complaint)	Rs.92,34,474/-
13.	Total amount paid by the complainant as per statement of account dated 13.08.2019 (Page 49 of complaint)	Rs.92,35,661/-
14.	Date of start of construction as per statement of account dated 13.08.2019	09.08.2012 [Page 48 of complaint]
15.	Due date of delivery of possession as per clause 10(a) of the said agreement i.e. 36 months from the date of start of construction i.e. 09.08.2012. [Page 60 of complaint]	09.08.2015

16.	Date of offer of possession to the complainant	08.05.2019 [Page 33 of complaint]
17.	Unit handover letter dated	03.06.2019 [Page 50 of complaint]
18.	Conveyance deed executed on	19.08.2019 [Page 104 of reply]
19.	Relief sought	1. DPC 2. Declare the waiver clause in indemnity-cum-undertaking as unfair and unjust.

31. According to the complainant, builder buyer's agreement dated 28.04.2011 was executed between one Shri Sandeep Chopra (original allottee) and the respondent/ promoter. The said Shri Sandeep Chopra sold out the said unit to the complainant (subsequent allottee) vide agreement dated 06.04.2013. The unit was booked in year 2011 but till April 2019, there was no intimation from the respondent to the complainant with regard to the offer of possession. On 08.05.2019, the respondent sent a letter of offer of possession via email to the complainant and asked him to deposit the balance amount for timely possession. In response to the said email, the complainant sent an email dated 16.05.2019 wherein he sought information as to the compensation for delayed possession of unit which was being offered with almost 4 years of delay from the promised delivery date. On 18.05.2019, the respondent replied to email dated 16.05.2019 to the complainant wherein the latter denied the entitlement of the complainant to claim compensation for delayed possession because of signing of the indemnity bond dated 21.05.2013 by the complainant by which he had waived off his right to claim the same. The respondent is one who had made the complainant to sign the indemnity bond dated 21.05.2013 having a waiver clause with respect to the claim for compensation on the ground of delayed possession. The complainant asserts that he deposited the amount as and when the demand

was raised by the promoter- developer towards the said unit and till the year 2017, he had deposited almost 95% of total consideration amount. On 10.06.2019, the complainant sent an email to the respondent wherein he mentioned that he was depositing the final demand of Rs.5,21,997/- raised by the respondent. However, **such deposit was made under protest** and without prejudice (emphasis supplied). Hence, the present complaint is filed seeking delayed possession charges and to declare the waiver clause in the indemnity bond dated 21.05.2013 as unjust and unfair.

Reply by the respondent

32. **The respondent has contested the complaint on the following grounds:**

(i) That the original allottees, Mr. Sandeep Chopra and Mrs. Anupama Chopra (original allottees) had booked the said unit in 2011. On 28.02.2011, the respondent provisionally allotted the apartment in question to the original allottees. The builder buyer's agreement dated 28.04.2011 was executed between the original allottees and the respondent. Thereafter, the complainant approached the original allottees for purchasing their rights and title in the unit in question. The original allottees acceded to the request of the complainant and agreed to transfer their rights and title in the unit in question to the complainant vide agreement to sell dated 06.04.2013.

(ii) That the complainant herein is a subsequent allottee who had purchased the apartment from the original allottee. It is stated that the complainant was aware about the status of construction of the project at the time when he chose to purchase its rights from the original allottees in the secondary market, and therefore, allegations qua delay in handing over the possession cannot be raised by the complainant at this stage. Further, the complainant had executed an affidavit and indemnity-cum-undertaking dated 21.05.2013 whereby the

complainant had consciously and voluntarily declared and affirmed (being the nominee and transferee) that he would not be entitled to any compensation for delay, if any, in handing over possession, or any rebate under a scheme or otherwise or any other discount, by whatever name called, from the respondent, for which the original allottees might have been entitled to.

(iii) That on 21.12.2018, the respondent had applied for occupation certificate and on receipt of the occupation certificate on 02.05.2019, the respondent offered possession of the unit to the complainant on 08.05.2019, subject to payment of outstanding amount and completion of necessary formalities.

(iv) That the complainant not only took possession but has in fact, executed the sale deed/ conveyance deed on 19.08.2019. It was contended by the respondent that with the execution of the aforesaid conveyance deed, the agreement stands discharged through accord and satisfaction and a new contract gets substituted. In view thereof, the complainant is not entitled to any relief whatsoever.

(v) Based on the above submissions, the respondent asserted that the present complaint deserves to be dismissed at the very threshold.

Written arguments of respondent

33. The learned counsel for the respondent, through their written arguments, has contended that in view of the fact that the complainant is a subsequent allottee i.e. he had purchased the unit from the original allottees, he is not entitled for the delay possession charges. To fortify his argument, the respondent has placed reliance on the following two judgments:

(a) 2020(3) RCR (Civil) 544- **Supreme Court- Wg. Cdr. Arifur Rahman Khan and Aleya Sultana Vs. DLF Southern Homes Pvt. Ltd**. (Paras 38 and 55) wherein it has been held as under:

"38. Similarly, the three appellants who have transferred their title, right and interest in the apartments would not be entitled to the benefit of the present order since they have sold their interest in the apartments to third parties. The written submissions which have been filed before this Court indicate that "the two buyers stepped into the shoes of the first buyers" as a result of the assignment of rights and liabilities by the first buyer in favour of the second buyer. In ***HUDA v. Raje Ram (2008) 17 SCC 407****, this Court while holding that a claim of compensation for delayed possession by subsequent transferees is unsustainable, observed that:*

> *7. Respondents in the three appeals are not the original allottees. They are re-allottees to whom re-allotment was made by the appellant in the years 1994, 1997 and 1996 respectively. They were aware, when the plots were re-allotted to them, that there was delay (either in forming the layout itself or delay in delivering the allotted plot on account of encroachment etc). In spite of it, they took re-allotment. Their cases cannot be compared to cases of original allottees who were made to wait for a decade or more for delivery and thus put to mental agony and harassment. They were aware that time for performance was not stipulated as the essence of the contract and the original allottees had accepted the delay."*

Even if the three appellants who had transferred their interest in the apartments had continued to agitate on the issue of delay of possession, we are not inclined to accept the submission that the subsequent transferees can step into the shoes of the original buyer for the purpose of benefiting from this order. The subsequent transferees in spite of being aware of the delay in delivery of possession the flats, had purchased the interest in the apartments from the original buyers. Further, it cannot be said that the subsequent transferees suffered any agony and harassment comparable to that of the first buyers, as a result of the delay in the delivery of possession in order to be entitled to compensation……

55. For the above reasons we have come to the conclusion that the dismissal of the complaint by the NCDRC was erroneous. The flat buyers are entitled to compensation for delayed handing over of possession and for the failure of the developer to fulfil the representations made to flat buyers in regard to the provision of amenities. The reasoning of the NCDRC on these facets suffers from a clear perversity and patent errors of law which have been noticed in the earlier part of this judgment. Allowing the appeals in part, we set aside the impugned judgment and order of the NCDRC dated 2 July

2019 dismissing the consumer complaint. While doing so, we issue the following directions:

(i) Save and except for eleven appellants who entered into specific settlements with the developer and three appellants who have sold their right, title and interest under the ABA, the first and second respondents shall, as a measure of compensation, pay an amount calculated at the rate of 6 per cent simple interest per annum to each of the appellants. The amount shall be computed on the total amounts paid towards the purchase of the respective flats with effect from the date of expiry of thirty-six months from the execution of the respective ABAs until the date of the offer of possession after the receipt of the occupation certificate;

(b) **AIR 2009 Supreme Court 2030--Haryana Urban Development Authority Vs. Raje Ram** wherein it has been held as under:

"7. Respondents in the three appeals are not the original allottees. They are re-allottees to whom re-allotment was made by the appellant in the years 1994, 1997 and 1996 respectively. They were aware, when the plots were re-allotted to them, that there was delay (either in forming the layout itself or delay in delivering the allotted plot on account of encroachment etc). In spite of it, they took re-allotment. Their cases cannot be compared to cases of original allottees who were made to wait for a decade or more for delivery and thus put to mental agony and harassment. They were aware that time for performance was not stipulated as the essence of the contract and the original allottees had accepted the delay. The appellant offered possession to respondents (re-allottees) and they took possession of the respective plots on 27.6.2002, 21.3.2000, and 13.9.1999 respectively. They approached the District Forum in 1997, within a short period from the dates of re-allotment in their favour. They had not paid the full price when they approached the District Forum. In the circumstances, having regard to the principles laid down by this Court in Ghaziabad Development Authority v. Balbir Singh - 2004 (5) SCC 65, Darsh Kumar (supra) and Bangalore Development Authority v. Syndicate Bank - 2007 (6) SCC 711, we are of the view that the award of interest was neither warranted nor justified."

34. The next contention on behalf of the respondent is that the complainant and the respondent are bound by terms and conditions enumerated in the builder buyer's agreement. To support the same, the respondent has put reliance on: **2000(1) Apex Court Journal 388, AIR 1996 SC 2508, AIR 1990 SC 699**. The respondent has submitted that this authority does not have the

jurisdiction and power to legally direct levying of interest and in this regard, the respondent has put reliance on **orders' dated 02.05.2019 passed by Justice Darshan Singh (Retd.) Chairman, Haryana Real Estate Appellate Tribunal, Chandigarh**. The respondent's counsel has also submitted that the liability to pay interest imposed on the developer is in the nature of compensation and any determination of dispute pertaining to payment of interest under sections 12, 14, 18 and 19 is to be adjudicated by the adjudicating officer as per section 71 of the Act. While supporting this contention, the respondent has placed reliance on **Neelkamal Realtors Suburban Pvt. Ltd. (supra)**.

35. The respondent also submitted that no compensation/interest of any nature deserves to be granted for the span of time commencing from revision of National Building Code (NBC) in the Year 2016, till issuance of occupation certificate. The said period deserves to be exempted for all intents and purposes. In light of the legal and factual position submitted above, the respondent opines that it is evident that there is no merit in the grievances raised in the present complaint qua the respondent. Then, the counsel for the respondent by placing reliance on various clauses of the "Indemnity cum Undertaking", unit handover letter, affidavit (transferor/ assignor/ nominator) etc. has submitted that subsequent transferee is not entitled to seek damages/compensation against the respondent for delay in delivery of physical possession. The indemnity-cum-undertaking furnished by the allottee as well as by the transferee is binding upon them with full force and effect. The contents of unit handover letter are also binding upon the allottee.

36. The learned counsel for the respondent contended that-

(i) When the subsequent purchaser was desirous of purchasing apartment, he/she categorically furnished an indemnity-cum-undertaking to the effect that he/she would not put forth any claim or demands for

damages/compensation or towards any other account for delay in delivery of physical possession of the apartment. Even otherwise the subsequent purchaser being well aware of the status of the project and more particularly the status of the delivery of the apartment/unit, the subsequent purchaser took a conscious call in seeking the assignment/endorsement/substitution of the allotment rights in the specific apartment/unit. Also, before lodging his/her/their application for the due assignment/endorsement/substitution of the allotment rights in the specific apartment/unit, the subsequent purchaser had executed various documents and had also visited the office of the respondent to understand his/her/their contractual obligations and rights and now when the possession has been offered, the subsequent purchaser cannot assert his/her/their rights independent of the various deeds, documents, affidavits, undertakings, bonds, declarations etc. and is bound by the covenants as agreed to and as set out therein. It is respectfully submitted that such voluntarily and consciously executed indemnity-cum-undertaking should be held to be binding upon the transferee with full force and effect.

(ii) Furthermore, the learned counsel for the respondent contended that the coming into operation of the Act is absolutely inconsequential and irrelevant. The aforesaid statute does not provide that settlement/contract/agreements duly executed by the allottee would lose their efficacy/legitimacy/binding character merely because the statute has become applicable. The plea of the allottee that he had no option but to enter into a particular contract or furnished the demanded indemnity-cum-undertaking has been discarded by court of law.

(iii) The learned counsel for the respondent contended that the subsequent transferee/subsequent allottee is not entitled to claim compensation for

delay in delivery of physical possession, since at the time of transfer, the transferee had voluntarily and consciously executed indemnity-cum-undertaking categorically waiving all his rights to be accrued in future in relation to the allotment of the unit especially those wherein the agreements have been executed prior to the coming into force of the Act, 2016. He has further drawn the attention of this authority towards the affidavit/undertaking given by the complainant (stated to be subsequent allottee) at the time of getting the unit transferred in his name in the records of the respondent after purchasing the same from the original allottees. The relevant clause of the said affidavit reads as under:

> *"Affidavit (Transferee/Assignee/Nominee):*
>
> *……*
>
> *That I/we shall be bound by all the terms and conditions of the said provisional registration/registration/booking/allotment being the Nominee/substitute of the Original Applicant/Allottee, however, I/We fully understand and confirm that I/We shall not be entitled to any compensation for delay in handing over possession or any rebate under a scheme or otherwise or any other discount, by whatever name called, from the Company, for which the original Applicant/Allottee might have been entitled. I agree and undertake to execute the Independent Floor/standard Flat/Plot/Villa Buyer's Agreement directly with the Company and undertakes to abide by all the terms and conditions which the Company may implement for the said Property."*

Further, the counsel has referred to the clause 2 of the indemnity-cum-undertaking which provides as under:

> *"INDEMNITY-CUM-UNDERTAKING OF THE TRANSFEREE/ NOMINEE*
>
> *Clause 2: Page 117.*
>
> *The Indemnifier having been apprised, understands and confirms that being the Nominee/Transferee, he/she is not entitled to claim any compensation for delay in handing over possession or rebate under a scheme or otherwise or any other discount by whatever name from the Company and hereby undertakes not to raise any claim*

whatsoever with regard to the same from the Company, for which the original Applicant/Allottee might have been entitled."

(iv) According to the respondent it has been held by the court of law that primary duty of the Hon'ble Court is to enforce a promise which the parties had made and to uphold the sanctity of contract/agreement entered into between the parties. It was further held that the Honorable courts must exercise extreme restraint in holding a contract or an agreement to be void as it encourages dishonesty and cheating.

(v) The respondent further submitted that, in case duly executed documents are not held to be binding upon the parties, it would encourage lawlessness. Certain allottees at the time of seeking delivery of physical possession obtain financial and other benefits from the developer and consciously agree that they are not left with any claim of any nature against the developer. However, such unscrupulous complainants should not be permitted to subsequently knock the door of the authority and to claim that they have been wronged or they have suffered on account of alleged delay in delivery of physical possession.

(vi) The contention of the learned counsel for the respondent is that in view of the above affidavit and the undertaking, which is binding on the allottee, the complaint/subsequent allottee is not entitled to claim delay possession charges with regard to the alleged delay in delivery of physical possession of the unit by him. He has placed reliance on the decision of the Hon'ble Supreme Court passed in **Wg. Cdr. Arifur Rahman (supra)** in this context.

37. The respondent contended that in light of legal and factual position submitted above, it is manifest that subsequent transferee is not entitled to seek damages/compensation against the respondent for delay in delivery of physical possession. The indemnity-cum-undertaking furnished by the

allottee as well as by the transferee is binding upon them with full force and effect. The contents of unit handover letter are also binding upon the allottee. Similarly, the settlement agreement entered into by the allottee/subsequent transferee with the respondent determines the rights and obligations of the parties and the allottee/subsequent transferee shall not be permitted to assert any right, title or interest at variance with the terms and conditions incorporated in the aforesaid agreement. Furthermore, after execution/registration of conveyance deed, the complainant is not entitled to institute any complaint against the respondent for the purpose of seeking any monetary relief for delay in delivery of physical possession.

38. The complainant has also filed rejoinder and written arguments to the reply filed by the respondent wherein the complainant has denied all the averments made by the respondent in its reply. Oral arguments of all the parties have been heard and written pleadings/arguments have been examined in detail by the authority. Copies of all the relevant documents have been filed and placed on the record.

ISSUES FOR ADJUDICATION

39. As per the complaints the following issues emerge for adjudication by this authority:

A.I Whether signing of indemnity-cum-undertaking at the time of possession or unit hand over letter extinguishes the right of the allottee to claim delay possession charges?

A.II Whether the execution of the conveyance deed extinguishes the right of the allottee to claim delay possession charges?

A.III Whether a subsequent allottee who had executed an indemnity-cum-undertaking with waiver clause is entitled to claim delay possession charges?

Complaint wise details of segregating the above-mentioned issues have been given in the table below:

Project- Palm Gardens

Complaint no.	Subsequent Allottee	UHL/CD	Other Reliefs
4031/2019	✓	✓	
1227/19		✓	
813/2020		✓	
2322/2019	✓		
5561/2019	✓	✓	
4343/2020	✓	✓	
357/2020 (linked with old no.- 3111/2019)	✓		i. Refund the excess amount charged to the tune of Rs.2,05,687/- by the respondent on intimation of possession. ii. Refund the excess amount collected to the tune of Rs.1,64,745/- by the respondent.
4409/2020		✓	✓

Project- Emerald Floors Premier

Complaint no.	Subsequent Allottee	UHL/CD	Other Reliefs
1457/2019	✓		
869/2018	✓		
858/2020	✓		
5532/2019	✓		
4754/2020	✓		
1532/2018	✓		✓
2847/2020		✓	✓
2880/2020	✓		✓

4731/2020	✓		✓

Project- Marbella

Complaint no.	Subsequent Allottee	UHL/CD	Other Reliefs
5567/2019		✓	✓

Project- The Palm Drive

Complaint no.	Subsequent Allottee	UHL/CD	Other Reliefs
319/2019		✓	
3202/2019		✓	✓
591/2019		✓	✓
3956/2020		✓	✓

Project- The Palm Terraces

Complaint no.	Subsequent Allottee	UHL/CD	Other Reliefs
152/2019	✓	✓	
3366/2020	✓	✓	
3165/2020	✓		✓

Project- The Palm Terraces Select

Complaint no.	Subsequent Allottee	UHL/CD	Other Reliefs
837/2019		✓	
283/2019	✓	✓	Direct the respondent to take appropriate steps to remove all the defects in quality which have come up in the flat after taking possession.
3722/2020	✓		
4495/2019	✓		✓
5605/2019	✓		✓
5271/2019		✓	✓

687/2020		✓	✓

Project- The Palm Hills

Complaint no.	Subsequent allottee	UHL/CD	Other Reliefs
1847/2019	✓		
5761/2019	✓		
4113/2020	✓		
801/2018	✓		
4317/2020	✓		✓

Arguments have been heard and the authority shall now deal with each issue in details in the subsequent paras:

A.I Whether signing of indemnity-cum-undertaking at the time of possession or unit hand over letter extinguishes the right of the allottee to claim delay possession charges?

At times, the allottee is asked to give the affidavit or indemnity-cum-undertaking in question before taking possession. The allottee has waited for long for his cherished dream home and now when it is ready for taking possession, he has either to sign the indemnity-cum-undertaking and take possession or to keep struggling with the promoter if indemnity-cum-undertaking is not signed by him. Such an undertaking/ indemnity bond given by a person thereby giving up their valuable rights must be shown to have been executed in a free atmosphere and should not give rise to any suspicion. If a slightest of doubt arises in the mind of the adjudicator that such an agreement was not executed in an atmosphere free of doubts and suspicions, the same would be deemed to be against public policy and would also amount to unfair trade practices. No reliance can be placed on any such indemnity-cum-undertaking and the same is liable to be discarded and

ignored in its totality. Therefore, this authority does not place reliance on such indemnity cum undertaking. To fortify this view, the authority place reliance on the NCDRC order dated 03.01.2020 in case titled as **Capital Greens Flat Buyer Association and Ors. Vs. DLF Universal Ltd., Consumer case no. 351 of 2015**, wherein it was held that the execution of indemnity-cum-undertaking would defeat the provisions of sections 23 and 28 of the Indian Contract Act, 1872 and therefore, would be against public policy, besides being an unfair trade practice. The relevant portion of the said judgment is reproduced herein below:

> *"Indemnity-cum-undertaking*
>
> *30. The developer, while offering possession of the allotted flats insisted upon execution of the indemnity-cum-undertaking before it would give possession of the allotted flats to the concerned allottee.*
>
> *Clause 13 of the said indemnity-cum-undertaking required the allottee to confirm and acknowledge that by accepting the offer of possession, he would have no further demands/claims against the company of any nature, whatsoever. It is an admitted position that the execution of the undertaking in the format prescribed by the developer was a pre- requisite condition, for the delivery of the possession. The opposite party, in my opinion, could not have insisted upon clause 13 of the Indemnity-cum-undertaking. The obvious purpose behind such an undertaking was to deter the allottee from making any claim against the developer, including the claim on account of the delay in delivery of possession and the claim on account of any latent defect which the allottee may find in the apartment. The execution of such an undertaking would defeat the provisions of Section 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being an unfair trade practice. Any delay solely on account of the allottee not executing such an undertaking would be attributable to the developer and would entitle the allottee to compensation for the period the possession is delayed solely on account of his having not executed the said undertaking-cum-indemnity."*

The said judgment of NCDRC was also upheld by the Hon'ble Supreme Court vide its judgement dated 14.12.2020 passed in civil appeal nos. 3864-3889 of 2020 against the order of NCDRC.

40. Hon'ble Supreme Court and various High Courts in plethora of judgments have held that a term of a contract shall not be binding if it is shown that the same were one sided and unfair and the person signing did not have any other option but to sign the same. Reference can also be made on the directions rendered in the **Pioneer Urban Land and Infrastructure Limited Vs. Govindan Raghavan** passed by the Hon'ble Apex Court as well as in the **Neelkamal Realtors Suburban Pvt. Ltd. (supra)** and others. A similar view has also been taken by the Apex court in **IREO Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors**. dated 11.01.2021.

41. The unit hand-over letter was relied upon by the learned counsel for the respondent in support of his submissions, that the complainant having taken possession of the allotted unit without any demur and protest and having got the sale deed executed in his favour without any protest are not entitled to any compensation. The relevant para of the unit handover letter relied upon reads as under:

> *"The allottee, hereby, certifies that he/she has taken over the peaceful and vacant physical possession of the aforesaid Unit after fully satisfying himself/herself with regard to its measurements, location, dimension and development etc. and hereafter the allottee has no claim of any nature whatsoever against the company with regard to the size, dimension, area, location and legal status of the aforesaid Home."*

The counsel for the respondent further submitted that upon acceptance of possession, the liabilities and obligations of the company as enumerated in the allotment letter/agreement executed in favour of the allottee stands satisfied.

42. It is noteworthy that section 18 of the Act stipulates for the statutory right of the allottee against the obligation of the promoter to deliver the possession within stipulated timeframe. Therefore, the liability of the promoter continues even after the execution of indemnity-cum-undertaking at the time of possession. Further, the reliance placed by the respondent counsel on the

language of the handover letter, that the allottee has waived off his right by signing the said unit handover letter is superficial. In this context, it is appropriate to refer case titled as **Mr. Beatty Tony Vs. Prestige Estate Projects Pvt, Ltd. (Revision petition no.3135 of 2014 dated 18.11.2014**), wherein the Hon'ble NCDRC while rejecting the arguments of the promoter that the possession has since been accepted without protest vide letter dated 23.12.2011 and builder stands discharged of its liabilities under agreement, the allottee cannot be allowed to claim interest at a later date on account of delay in handing over of the possession of the apartment to him, held as under:

> *"The learned counsel for the opposite parties submits that the complainant accepted possession of the apartment on 23/24.12.2011 without any protest and therefore cannot be permitted to claim interest at a later date on account of the alleged delay in handing over the possession of the apartment to him. We, however, find no merit in the contention. A perusal of the letter dated 23.12.2011, issued by the opposite parties to the complainant would show that the opposite parties unilaterally stated in the said letter that they had discharged all their obligations under the agreement. Even if we assume on the basis of the said printed statement that having accepted possession, the complainant cannot claim that the opposite parties had not discharged all their obligations under the agreement, the said discharge in our opinion would not extend to payment of interest for the delay period, though it would cover handing over of possession of the apartment in terms of the agreement between the parties. In fact, the case of the complainant, as articulated by his counsel is that the complainant had no option but to accept the possession on the terms contained in the letter dated 23.12.2011, since any protest by him or refusal to accept possession would have further delayed the receiving of the possession despite payment having been already made to the opposite parties except to the extent of Rs. 8,86,736/-. Therefore, in our view the aforesaid letter dated 23.12.2011 does not preclude the complainant from exercising his right to claim compensation for the deficiency on the part of the opposite parties in rendering services to him by delaying possession of the apartment, without any justification condonable under the agreement between the parties."*

43. The said view was later reaffirmed by the Hon'ble NCDRC in case titled as **Vivek Maheshwari Vs. Emaar MGF Land Ltd. (Consumer case no. 1039 of 2016 dated 26.04.2019**) wherein it was observed as under:

> *"7. It would thus be seen that the complainants while taking possession in terms of the above referred printed handover letter of the OP, can, at best, be said to have discharged the OP of its liabilities and obligations as enumerated in the agreement. However, this hand over letter, in my opinion, does not come in the way of the complainants seeking compensation from this Commission under section 14(1)(d) of the Consumer Protection Act for the delay in delivery of possession. The said delay amounting to a deficiency in the services offered by the OP to the complainants. The right to seek compensation for the deficiency in the service was never given up by the complainants. Moreover, the Consumer Complaint was also pending before this Commission at the time the unit was handed over to the complainants. Therefore, the complainants, in my view, cannot be said to have relinquished their legal right to claim compensation from the OP merely because the basis of the unit has been taken by them in terms of printed hand over letter and the Sale Deed has also been got executed by them in their favour."*

44. It is observed by the authority that the respondent had failed to show a single incident wherein the indemnity-cum-undertaking has been executed by the complainant in a free atmosphere. On the contrary, in the lead complaint **Varun Gupta Vs. Emaar MGF Land Ltd. (4031/2019)**, the complainant had deposited the amount under protest which clearly shows that the said indemnity-cum-undertaking has been executed under a distress atmosphere where the complainant in order to take possession of the unit has executed the said indemnity-cum-undertaking. Therefore, in light of the aforesaid discussion and judgements, the authority is of the view that the aforesaid unit handover letter or execution of indemnity-cum-undertaking does not preclude the complainant-allottee from exercising his right to claim delay possession charges as per the provisions of the Act.

A.II Whether the execution of the conveyance deed extinguishes the right of the allottee to claim delay possession charges?

45. Time and again during the hearing of complaint in question, it has been contended by the counsel for the promoter that on execution of the conveyance deed, the relationship between the allottee and the promoter stands concluded, therefore, the allottee is estopped from claiming any interest or refund in the facts and circumstances of the case.

46. It is important to look at the definition of the term 'deed' itself in order to understand the extent of the relationship between an allottee and promoter. A deed is a written document or an instrument that is sealed, signed and delivered by all the parties to the contract (buyer and seller). It is a contractual document that includes legally valid terms and is enforceable in a court of law. It is mandatory that a deed should be in writing and both the parties involved must sign the document. Thus, a conveyance deed is essentially one wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or movable. In this case, the assets under consideration are immovable property. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration (usually monetary). Therefore, a 'conveyance deed' or 'sale deed' implies that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer.

47. From the above, it is clear that on execution of a sale/ conveyance deed, only the title and interest in the said immovable property (herein the allotted unit) is transferred. However, the conveyance deed does not mark an end to the liabilities of a promoter since various sections of the Act provide for continuing liability and obligations of a promoter who may not under the garb of such contentions be able to avoid its responsibility. The relevant sections are reproduced hereunder:

"11. Functions and duties of promoter.

(1) xxx

(2) xxx

(3) xxx

(4) The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.

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

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;

(c) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees;

(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;

(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:

Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of

allottees having booked their plot or apartment or building, as the case may be, in the project;

(f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;

(g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project):

Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person;

(h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be;"

*"**14. Adherence to sanctioned plans and project specifications by the promoter-***

(1) XXX
(2) XXX

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act." (emphasis supplied)

In respect of the above, the authority observes that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the said unit whereby the right, title and interest has been transferred in the name of the allottee on execution of the conveyance deed.

48. This view is affirmed by the Hon'ble NCDRC in case titled as **Vivek Maheshwari Vs. Emaar MGF Land Ltd. (supra)** wherein it was observed as under:

"7. It would thus be seen that the complainants while taking possession in terms of the above referred printed handover letter of the OP, can, at best, be said to have discharged the OP of its liabilities and obligations as enumerated in the agreement. However, this hand over letter, in my opinion, does not come in the way of the complainants seeking compensation from this Commission under section 14(1)(d) of the Consumer Protection Act for the delay in delivery of possession. The said delay amounting to a deficiency in the services offered by the OP to the complainants. The right to seek compensation for the deficiency in the service was never given up by the complainants. Moreover, the Consumer Complaint was also pending before this Commission at the time the unit was handed over to the complainants. Therefore, the complainants, in my view, cannot be said to have relinquished their legal right to claim compensation from the OP merely because the basis of the unit has been taken by them in terms of printed hand over letter and the Sale Deed has also been got executed by them in their favour.

8. ..... The relationship of consumer and service provider does not come to an end on execution of the Sale Deed in favour of the complainants....." (emphasis supplied)

49. From above, it can be said that the taking over the possession and thereafter execution of the conveyance deed can best be termed as respondent having discharged its liabilities as per the builder buyer's agreement and upon taking possession, and/or executing conveyance deed, the complainant never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act. Also, the same view has been upheld by the Hon'ble Supreme Court in case titled as **Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now Known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020,** the relevant paras are reproduced herein below:

> *"34 The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into a pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their right to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their title to the flats for which they had paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who seeks to espouse a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position which the NCDRC has espoused. We cannot countenance that view.*
>
> *35. The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeking a Deed of*

Conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."

50. It is observed that perusal of all the agreements/documents signed by the allottees reveals stark incongruities between the remedies available to both the parties. In most of the cases, these documents and contracts are ex-facie one sided, unfair and unreasonable whether the plea has been taken by the allottee while filing the complaint that the documents were signed under duress or not. The right of the allottee to claim delayed possession charges shall not be abrogated simply for the said reason.

51. The allottees have invested their hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing a conveyance deed which is the statutory right of the allottee. Also, the obligation of the developer – promoter does not end with the execution of a conveyance deed. The essence and purpose of the Act was to curb the menace created by the developer/promoter and safeguard the interests of the allottees by protecting them from being exploited by the dominant position of the developer which he thrusts on the innocent allottees. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in the **Wg. Cdr. Arifur Rahman (supra)**, this authority holds that even after execution of the conveyance deed, the complainant allottee cannot be precluded from his right to seek delay possession charges from the respondent-promoter.

A.III Whether the subsequent allottee who had executed an indemnity-cum-undertaking with waiver clause is entitled to claim delay possession charges?

52. The authority has perused the written arguments submitted by the respondent counsel as well as have heard the arguments of the counsel for

the complaint at length. With regard to the above contentions raised by the promoter/developer, it is worthwhile to examine following four sub issues:

(i) Whether subsequent allottee is also an allottee as per provisions of the Act?

(ii) Whether the subsequent allottee is entitled to delayed possession charges w.e.f. due date of handing over possession or w.e.f. the date of nomination letter/endorsement (i.e. date on which he became allottee)?

(iii) Whether delay possession charges are in the nature of statutory legal obligation of the promoter other than compensation?

(iv) Whether indemnity-cum-undertaking with waiver clause at the time of transfer of unit is arbitrary and whether statutory rights can be waived of by such one sided and unreasonable undertaking?

(i) Whether subsequent allottee is also an allottee as per provisions of the Act?

53. The term "allottee" as defined in the Act also includes and means the subsequent allottee, hence is entitled to the same relief as that of the original allottee. The definition of the allottee as provided in the Act is reproduced as under:

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

Accordingly, following are allottees as per this definition:

(a) Original allottee: A person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter.

(b) Allottees after subsequent transfer from the original allottee: A person who acquires the said allotment through sale, transfer or otherwise. However, allottee would not be a person to whom any plot, apartment or building is given on rent.

From a bare perusal of the definition, it is clear that the transferee of an apartment, plot or building who acquires it by any mode is an allottee. This may include (i) allotment; (ii) sale; (iii) transfer; (iv) as consideration of services; (v) by exchange of development rights; or (vi) by any other similar means. It can be safely reached to the only logical conclusion that no difference has been made between the original allottee and the subsequent allottee and once the unit, plot, apartment or building, as the case may be, has been re-allotted in the name of the subsequent purchaser by the promoter, the subsequent allottee enters into the shoes of the original allottee for all intents and purposes and he shall be bound by all the terms and conditions contained in the builder buyer's agreement including the rights and liabilities of the original allottee. Thus, as soon as the unit is re-allotted in his name, he will become the allottee and nomenclature "subsequent allottee" shall only remain for identification for use by the promoter. Therefore, the authority does not draw any difference between the allottee and subsequent allottee per se.

54. Reliance is placed on the judgment dated 26.11.2019 passed in consumer complaint no. 3775 of 2017 titled as **Rajnish Bhardwaj Vs. M/s CHD Developers Ltd.** by NCDRC wherein it was held as under:

> *"15. So far as the issue raised by the Opposite Party that the Complainants are not the original allottees of the flat and resale of flat does not*

come within the purview of this Act, is concerned, in our view, having issued the Re-allotment letters on transfer of the allotted Unit and endorsing the Apartment Buyers Agreement in favour of the Complainants, this plea does not hold any water……."

55. The authority concurs with the Hon'ble NCDRC's decision dated 26.11.2019 in **Rajnish Bhardwaj vs. M/s CHD Developers Ltd.** (supra) that it is irrespective of the status of the allottee whether it is original or subsequent, an amount has been paid towards the consideration for a unit and the endorsement by the developer on the transfer documents clearly implies his acceptance of the complainant as an allottee.

56. Therefore, taking the above facts into account, the authority is of the view that the term subsequent allottee has been used synonymously with the term allottee in the Act. The subsequent allottee at the time of buying a unit/plot takes on the rights as well as obligations of the original allottee vis-a-viz the same terms and conditions of the builder buyer's agreement entered into by the original allottee. Moreover, the amount if any paid by the subsequent or original allottee is adjusted against the unit in question and not against any individual. Furthermore, the name of the subsequent allottee has been endorsed on the same builder buyer's agreement which was executed between the original allottee and the promoter. Therefore, the rights and obligation of the subsequent allottee and the promoter will also be governed by the said builder buyer's agreement.

(ii) Whether the subsequent allottee is entitled to delayed possession charges w.e.f. due date of handing over possession or w.e.f. the date of nomination letter (i.e. date on which he became allottee)?

57. The respondent/promoter contended that the subsequent allottee shall not be entitled to any compensation/delayed possession charges since at the time of the execution of transfer documents/agreement for sale, he was well

aware of the due date of possession and has knowingly waived off his right to claim any compensation for delay in handing over possession or any rebate under a scheme or otherwise or any other discount. The respondent/ promoter had spoken about the disentitlement of compensation/delayed possession charges to the subsequent allottee who had clear knowledge of the fact w.r.t. the due date of possession and whether the project was already delayed. But despite that he entered into the agreement for sell and/or indemnity-cum-undertaking knowingly waiving off his right of compensation. In support of his contention, the respondent/promoter has placed reliance on the case titled as **HUDA Vs. Raje Ram (supra)** wherein it has been held by the Apex Court that the subsequent allottees cannot be treated at par with the original allottees. Further, the respondent placed reliance on the judgment of **Wg. Cdr. Arifur Rahman Khan (supra)** wherein the Apex Court had rejected the contention of the appellants that the subsequent transferees can step into the shoes of the original buyer for the purpose of seeking compensation for delay in handing over possession.

58. The authority finds it a fit case to place reliance on the judgement of the Hon'ble Supreme Court in ***Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, II (2019) CPJ 29 (SC),*** wherein the Hon'ble Apex Court has clearly laid down that a flat purchaser cannot be made to wait indefinitely for seeking possession. Furthermore, the above referred cases cited by the respondent are not relied upon by the authority as in the recent case titled as ***M/s Laureate Buildwell Pvt. Ltd. Vs. Charanjeet Singh, civil appeal no. 7042 of 2019 dated 22.07.2021***, the Apex Court has held that relief of interest on refund, enunciated by the decision in Raje Ram (supra) which was applied in Wg. Commander Arifur Rehman (supra) cannot be considered good law and has held that the subsequent purchaser/respondent had stepped into the shoes of the original allottee, and intimated Laureate

(builder) about this fact in April 2016, the interest of justice demand that the interest at least from that date should be granted, in favour of the respondent. The relevant paras of the said judgment are being reproduced as follows:

> *"31. In view of these considerations, this court is of the opinion that the per se bar to the relief of interest on refund, enunciated by the decision in Raje Ram (supra) which was applied in Wg. Commander Arifur Rehman (supra) cannot be considered good law. The nature and extent of relief, to which a subsequent purchaser can be entitled to, would be fact dependent. However, it cannot be said that a subsequent purchaser who steps into the shoes of an original allottee of a housing project in which the builder has not honoured its commitment to deliver the flat within a stipulated time, cannot expect any – even reasonable time, for the performance of the builder's obligation. Such a conclusion would be arbitrary, given that there may be a large number- possibly thousands of flat buyers, waiting for their promised flats or residences; they surely would be entitled to all reliefs under the Act. In such case, a purchaser who no doubt enters the picture later surely belongs to the same class. Further, the purchaser agrees to buy the flat with a reasonable expectation that delivery of possession would be in accordance within the bounds of the delayed timeline that he has knowledge of, at the time of purchase of the flat. Therefore, in the event the purchaser claims refund, on an assessment that he too can (like the original allottee) no longer wait, and face intolerable burdens, the equities would have to be moulded. It would no doubt be fair to assume that the purchaser had knowledge of the delay. However, to attribute knowledge that such delay would continue indefinitely, based on an a priori assumption, would not be justified. The equities, in the opinion of this court, can properly be moulded by directing refund of the principal amounts, with interest @ 9% per annum from the date the builder acquired knowledge of the transfer, or acknowledged it.*
>
> *32. In the present case, there is material on the record suggestive of the circumstance that even as on the date of presentation of the present appeal, the occupancy certificate was not forthcoming. In these circumstances, given that the purchaser/respondent had stepped into the shoes of the original allottee, and intimated Laureate about this fact in April 2016, the interests of justice demand that interest at least from that date should be granted, in favour of the respondent. The directions of the NCDRC are accordingly modified in the above terms." ...(Emphasis supplied)*

59. Therefore, keeping in view the aforesaid principles of law and arguments advanced by both the parties, the authority is of the view that four bifurcations can be made in respect to entitlement for delay possession charges to the subsequent allottee which are as follows:

a. Where the subsequent allottee had stepped into the shoes of original allottee before the due date of handing over possession:

Even in the instant case (4031/2019), the complainant/subsequent allottee had been acknowledged as an allottee by the respondent vide nomination letter dated 24.05.2013. The authority has perused the nomination letter where the promoter has confirmed the transfer of allotment in favour of subsequent allottee, Mr. Varun Gupta (complainant) and the instalments paid by the original allottees, Mr. Sandeep Chopra and Mrs. Anupama Chopra, are adjusted in the name of the subsequent allottee and the next instalments are payable/due as per the original allotment letter. Similarly, we have also perused the builder buyer's agreement which was originally entered into between the original allottees, Mr. Sandeep Chopra and Mrs. Anupama Chopra, and the promoter, M/s Emaar MGF Land Limited. The same builder buyer's agreement has been endorsed in favour of Mr. Varun Gupta, subsequent allottee. All the terms of builder buyer's agreement remain the same so it is quite clear that the subsequent allottee has stepped into the shoes of the original allottee.

Though the promised date of delivery was 08.05.2015 but the construction of the tower in question was not completed by the said date and it was offered by the respondent only on 08.05.2019 i.e. after delay of 3 years 8 months 29 days. If these facts are taken into consideration, the complainant/subsequent allottee had agreed to buy the unit in question with the expectation that the respondent/promoter would abide by the terms of the builder buyer's agreement and would deliver the subject unit by the said due date. At this juncture, the subsequent purchaser cannot be expected to have knowledge, by any stretch of imagination, that the project will be delayed, and the possession would not be handed over within the stipulated period. So, the authority is of the view that in cases where the subsequent allottee had

stepped into the shoes of original allottee before the due date of handing over possession, the delayed possession charges shall be granted w.e.f. due date of handing over possession.

b. Where subsequent allottee had stepped into the shoes of original allottee after the due date of handing over possession but before the coming into force of the Act:

In cases where the complainant/subsequent allottee had purchased the unit after expiry of the due date of handing over possession, the authority is of the view that the subsequent allottee cannot be expected to wait for any uncertain length of time to take possession. Even such allottees are waiting for their promised flats and surely, they would be entitled to all the reliefs under this Act. It would no doubt be fair to assume that the subsequent allottee had knowledge of delay, however, to attribute knowledge that such delay would continue indefinitely, based on priori assumption, would not be justified. Therefore, in light of ***Laureate Buildwell judgment (supra),*** the authority holds that in cases where subsequent allottee had stepped into the shoes of original allottee after the expiry of due date of handing over possession and before the coming into force of the Act, the subsequent allottee shall be entitled to delayed possession charges w.e.f. the date of entering into the shoes of original allottee i.e. nomination letter or date of endorsement on the builder buyer's agreement, whichever is earlier.

c. Where the subsequent allottee has stepped into the shoes of the original allottee after coming into force of the Act and before the registration of the project in question:

There may be a situation where an allottee transferred his unit in favour of a subsequent allottee after the Act came into force and where the project has not been registered by the respondent. By virtue of proviso to section 18(1),

the Act has created statutory right of delay possession charges in favour of the allottees. As delineated herein above, the term subsequent allottee has been used synonymously with the term allottee in the Act. Though when the Act came into force, many home buyers who were stuck in delayed projects were uncertain as to when the builder will handover possession of the subject unit and being distressed by the said situation, they were forced to sell their unit. Now, the question arises is that whether the transfer of unit in favour of subsequent allottee creates a bar for the later to claim delay possession charges. The answer is in the negative. In the case in hand also, though the builder buyer's agreement between the parties was executed prior to the Act coming into force but the endorsement was made in favour of the subsequent allottee when the Act became applicable. The subsequent allottee at the time of buying a unit/plot takes on the rights as well as obligations of the original allottee vis-a-viz the same terms and conditions of the builder buyer's agreement entered into by the original allottee. Although at the time of endorsement of his name in the builder buyer's agreement, the due date of possession had already lapsed but the subsequent allottee as well as the promoter had the knowledge of the statutory right of delay possession charges being accrued in his favour after coming into force of the Act. Thus, the concept of quasi-retroactivity will make the provisions of the Act and the rules applicable to the subsequent allottee. Moreover, the authority cannot ignore the settled principle of law that the waiver of statutory rights is subject to the public policy and interest vested in the right sought to be waived as reiterated by Hon'ble Supreme Court of India in ***Waman Shriniwas Kini Vs. Ratilal Bhagwandas and Co.*** (AIR 1959 SC 689). In the present situation, there is nothing which can prove that such right was waived off by the subsequent allottees for either of the two reasons quoted above. In simple words, neither they have got any private benefit by waiving of their right nor

does it involve any element of public interest. Therefore, the authority is of the view that in cases where the subsequent allottee had stepped into the shoes of original allottee after coming into force of the Act and before the registration of the project in question, the delayed possession charges shall be granted w.e.f. due date of handing over possession as per the builder buyer's agreement.

d. Where the subsequent allottee has stepped into the shoes of the original allottee after coming into force of the Act and after the registration of the project in question:

There may be a situation where an allottee transferred his unit in favour of a subsequent allottee after the Act came into force and where the project has been registered under the Act by the respondent. It was argued by the promoter that in cases where the subsequent allottee came into picture after the registration of the project under the provisions of the Act with the authority, then the date of completion of the project and handing over the possession shall be the date declared by the promoter under section 4(2)(l)(C) of the Act. The counsel of the respondent further argued that the while purchasing the unit, it is presumed that the allottee very well knew that the project would be completed by that specific declared date, therefore, the delayed possession charges shall not be allowed.

The authority is of the view that the time period for handing over the possession is committed by the builder as per the relevant clause of builder buyer's agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the builder buyer's agreement. The new timeline as indicated by the promoter in the

declaration under section 4(2)(l)(C) is now the new timeline as indicated by him for the completion of the project. Although, penal proceedings cannot be initiated against the builder for not meeting the committed due date of possession but now, if the promoter fails to complete the project in declared timeline, then he is liable for penal proceedings. The due date for possession as per the agreement remains unchanged and the promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the builder buyer's agreement and is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. The same issue has been dealt by Hon'ble Bombay High Court in case titled as ***Neelkamal Realtors Suburban Pvt. Ltd.*** (supra) wherein it was held that the RERA Act does not contemplate rewriting of contract between the allottee and the promoter. The relevant para of the judgement is reproduced below:

> *"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter…"*

Moreover, as delineated hereinabove, the Act does not distinguish between the original allottee and the subsequent allottee. The Act, by virtue of section 18, has created statutory right of delay possession charges in favour of the allottees. No doubt, the subsequent allottee knew the new date of completion as declared by the promoter but that does not abrogate the statutory rights of the subsequent allottee. Therefore, the authority is of the view that in cases where the subsequent allottee had stepped into the shoes of original allottee

after coming into force of the Act and after the registration of the project in question, the delayed possession charges shall be granted w.e.f. due date of handing over possession as per the builder buyer's agreement.

(iii) Whether delay possession charges are in the nature of statutory legal obligation of the promoter other than compensation?

60. It is important to understand that the Act has clearly provided interest and compensation as separate entitlement/right which the allottee can claim. An allottee is entitled to claim compensation under sections 12, 14, 18 and section 19, to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The interest is payable to the allottee by the promoter in case where there is refund or payment of delay possession charges i.e., interest at the prescribed rate for every month of delay. The interest to be paid to the allottee is fixed and as prescribed in the rules which an allottee is legally entitled to get and the promoter is obligated to pay. The compensation is to be adjudged by the adjudicating officer and may be expressed either lumpsum or as interest on the deposited amount after adjudgment of compensation. This compensation expressed as interest needs to be distinguished with the interest at the prescribed rate payable by the promoter to the allottee in case of delay in handing over of possession or interest at the prescribed rate payable by the allottee to the promoter in case of default in due payments. Here, the interest is pre-determined, and no adjudication is involved. Accordingly, the distinction has to be made between the interest payable at the prescribed rate under section 18 or 19 and adjudgment of compensation under sections 12, 14, 18 and section 19. The compensation shall mean an amount paid to the flat purchasers who have suffered agony and harassment, as a result of

the default of the developer including but not limited to delay in handing over of the possession.

61. In **Ghaziabad Development Authority Vs. Balbir Singh [(2004) 5 SCC 65],** the division bench of Hon'ble Supreme Court, while explaining the ambit of the jurisdiction of the adjudicatory fora under the Consumer Protection Act 1986 observed that:

> *"6. ....The word compensation is of a very wide connotation. It may constitute actual loss or expected loss and may extend to compensation for physical, mental or even emotional suffering, insult or injury or loss. The provisions of the Consumer Protection Act enable a consumer to claim and empower the Commission to redress any injustice done."*

62. The respondent/promoter contended that the subsequent allottees are not entitled to compensation/delayed possession charges as they had clear knowledge of the due date of possession and about the status of the project being delayed but despite that they entered into the agreement for sale and/or indemnity-cum-undertaking knowingly waiving off their right of compensation. In support of this contention, the respondent/promoter has placed reliance on the case titled as **HUDA Vs. Raje Ram (supra)** wherein it has been held by the Hon'ble Apex Court that subsequent allottees cannot be treated at par with the original allottees. The authority in this regard observes that the said judgment does not apply in the present case. In the said case, the plots were allotted by the HUDA to the three original allottee on 12/12/86, 08/04/86 and 21/03/86 respectively. However, the physical possession of these plots was not given to them, and they sold their respective plots to the three respondents (re-allottees) and the re-allotment was made in their names by the Appellant HUDA in the years 1994,1997 and 1996 respectively. The three respondents filed consumer complaints before the consumer forum for compensation on account of delayed possession after receiving the offer of possession letters for the plots. They won the legal

battle before the District Consumer Forum and again before the State Commission. The appellant HUDA took the matter before the Hon'ble NCDRC but to no effect. The matter ultimately reached the Hon'ble Supreme Court. The Hon'ble Supreme Court allowed the appeal filed by HUDA by observing that the re-allottees were aware about the delay (either informing the delay itself or delay in delivering the allotted plots on account of encroachment etc.) and in spite of it, they took the re-allotment. It was held that their cases could not be compared to the cases of original allottees who were made to wait for a decade or more for delivery and thus they were put to mental agony and harassment. It was observed that the re-allottees were aware that the time for performance was not stipulated as the essence of the contract and the original allottees has accepted the delay. Hence, the re-allottees were not held entitled to any interest on account of delay. Thus, it is abundantly clear that this case is altogether a different case and had been decided on the basis of its own peculiar facts and circumstances.

63. For the promoter to add some weight to its arguments, they placed reliance on the judgment of **Wg. Cdr. Arifur Rahman Khan (supra)** wherein the Hon'ble Apex Court had rejected the contention of the appellants that the subsequent transferees can step into the shoes of the original buyer for the purpose of seeking compensation for delay in handing over possession. Further, it was held that the subsequent transferees in spite of being aware of the delay in delivery of possession of the flats, had purchased the apartment from the original buyers and it cannot be said that the subsequent transferees suffered any agony/harassment comparable to that of the first buyer.

64. Here, the authority observes that the term compensation used by the Hon'ble Apex Court as well as the NCDRC refers to the monetary recompense for the hardship/ losses/ harassment/ mental agony, if any, suffered by the allottee

due to such delay in delivery of possession which the subsequent allottee shall not be entitled to. The authority observes that the case was decided under the Consumer Protection Act, 1986 where the Consumer Fora is vested with the powers to grant compensation for deficiency in service. In that case, there was no specific and separate provision for delay possession charges in the matters of real estate. Here, in the Act, the Parliament has, in its wisdom, used both the terms i.e., compensation and also delay possession charges. Therefore, the judgment rendered under the Consumer Protection Act, 1986 awarding compensation for deficiency in service does not apply to the case under the Act, where the allottee has demanded delay possession charges on account of delayed delivery of possession of the unit beyond the due date of delivery of possession and **NOT** compensation. Moreover, the aforesaid two judgements referred by the respondent i.e. ***Raje Ram (supra)*** which was applied in ***Wg. Commander Arifur Rehman (supra)*** cannot be relied upon as the Hon'ble Apex Court had taken a different view in ***Laureate Buildwell judgment (supra)***.

65. In addition, the quantum of compensation to be awarded shall be subject to the extent of loss and injury suffered by the negligence of the opposite party and is not a definitive term. It may be in the form of interest or punitive in nature. However, the Act clearly differentiates between the interest payable for delayed possession charges and compensation. Section 18 of the Act provides for two separate remedies which are as under:

i. In the event, the allottee wishes to withdraw from the project, he/she shall be entitled without prejudice to any other remedy refund of the amount paid along with interest at such rate as may be prescribed in this behalf **including compensation** in the manner as provided under this Act;

ii. In the event, the allottee does not intend to withdraw from the project, he/she shall be paid by the promoter **interest for every month of delay till the handing over of the possession, at such rate as may be prescribed**.

66. The rate of interest in both the scenarios is fixed as per rule 15 of the rules which shall be the State Bank of India's highest marginal cost of lending rate +2%. However, for adjudging compensation or interest under sections 12,14,18 and section 19, the adjudicating officer has to take into account the various factors as provided under section 72 of the Act.

(iv) Whether indemnity-cum-undertaking with waiver clause at the time of transfer of unit is arbitrary and whether statutory rights can be waived of by such one sided and unreasonable undertaking?

67. The authority further is unable to gather any reason or has not been exposed to any reasonable justification as to why a need arose for the complainant to sign any such affidavit or indemnity-cum-undertaking and as to why the complainant had agreed to surrender his legal rights which were available or had accrued in favour of the original allottees. In the instant matter in dispute, it is not the case of the respondent that the re-allotment of the unit was made in the name of the subsequent purchaser after the expiry of the due date of delivery of possession of the unit. Thus, so far as the due date of delivery of possession had not come yet and before that the unit had been re-allotted in the name of the subsequent allottee, the subsequent-allottee will be bound by all the terms and conditions of the builder buyer's agreement including the rights and liabilities. Thus, no sane person would ever execute such an affidavit or indemnity-cum-undertaking unless and until some arduous and/or compelling conditions are put before him with a condition that unless and until, these arduous and/or compelling conditions are performed by him, he will not be given any relief and he is thus left with no other option but to

obey these conditions. Exactly same situation has been demonstratively happened here, when the subsequent-allottee had been asked to give the affidavit or indemnity-cum-undertaking in question before transferring the unit in the name of the subsequent allottee otherwise such transfer may not be allowed by the promoter. Such an undertaking/ indemnity bond given by a person thereby giving up his valuable rights must be shown to have been executed in a free atmosphere and should not give rise to any suspicion. No reliance can be placed on any such affidavit/ indemnity-cum-undertaking and the same is liable to be discarded and ignored in its totality. Therefore, this authority does not place reliance on the said affidavit/indemnity cum undertaking. To fortify this view, we place reliance on the order dated 03.01.2020 passed by hon'ble NCDRC in case titled as **Capital Greens Flat Buyer Association and Ors. Vs. DLF Universal Ltd., Consumer case no. 351 of 2015**, wherein it was held that the execution of indemnity-cum-undertaking would defeat the provisions of section 23 and 28 of the Indian Contract Act, 1872 and therefore, would be against public policy, besides being an unfair trade practice. The said judgment of NCDRC was also upheld by the Hon'ble Supreme Court vide its judgement dated 14.12.2020 passed in civil appeal nos. 3864-3889 of 2020 against the order of NCDRC.

68. Hon'ble Supreme Court and various High Courts in plethora of judgments have held that the terms of a contract shall not be binding if it is shown that the same were one sided and unfair and the person signing did not have any other option but to sign the same. Reference can also be placed on the directions rendered by the Hon'ble Apex Court in civil appeal no. 12238 of 2018 titled as **Pioneer Urban Land and Infrastructure Limited Vs. Govindan Raghavan** (decided on 02.04.2019) as well as by the Hon'ble Bombay High Court in the **Neelkamal Realtors Suburban Pvt. Ltd.** (supra).

A similar view has also been taken by the Apex court in **IREO Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors**. (supra) as under:

> *".....that the incorporation of such one-sided and unreasonable clauses in the Apartment Buyer's Agreement constitutes an unfair trade practice under Section 2(1)(r) of the Consumer Protection Act. Even under the 1986 Act, the powers of the consumer fora were in no manner constrained to declare a contractual term as unfair or one-sided as an incident of the power to discontinue unfair or restrictive trade practices. An "unfair contract" has been defined under the 2019 Act, and powers have been conferred on the State Consumer Fora and the National Commission to declare contractual terms which are unfair, as null and void. This is a statutory recognition of a power which was implicit under the 1986 Act.*
>
> *In view of the above, we hold that the Developer cannot compel the apartment buyers to be bound by the one-sided contractual terms contained in the Apartment Buyer's Agreement."*

69. The same analogy can easily be applied in the case of execution of an affidavit or indemnity-cum-undertaking which got executed from the subsequent-allottee before getting the unit transferred in his name in the record of the promoter as an allottee in place of the original allottee.

70. The authority may deal with this point from yet another aspect. By executing an affidavit/undertaking, the subsequent-allottee cuts his hands from claiming delay possession charges in case there occurs any delay in giving possession of the unit to him beyond the stipulated time or the due date of possession. But, the question which arises before the authority is that what does the allottee get in return from the promoter by giving such a mischievous and unprecedented undertaking. However, the answer would be "nothing". If it is so, then why did the complainant executed such an affidavit/undertaking is beyond the comprehension and understanding of this authority.

71. The authority holds that irrespective of the execution of the affidavit/undertaking by the subsequent allottee/re-allottee at the time of

endorsement (transfer) of his name as an allottee in place of the original allottee in the record of the promoter does not disentitle him from claiming the delay possession charges in case there occurs any delay in delivering the possession of the unit beyond the due date of delivery of possession as promised even after executing an indemnity-cum-undertaking.

Issues pertaining to various charges levied by the respondent:

72. In some of the complaints, the allottees have disputed various charges like PLC; holding charges; VAT & GST demanded by the builder; increase in super area; electricity, water and sewerage charges; bulk supply of electricity; power backup; maintenance charges; sale deed registration and administration charges. The authority shall now discuss all the issues pertaining to various charges levied by the promoter at the time of handing over of the possession and in terms of the agreement signed between the parties.

73. Complaint wise details of the issues regarding various charges levied by the respondent and objected by the complainants are given in the table below:

Project: Palm Gardens

S.no. in cause list	DPC	HVAT and GST	PLC	IFMS	Common area car parking	Super area	Holding charges & interest on delayed payment	AMC	Admn. Charges /reg. charges	FD on a/c of HVAT	EDC and IDC
3989/ 2019	✓	✓	✓	✓				✓	✓		
491/ 2019	✓	✓			✓						
6053/ 2019	✓		✓				✓				
31/ 2020 OLD-3830/ 2019	×		✓			✓					
5991/ 2019	×		✓			✓					

6709/ 2019	×		✓			✓	✓	✓			
4409/ 2020	✓								✓	✓	

Project: Emerald Floors Premier

S.no. in cause list	DPC	HVAT and GST	PLC	IFMS	Common area car parking	Super area	Holding charges & interest on delayed payment	AMC	Admn. Charges/ reg. charges	FD on a/c of HVAT	EDC and IDC
2626/ 2019	✓	✓	✓								
1532/ 2018	✓	✓			✓						
157/ 2020	✓	✓						✓	✓		
2722/ 2020	✓		✓				✓				✓
2847/ 2020	✓						✓				
2880/ 2020	✓	✓			✓						
2849/ 2020	✓				✓						
10/ 2020	✓	✓	✓								
4731/ 2020	✓		✓				✓		✓		

Project: Marbella

S. No.	DPC	Club house charges	Return of excess amount collected from the complainant	Holding charges & interest on delayed payment	GST	Electricity connection to villa
5567/ 2019	✓	✓	✓			
670/ 2020	✓			✓	✓	✓

Project: The Palm Drive

S. No.	DPC	HVAT and GST	PLC	IFMS	Common area car parking	Inc. in Super area	Holding charges & interest on delayed payment	AMC	Admn. Charges/ reg. charges	FD on a/c of HVAT	EDC and IDC

3202/ 2019	✓					✓					✓
591/ 2019	✓	✓			✓	✓					
3956/ 2020	✓			✓							

Project: The Palm Terraces Select

S. No.	DPC	HVAT and GST	PLC	IFMS	Common area car parking	Super area	Holding charges & interest on delayed payment	AMC	Admn. Charges/ reg. charges	FD on a/c of HVAT	EDC and IDC
4495/ 2019	✓							✓	✓		
Note:	1. Water connection charges- Rs.4,242/- 2. Sewerage connection charges-Rs.2,097/- 3. Electrification charges-Rs.6,513/ 4. Electricity connection charges-Rs.68,589/- 5. Miscellaneous expenses-Rs.2,500/-										
5605/ 2019	✓						✓	✓			
5271/ 2019	✓	✓						✓			
687/ 2020	✓	✓						✓			

Project: Palm Hills

S. No.	DPC	HVAT and GST	PLC	IFMS	Common area car parking	Super area	Holding charges & interest on delayed payment	AMC	Admn. Charges /reg. charges	FD on a/c of HVAT	EDC and IDC
4941/ 2020	✓										
4317/ 2020	✓						✓				
Note:	To cancel the intimation of offer of possession dated 03.01.2020 being invalid and illegal and to issue fresh offer of possession adjusting the DPC.										

PART - B

B.I Whether the area mentioned as super area is actually being allotted to the allottee?

74. The issue in question has been raised in the following complaints:

S.No.	Complaint no.	Complaint title
9.	CR/31/2020 linked with 3830/2019	Sunjay Pathak and Radesh Pathak Vs. Emaar MGF Land Limited
10.	CR/5991/2019	Jaspal Singh Monga Vs. Emaar MGF Land Limited
11.	CR/6709/2019	Kapil Mehrotra Vs. Emaar MGF Land Limited
29	CR/3202/2019	Neel Kamal Jha and Bidya Nand Jha Vs. Emaar MGF Land Limited

75. For better insight in this issue, facts of complaint number 31 of 2020 titled as '**Sunjay Pathak and Radesh Pathak Vs. EMAAR MGF Land Ltd.**' are being considered. The complainants received a provisional allotment letter on 09.06.2011 from the respondent. That builder buyer's agreement was executed between the complainants and respondent on 24.07.2011. The complainants were allotted unit no. PGN-10-12A05, 12th floor, tower no. 10 measuring 1900 sq. ft. of super area in the project "Palm Gardens", Sector 83, Gurugram. The complainants submitted that the super area of said unit is found out to be less than as agreed upon i.e. 1900 sq. ft. On measurements at the time of survey/inspection, it was found to be 1847 sq. ft., which happens to be less by 53 sq. ft. The sale price of Rs.1,03,99,883/- payable by complainants to the respondent was agreed for a super area of 1900 sq. ft. The total consideration for the unit including basic sale price, PLC, EDC and IDC etc. is calculated on tentative super area of approximately 1900 sq. ft. Therefore, the respondent wrongly demanded and deposited an excess amount as part of sale price on account of 53 sq. ft. less of super area in the allotted unit. On the contrary, the respondent submitted that there is no

decrease in the area of the unit in question. The super area of the unit in question was tentative at the time of execution of the builder buyer's agreement. Moreover, the complainants were specifically notified by the respondent regarding the tentative nature of the super area of the unit in question. The complainants were expressly informed that the super area of the unit in question is liable to change till the completion of construction of the project.

76. It is correct that before coming into force of this Act, the unit was allotted and charged on the basis of the super area, but the question is whether the allotted unit has actually the super area as mentioned in the allotment letter or the builder buyer's agreement. Although, the promoter is claiming that the super area of the unit is 1900 sq. ft. but allottee has a right to know whether the super area actually allotted to him is 1900 sq. ft. The promoter is duty bound to give him details of the super area component wise so that there remains no doubt that the allottee has been changed of the super area that has actually been allotted to him. Many times, a question has been raised that loading has been done arbitrarily without any basis. There are also allegations that the definition of super area is so vague and confusing that it is impossible to allocate quantum of super area in respect of a particular component to be included in the overall super area of the unit.

77. It is worthwhile to examine the definition of super area in the agreement under consideration. The definition of the super area as given in the annexure 4 to the builder buyer's agreement and the same is reproduced below:

Annexure 4

"Super area for the purpose of calculating the Total Consideration in respect of the unit shall be the sum of apartment area of the unit and its pro-rata share of the common areas in the entire group housing complex/project. The allottee(s) shall however not be permitted to cover any portion of the open terraces.

The super area computation shall not include the following:

1. *Sites/areas/building of community facilities amenities like Nursery/Primary schools dwelling units for EWS sections.*
2. *Roof/top terrace above flats, boundary wall and garbage dumps.*
3. *Car parking open/covered parking area allotted to allottee(s) for exclusive use.*

It is further clarified that the super area mention in the agreement is tentative and for the purpose of computing total consideration in respect of said unit only. The allottee shall have undivided interest in the common areas taken into consideration for the purposes of calculation of the super area.

Apartment area shall include area encompassed within the walls of unit/s, all balconies, whether covered or uncovered in the unit/s and thickness of wall. However, in case there be a common wall only 50% of thickness of such wall shall be taken in consideration for calculating apartment area.

Tentative percentage of apartment area to super area of the unit is 84% approximately presently. Super area and the percentage of apartment area to super area may undergo changes till the completion of the building/complex and final super area shall be intimated upon completion of construction of the said building(s).”

78. The definition of the super area in various builder buyer’s agreements is more or less the same except builder buyer’s agreements in case of project Marbella (Villas) and commercial project Emerald Plaza. The definition of super area in both the project is same which has been reproduced below:

(i) The allottee(s) agrees for the purpose of calculating the basic sale price the super area shall mean and include the sum of carpet area of the said premises and the pro-rata share of common areas in the entire complex. Whereas the super area of the said office space shall mean and denote the covered area of the said unit inclusive of the entire area enclosed by its periphery walls including areas under walls, columns, half the area of walls common with other premises, cupboards, lofts, balconies, etc. which forms integra part of said office space and where in the common area shall mean all such parts/ areas in the said complex which the allottee(s) shall use by sharing with other allottee(s) including entrance canopy and lobby, atrium, corridors & passages, (both open and covered), common toilets, security/fire control room(s), if provided, lift/escalator lobbies on all floors, lift shifts, all electrical, plumbing and fires shafts on all floors

and rooms if any, staircases, mumties, refuge areas, lift machine rooms and overhead water tanks, etc. In addition, area provided in the basement to house services including but not limited to, electric substation, transformers, DG set rooms, underground water tanks, pump rooms, maintenance and service rooms, firefighting pumps and equipment, circulation area, etc., shall be counted towards common area. The decision of the company in this regard shall be final and binding on the allottee(s).

(ii) Notwithstanding the fact that a portion of the common area has been included for the purpose of calculating the super area of the said office space, this has been done on account of the structural design of the building without which there can be no support to the office space. It is reiterated and specified that it is only the inside space in the office space that has been agreed to be allotted and inclusion of common areas in computation does not create any interest therein in favour of allottee(s).

(iii) Super area of the office spaces provided with exclusive open terraces shall also include 50% area of such terrace. The office spaces allottee(s) shall however not be permitted to cover such terraces.

(iv) The super area computation shall not include the following:

1. *Roof top/terrace above office space, overhead tanks/underground tanks, pump rooms, boundary wall and garbage dumps.*
2. *Car parking area: covered parking area allotted to Allottee(s) for use, at basement level except in categories where 50% of such area is taken for super area calculation*

(v) It is further clarified that the super area mentioned in the agreement is tentative and for the purpose of computing the total sale consideration in respect of said office space only and the inclusion of common area within the said commercial complex/ building/ tower for the purpose of calculating super area does not give any right, title or interest in common areas by sharing with other occupants/allottee(s) in the said commercial complex/ building. The total sale consideration payable shall be recalculated upon confirmation by the company of the final super area of the said office space and any increase or reduction in the super area of the said office space shall be payable o refundable, without any interest, at the same rate per square meter as agreed between the parties. If there shall be an increase in super area, the allottee(s) agrees and undertakes to pay for the increased super area immediately on demand by the company and in the event there shall be a reduction in the super area, then the refundable amount due to the allottee(s)

shall be adjusted by the company from the final instalment as set forth in the schedule of payments appended in Annexure III.

(vi) The tentative percentage of carpet area of the office space to super area of office space is presently 65% to 35% approximately. Super area and the percentage of office space area to super area may undergo changes due to any change in the license condition granted by DTCP, any change in building sanction plan, BIS codes or NBCC etc. till the completion of the building/commercial complex and final super area shall be intimated upon completion of construction of the said commercial complex/building(s).

79. According to the definition of super area, it comprises of two elements- sum of apartment area of the unit and its pro-rata shares of the common areas in the entire group housing complex. The apartment area has been defined in clause 4 of the builder buyer's agreement. Apartment area shall include area encompassed within the walls of the unit/s, all balconies, whether covered or uncovered in the unit/s and thickness of wall. However, in case there be a common wall, only 50% of thickness of such wall shall be taken in consideration for calculating apartment area.

Tentative percentage of apartment area to super area of the unit is approximately 84% presently. Super area and the percentage of apartment area to super area may undergo changes till the completion of the building/complex and final super area shall be intimated upon completion of construction of the said building(s)."

80. The definition of "common areas" has been provided in the agreement as under:

"PART-A

Common Area shall mean all such parts/areas in the entire Building which the Allottee(s) shall use by sharing with other occupants of the Building/Group Housing Complex that include entrance lobby, driver's/common toilet, lift shafts, electrical shafts, fire shafts, plumbing shafts, common corridors and passages, staircase, mumties, service areas not limited to lift machine room, maintenance office, pump room, water tanks, fire room, ESS, transformer, AHU's, guard room, fan room, club/community centre etc.

PART-B

List of general commonly used areas and facilities within the Project for use of all Allottee(s) are excluded from the computation of Super Area of the said Unit:

1. *Lawns and play areas, including lighting and services etc.*
2. *Roads and driveways, including lighting and services etc.*
3. *Fire Hydrants and fire brigade inlet etc.*
4. *Car Parking Space*

PART-C

It is specifically made clear by the Company and agreed by the Allottee that this Agreement is limited and confined in its scope only to the said Unit, areas, amenities and facilities as described in Part A, Part B and Part C of this Annexure, the land underneath the said Building. It is understood and confirmed by the Allottee that all other land(s), areas, facilities and amenities outside the periphery/boundary of the said Project are specifically excluded from the scope of this Agreement and the Allottee agrees that he/she shall have no ownership rights, no rights of usage, no title, no interest in any form or manner whatsoever in such other lands, areas, facilities and amenities as these have been excluded from the scope of this Agreement and have not been taken in the computation of Super Area for calculating the Total Consideration and therefor the Allottee has not paid any money in respect of such other lands, areas, facilities and amenities. The Allottee agrees and confirms that the owner of such other lands, areas, facilities and amenities shall vest solely with the Company, its associate companies, its subsidiary companies and the Company shall have the absolute discretion and the right to decide on their usage, manner and method of disposal etc. a tentative list of such other lands, areas, facilities and amenities is given below which is merely illustrative and is not exhaustive in any manner.

1. Shops within the said building, if any.
2. *Dwelling units for Economically Weaker Sections and Service Personnel's units and buildings other than Unit/Building.*
3. *Areas for all kinds of schools and school buildings (including but not limited to nursery, primary and higher secondary schools).*
4. *Area for Dispensary and Dispensary building(s).*
5. *Areas for Crèches and Crèche building(s).*
6. *Areas for Religious building(s) and Religious building(s).*
7. *Areas for Health Centres and Health Centre building(s).*
8. *Areas for Police Posts and Police Post building(s).*
9. *Areas for Telephone Exchange, Telecommunication facilities, Post Office etc and building(s) thereof.*
10. *Areas for all commercial buildings and commercial buildings/premises.*
11. *Roads, parks for use of general public.*

12. All areas, buildings, premises, structures falling outside the periphery/boundary of the said portion of land"

Arguments made by the respondent

81. That from the contractual covenants reproduced hereinabove, it is comprehensively established that it had been conveyed transparently and fairly by the respondent to the prospective purchasers that the "super area" for the purpose of calculating the total consideration in respect of a unit shall be the sum of the area of the concerned unit and its pro rata share of the "common areas" in the entire project. Furthermore, the details of the areas to be included in the "common area" have been categorically stated in the builder buyer's agreement. The allottees' had accepted the consideration (calculated in the manner as aforesaid) specified in the builder buyer's agreement and have undertaken to pay the determined consideration as per the payment plan opted by them. The legality/validity of the builder buyer's agreement has not been challenged by the complainants. Moreover, the limitation for challenging the validity of the voluntarily and consciously executed builder buyer's agreements has expired long ago.

82. That the present proceedings are summary proceedings. Intricate questions of facts and law cannot be looked into or examined especially those which require leading of evidence. In any planned real estate project, there are various common areas which are provided to bring about regulated occupation and use/utilization of the project by the allottees. The area used/utilized for providing such common areas for instance atrium, lift well, escalator space etc., are distributed pro rata over all the apartments located in the project.

83. That the issue with regard to legitimacy of sale of super area instead of carpet area by the developer has been examined threadbare by several fora/tribunals at various times. It has been held that the terms and conditions

incorporated in the builder buyer's agreements are sacrosanct and the validity thereof with regard to calculation of super area cannot be questioned by the apartment purchaser. It has further been held by this Hon'ble authority that where the builder buyer's agreements have been executed prior to coming into force of the Act, the parties are bound to fulfil their contractual obligations and cannot question the covenants in light of the aforesaid statute. It has been held in such cases that the developer is well within its right to seek payment of charges prescribed under the builder buyer's agreement from the apartment purchaser. Therefore, calculation of sale consideration on the basis of super area is valid and legal and has relied on following citations: **Komal Jain Vs. SS Group Private Limited** (20.03.2019 - RERA Haryana): MANU/RR/0239/2019; **Deepika Jain and Ors. Vs. SS Group Pvt. Ltd.** (02.05.2019 - RERA Haryana): MANU/RR/0159/2019; **Rita Bansal Vs. SS Group Pvt. Ltd.** (02.05.2019 - RERA Haryana): MANU/RR/0198/2019; **Amba Aircon Pvt. Ltd. Vs. Sana Realtors Pvt. Ltd.** (14.03.2019 - RERA Haryana): MANU/RR/0289/2019; **Jessica Sherwal and Ors. Vs. EMAAR MGF Land Limited and Ors.** (14.12.2018 - RERA Haryana): MANU/RR/0127/2018; **Vandana Bhatnagar Vs. Sana Realtors Private Limited** (02.04.2019 - RERA Haryana): MANU/RR/0125/2019; **Meenakshi Anand and Ors. Vs. Orris Infrastructure Pvt. Limited** (08.02.2019 - RERA Haryana): MANU/RR/0383/2019.

View of the authority

84. Typically, the definition of common areas shall sometimes include all such features/ areas in the colony that the purchaser shall use by sharing with other occupants of the colony. How could be the features included in the common areas? There may be extraordinary architectural features in a project that may add to basic cost, but these cannot be separately accounted for. The definition of common areas is very vague and ambiguous. If one looks

at the components further provided for in the inclusive part of the definition, it will be unequivocally concluded that even the basic services have been included in the common areas which are otherwise part of the internal development works which always form part of the basic sale price. The promoter/respondent was asked to give component wise details of the common areas which are included in the super area.

85. The definition of super area under annexure 4 is also arbitrary, confusing, ambiguous, and mischievously drafted. No details of super area are given at the time the allottee signed the agreement or after approval of the building plans. From the case file and other relevant record, we have not been able to be informed about the calculation/ component wise details for the super area. There is a naughty practice in the real estate sector regarding "loading" of area. This is indiscriminately done without any basis. But in this particular case, tentative percentage of apartment area to super area of unit is 84% approximately which is a good practice, but unfortunately, it is not followed by most of the builders. The ratio is also reasonable in this case.

86. Furthermore, it is to be noted that it is the super area that is being charged/ sold by the builder on pro-rata basis. It is to be seen whether open areas, parks, community centres and architectural features can be included in the definition of super area and allowed to be sold. If in a project, there are better facilities, more open spaces, impressive architectural features, quality community centre, the cost component of these may be included in the basic sale consideration (rate per sq. ft.) but these cannot be the facilities which are chargeable and included in the super area. In any condition, the promoter must provide the details of the super area to each individual allottee.

87. This is an ongoing project, and the provisions of the Act are applicable to it. The allottees have a right to know as to how much the carpet area of the unit is and how much loading has been done on it along with components of super

area as per the builder buyer's agreement. Although, the agreements entered into prior to coming into force of the Act are treated as sacrosanct and the promoter is well within his right to charge on the basis of the super area but under this garb, allottees cannot be allowed to be cheated and they are to be informed as what is being charged from them in the name of super area. Accordingly, the respondent promoter is directed to make available the details of the super area.

88. Our attention was drawn by the counsel for the complainants towards the judgement of the Haryana Real Estate Regulatory Authority, Panchkula in complaint no. RERA-PKL 22/2019 ***Parmeet Singh Vs. M/s TDI Infrastructure Ltd.*** a bunch of complaints decided on 19.03.2019 and complaint no. RERA-PKL 607/2019 ***Vivek Kadyan Vs. M/s TDI Infrastructure Ltd. & Other,*** a bunch of complaints decided on 29.01.2019.

89. The authority has step by step perused the written submissions made by both the parties and therefore, this authority is of the view that:

(i) Sale on super area basis, in case of the agreements executed before coming into force of the Act, is lawful and the promoters are well within their legal rights to charge on the super area basis.

(ii) The definition of the super area provided in the builder buyer's agreements is to be examined on case to case basis. Wherever, it is arbitrary, ambiguous, confusing or misleading, reasonable interpretation of the definition of super area is to be done and super area is to be determined.

(iii) The promoter is duty bound to disclose details of the super area component wise, in a simple manner as could be understood by a common man, as per the definition of super area provided in the builder

buyer's agreement, ideally on its own but certainly when asked for/demanded by the allottee.

(iv) No component in the super area would be added if it is specifically prohibited to be charged under the Haryana Urban Areas (Development and Regulation) Areas Act, 1975 and the rules framed thereunder such as in the super area pro-rata share of community centre/club cannot be included as same is prohibited under the Act ibid. In this particular case, the community centre/club has been included in the super area.

(v) Where the promoters have included particular area in the super area then no separate charges can be levied by the promoter for that particular area. Similarly, if separate charges have been levied by the promoter for a particular area, then that cannot be included in the super area.

(vi) The principle of deciding components of the covered area to be included in the super area are detailed below:

(a) **Covered area:** The covered area of an apartment is determined after accounting for full width of the external walls provided they are not shared with any other apartment. If an external wall is shared with an adjoining apartment then only 50% of the width of such external wall shall be taken into account. The covered area of the apartment shall be determined accordingly.

(b) **Balcony plus projection areas:** The flat/unit if provided with usable open terrace(s) and balcony(ies), the area of such open terrace(s) and balcony(ies) shall also be included in the super area of the flat, however, the purchaser(s) shall not be entitled to cover such terrace(s) and balcony(ies) and shall use the same as open terrace(s) and balcony(ies) only and in no other manner

whatsoever. There is no confusion about including balcony and projection areas in the super area.

(c) **Shaft area:** The authority examined the sanctioned building plans of the apartments and found that there are two different types of plumbing shafts: (a) internal plumbing shafts enclosed from all the four sides; (b) a plumbing shaft which is enclosed on three sides and open on the fourth side. Detailed examination of these shafts revealed that in first case, internal plumbing shafts area may be included in the super area whereas in second case, each of the three walls are actually external walls of one or the other apartments. Since entire external wall of the apartments has been accounted for in the covered area of the apartment, now the same wall cannot be allowed to be charged in the form of plumbing shaft. The plumbing shaft in this case shall be considered an external open area. No additional construction, which has not been charged as covered area, has taken place in the shaft. Also, provision of services is a part of the agreement, therefore, the cost proposed to be charged on account of the shaft is not justified at all.

(d) **Circulation area:** The circulation area is comprised of corridors, lift-lobbies, entrance lobbies, staircase etc. It also includes lift areas. It is intended to facilitate horizontal and vertical movement within the apartment complex. This is the necessary feature of the housing complex. The complainants are duty bound to pay for it. The complainant, however, shall pay only for the total circulation area divided by the total number of apartments in the complex/tower. However, the promoter respondent shall disclose as what is the actual circulation area and if there is any extra charging, then the allottees may approach this authority.

(e) **Steel staircase area:** Since, this is a fire escape facility, for the residents, they have to pay for it and the same may be included in the super area. However, if the actual proportionate area of the staircase is less than what has been communicated by the promoter respondent, the complainants' shall retain their rights to approach this authority, in case they find any discrepancy in the calculation. This, however, is further subject to the condition that this fire escape facility has been provided in accordance with sanctioned plan.

(f) **Mumties/machine room/water tanks area:** Typically, a mumty is a shed made over the staircase leading to the top terrace. Machine room is a covering over the machines installed for the usage of the building, like the roof cast over the lift area and other similar facilities. Water tanks are usually kept open on the terrace area and sometime, a roof is constructed over them for protection from rain etc. The water tanks, machines, mumties etc. are a part of the basic services provided in an apartment/complex. When a person purchases an apartment, he presupposes provision of all basic services like drinking water, drainage, sewerage system, electricity supply, road, street light system etc. The cost of all such facilities is invariably a part of the overall cost of the apartments. Its cost is presumed to be included in the per square foot cost of the apartment. Another fact of this issue is that entire super area is being charged at the same rate as the covered area of the apartment. The covered area of the apartment includes flooring, RCC roof, painting of the walls, conduiting, windows etc. The cost per sq. ft. of the covered area containing all these facilities is entirely different from the cost per sq. ft. of mumty, machine rooms

or the water tanks area. Therefore, the cost per square foot of these facilities is much less than the cost per square foot of the covered area. The facilities like mumty, machine room & water tank areas can either be considered as a part of the services in the apartments therefore, not chargeable at all, or if there is a provision in the agreement for charging extra for these facilities, then the same can be charged at the rate of the actual cost incurred divided proportionately amongst all the apartments, and not at the rate per sq. ft. of the covered area. The agreement made between the parties in regard to these facilities is rather vague. The respondent should have precisely defined the area to be calculated under such facilities and also the rates chargeable for the same, since costing of these facilities has not been defined properly and unambiguously, they now have to be interpreted in a reasonable manner. This authority, therefore, determines that the actual cost incurred on these facilities shall be worked out and that actual cost shall be divided amongst all apartments, and that proportionate actual cost along with 15% margin shall be charged from each of the allottee and the complainants. The areas of such various facilities cannot be allowed to be charged at the same rate as the covered area of the apartment. Accordingly, on the basis of the above principle, the area of mumty, machine room, water tank shall be deducted from the super area charged by the respondent.

(g) **Stilt floor + Basement (BT) common area:** This area is at the ground level slightly raised and supported by thick columns, generally used as non-enclosed parking area. Thus, being a necessary feature of the housing complex, built for the convenience of the residents, the complainants shall pay for it. The complainant,

however, shall pay only for the total stilt floor + BT common area divided by the total number of apartments in the complex/tower, which is payable by the complainants. However, in case the complainant finds that the actual stilt floor + BT common area is less than what has been communicated, he may represent accordingly to the respondent or may approach this authority. If parking in the basement or stilt portion have been levied separately from the allottees by the promoter, then basement and stilt cannot be added in the super area.

(h) **STP, ESS, Guard room, Panel room, BW, etc. area:** Sewerage Treatment Plant (STP), Electric Sub Station (ESS), Guard Room, Panel Room and Boundary Wall (BW) are a part of the basic services provided in an apartment/ complex. When a person purchases an apartment, he presupposes provision of all basic services like drinking water, drainage, sewerage system, electricity supply, road and street light system etc. The cost of all such facilities is invariably a part of the overall cost of the apartments. Its cost is presumed to be included in the per square foot cost of the apartment. The facilities like STP, ESS, guard room, panel room, BW, etc. area can either be considered as a part of the services in the apartment therefore, not chargeable at all, or if there is a provision in the agreement for charging extra for these facilities, then the actual total cost incurred divided proportionately amongst all the apartments, and not at the rate per sq. ft. of the covered area. The agreement made between the parties in regard to these facilities is rather vague. The respondent should have precisely defined the area to be calculated for such facilities and also the rates chargeable for the same. Since costing of these

facilities has not been defined properly and they now have to be interpreted in a reasonable manner. This authority, therefore, determines that the actual cost incurred on these facilities shall be worked out and that the actual cost shall be divided amongst all apartments, and the proportionate actual cost along with 15% margin shall be charged from each of the allottee and complainants. The areas of such facilities cannot be allowed to be charged at the same rate as the carpet area of the apartment. Applying the above principles on the facts of each of the captioned complaint, the respondent shall demand payment for the super area.

90. In this context, the authority places reliance on the order passes by the Haryana Real Estate Appellate Tribunal in appeal no. 21 of 2019 titled as **M/s Pivotal Infrastructure Pvt. Ltd. Vs. Prakash Chand Arohi** dated 20.05.2020 wherein it has been held as under:

> *"……During the proceedings, the learned Authority has directed for the production of the 60 Appeal No.21 of 2019 building plan. The learned Authority after perusal of the building plan and hearing the parties observed as under in Para No.7 of the impugned order: -*
>
> *The Authority on appraisal of the building plan today produced by the respondent in pursuant to its previous order and after hearing the parties has however found that the respondent for the purpose of calculating increase in super area of complainant's apartment has divided the common area of the floor at which said apartment situates by the number of flats construed on that floor instead of calculating the increase in the super area on pro-rata basis by dividing the entire commonly useable area of the project with the number of total apartments existing therein. The criteria adopted by the respondent is apparently wrong because the common area on the floor at which complainant's flat situates will not be used by the complainant alone and it will rather be useable even by other allottees of the project. So, the entire common area of the project deserves to be proportionately divided by the total number of allottees in order to assess the increase in the super area of the complainant's flat. Accordingly, the respondent is directed to calculate the increase in this manner and supply its copy to the complainant so that he is assured that the increase in his*

super area has been calculated by dividing the overall common area of the project with the total number of apartments in the project. At this stage, the authority further observes that the respondent has added that area of water tanks installed on terrace and mumty built on staircase and machine rooms of lifts in calculating super area. The area occupied by common utility services cannot be considered a part of super area because the rest on a space which already has been counted towards common utility area. So, the respondent is directed to exclude from adding any such structure which has been laid or raised on a space already counted in determination of the super area.

We do not find any illegality in the direction given by the learned Authority in order to determine the increase in the super area."

B.II Whether increase in super area is justified without giving any basis?

91. The abovesaid issue has been raised in complaint no. **591 of 2019** titled as ***V.K. Vaidh and Sons HUF Vs. Emaar MGF Land Ltd.*** and therefore, facts of said complaint are being taken into consideration wherein the allottee booked a unit admeasuring 1950 sq. ft. in the project "Premier Terraces at Palm Drive", Sector 66, Gurugram. The area of the said unit was increased to 1996.17 sq. ft. vide letter of offer of possession dated 09.03.2018 without giving any prior intimation to, or by taking any written consent from the allottee. The said fact has not been denied by the respondent in its reply. The allottee in the said complaint prayed inter alia for directing the respondent to refund the excess amount charged on account of increase in the area by 46 sq. ft. without the consent of the complainant. Clause 1.2(g) is reproduced hereunder:

"1.2(g) Super Area

It is made clear that the super area of the Apartment/ Villa/Penthouse as defined in Annexure-IV is tentative and is subject to change till the construction of the Group Housing Complex. The Sale Price payable shall be recalculated upon confirmation by the Company of the final super area of the said Apartment/ Villa/Penthouse and any increase or reduction in the super area of the said Apartment/Villa/Penthouse shall be payable or refundable, without any interest, at the same rate per square feet as agreed herein above. If there shall be an increase in super area, the Apartment 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 Apartment Allottee shall be adjusted by the Company from the final instalment as set forth in the schedule of payments appended in Annexure II."

92. From the bare perusal of clause 1.2(g) of the builder buyer's agreement, there is evidence on the record to show that the respondent had allotted an approximate super area of 1950 sq. ft (181.16 sq. mtrs.) and the areas were tentative and were subject to change till the time of construction of the group housing complex. Clause 1.1 provides description of the property which mentions about sale of super area and the buyer has signed the agreement. Also, by virtue of Annexure IV of the said agreement dated 11.03.2008, the complainant had been made to understand and had agreed that the super area mentioned in the agreement was only a tentative area which was subject to the alteration till the time of construction of the complex. The respondent in its defence submitted that as per the terms and conditions of the builder buyer's agreement, the builder was not bound to inform the allottee with regards to the increase in super area.

93. Relevant clauses of the agreement are reproduced hereunder:

"6. ALTERATIONS/ MODIFICATIONS IN THE LAYOUT PLANS AND DESIGNS:

……

(d) In case of any alteration/ modification resulting in more than 10% increase or decrease in super area of the Apartment/Villa/Apartment in the sole opinion of the Company any time prior to and upon the grant of occupation certificate, the Company shall intimate the Apartment Allottee in writing of such increase or decrease in super area thereof and the resultant change, if any, in the Sale Price of the apartment/Villa/Penthouse. The Apartment Allottee agrees that in the event of such increase or decrease in super area, if the Apartment Allottee has any objection on the same, the Apartment Allottee shall intimate the same to the Company within thirty (30) days of the date dispatch of such notice by the Company, failing which the Apartment Allottee shall be deemed

to have given his/her absolute consent to such increase or decrease in super area and/or any alterations/modifications and for payments, if any, to be paid in consequence thereof. However, in case of such increase or decrease in super area, if any demand is made for refund of the monies deposited by the Apartment Allottee towards the Apartment booked by Apartment Allottee with the Company, then in such case this Agreement shall be cancelled without any further notice and the Company shall refund the money received from the Apartment Allottee within thirty (30) days from further sale of the Apartment/Villa/Penthouse to any third party. On payment of money after making deductions of earnest money, the Company and/ or the Apartment Allottee shall be released and discharged from all their obligations and liabilities under this Agreement. It being specifically agreed that irrespective of any outstanding amount payable by the Company to the Apartment Allottee(s), the Apartment Allottee shall have no right, lien or charge on the Apartment/Villa/Penthouse in respect of which refund as contemplated by this clause is payable.

(e) In case of any alteration/modification resulting in less than 10% increase in super area, then in such an event, the Company shall not be obliged to take any consent from the Apartment Allottee. The Apartment Allottee agrees and acknowledges that he/she/they/it shall be obliged to make payments for such increase in area within thirty (30) days of the date dispatch of such notice by the Company.

(f) In case of any alteration/modification resulting in less than 10% decrease in super area, then in such an event, the Company shall not be obliged to take any consent from the Apartment Allottee. The excess amount towards the consideration shall be adjusted by the Company at the time of final accounting before giving possession to Apartment Allottee. The Apartment Allottee agrees and acknowledges that the Company shall not be obliged to pay any interest in this regard."

94. Before deciding whether the builder is entitled to charge the cost for increase in super area, it will be pertinent to examine whether the above clause regarding super area is arbitrary and unreasonable. As per the said clause 1.2(g) of the builder buyer's agreement, the super area of the flat shall be finally determined after completion of the construction of the colony. It is interesting to note that only after the approval of building plans, construction can be started and at the time of approval of the building plan, the area/super

area of the unit is known. If the building plan have been approved before the builder buyer's agreement, then there is no justification of such clause and the area/super area of the unit should have been mentioned in the builder buyer's agreement, rather than leaving it to some future remote date after completion of the construction. Arguably, it can be said that even if the building plans were approved after the signing of the builder buyer's agreement, then unit area/super area should have been intimated to the allottee within reasonable time. The super area once defined in the agreement will not undergo any change if there is no change in the building plan. If there was a revision in the building plan, then also allottee should have been informed about the increase/ decrease in the super area on account of revision of building plans supported with due justification in writing.

95. The authority vehemently arraigns that drafting of such clause is extremely arbitrary, contentious, and uncertain as it is left to be decided on completion of the project. It is to be noted that the completion certificate of project is not obtained by the promoter for years together as the necessary infrastructural works are not completed and as soon as building/ apartment becomes habitable after meeting parameter as provided in the Haryana Building Code, 2017; occupation certificate in respect of some of the buildings is obtained and possession is offered. At this stage of offering possession, additional demand for excess super area is made although the project is not complete. There is a difference between occupation certificate and completion certificate. Occupation certificate is for buildings/towers/phases of a project whereas completion certificate is for the project in entirety.

96. Clause 6 (d), (e) and (f) of the builder buyer's agreement further exhibit high handedness of the promoter. In case, there is a variation of more than 10 percent in the agreed super area (although from promoter side, it was always

tentative) and the purchaser is unwilling to accept the changed super area by way of refusing to pay the enhanced sale consideration; the non-acceptance of which shall amount to automatic cancellation of the allotment.

97. Therefore, the authority is of the opinion that unless and until, the allottee is informed about the increase/decrease of the super area either in the builder buyer's agreement itself or if building plans were not already approved, immediately after the receipt of approval of building plans from the competent authority, the promoter is not entitled to burden the allottee with the liability to pay for the increase in the super area. The authority is of the opinion that each and every minute detail must be apprised, schooled and provided to the allottee regarding the increase/decrease in the super area and he should never be kept in dark or made to remain oblivious about such an important fact i.e. the exact super area till the receipt of the offer of possession letter in respect of the unit.

98. In a recent judgement of **National Consumer Disputes Redressal Commission, New Delhi, consumer case no. 285 of 2018 titled as Pawan Gupta Vs. Experion Developers Pvt. Ltd. (Decided on 26.08.2020)** which has been upheld by the Hon'ble Supreme Court of India in **civil appeal nos. 3703-3704 of 2020 decided on 12th January 2021**, the NCDRC in this case observed as under:

> *"17. The complaints have been filed mainly for two reasons. The first is that the opposite party has demanded extra money for excess area and second is the delay in handing over the possession. In respect of excess area, the complainant has made a point that without any basis the opposite party sent the demand for excess area and the certificate of the architect was sent to the complainant, which is of a later date. The justification given by the opposite party that on the basis of the internal report of the architect the demand was made for excess area is not acceptable because no such report or any other document has been filed by the opposite party to prove the excess area. Once the original plan is approved by the competent authority, the areas of residential unit as well as of the common spaces and common*

buildings are specified and super area cannot change until there is change in either the area of the flat or in the area of any of the common buildings or the total area of the project (plot area) is changed. The real test for excess area would be that the opposite party should provide a comparison of the areas of the original approved common spaces and the flats with finally approved common spaces/ buildings and the flats. This has not been done. In fact, this is a common practice adopted by majority of builders/developers which is basically an unfair trade practice. This has become a means to extract extra money from the allottees at the time when allottee cannot leave the project as his substantial amount is locked in the project and he is about to take possession. There is no prevailing system when the competent authority which approves the plan issues some kind of certificate in respect of the extra super area at the final stage. There is no harm in communicating and charging for the extra area at the final stage but for the sake of transparency the opposite party must share the actual reason for increase in the super area based on the comparison of the originally approved buildings and finally approved buildings. Basically, the idea is that the allottee must know the change in the finally approved lay-out and areas of common spaces and the originally approved lay-out and areas. In my view, until this is done, the opposite party is not entitled to payment of any excess area. Though the Real Estate Regulation Act (RERA) 2016 has made it compulsory for the builders/developers to indicate the carpet area of the flat, however the problem of super area is not yet fully solved and further reforms are required."

99. Keeping in view of the above discussions and the judgements, the authority reckons that it is basically an unfair trade practice, commonly adopted by majority of builders/developers which has become a means to extract illegally extra money from the allottees at the time when allottee cannot leave the project since his substantial amount is already locked in the project and he is about to take possession. If at this stage allottee decides to walk out from the project, he will suffer huge monetary losses apart from mental agony, frustration, disappointment, stress and strain which he has gone through in waiting for getting possession of the unit which is ready to move now but only for the reason of extra illegal demand, he may not be in a position to take possession and the developer is eager to cancel the unit under the garb of one-sided clauses in the agreement. Therefore, the authority after going

through the facts and circumstances of the case, deduces that without giving any justification for increase in super area, there is no case made out for charging it. There was a need to put system in place so that at the time of the approval of building plans, the promoter was obligated to disclose all the relevant details of super area and whenever there was a revision of building plans, the approval of the competent authority should have been taken before hand prior to raising any demands.

100. Further, in a recent judgement passed by the Hon'ble NCDRC in **Capital Greens Flat Buyer Association Vs. DLF Universal Limited & Anr**. along with connected matters wherein vide judgement dated 03.01.2020, the Commission held as under:

> *"13. In terms of Annexure-II of the Agreements executed between the developer and the allottees, the price of the apartments was to be calculated on the basis of its super area. It was also noted in the above referred clause that the super area mentioned in clause 1.1 was only tentative and could change. The allottees had agreed not to object to the change of the super area. However, if the super area was to increase/decrease by more than 15% on account of any alteration/modification/change, the allottees were required to be intimated in writing before carrying out the proposed change and had an option to take refund of the payment which they had made to the developer alongwith interest.*
>
> *The super area in terms of Annexure-II of the Agreements was to consist of the apartment area, pro-rata share of the common areas of the building and pro-rata share of other common areas outside the building, as defined therein.*
>
> *14. In the project subject matter of these complaints, the developer has not sought additional payment for increase in the super area beyond 15%. Therefore, no prior notice to the allottees was required before increasing the super area and to the extent there has been actual increase in the super area, as defined in Annexure-II of the Agreements, the allottees are required to pay for such an increase. The allottees had also agreed that not only the super area but even the percentage of the apartment area to the super area could change and they would have no objection to change of the said ratio, though the case of the OP is that the ratio has not changed and the same continues to be 78.5% of the super*

area……Therefore, I have no hesitation in holding that the additional demand on account of increase in the super area, which has been restricted to 15% of the super area stated in the agreements, is justified. Though, the ratio of the apartment area to the super area could also change, it is stated in the affidavit of Mr. Mukul Gupta that the final percentage of the apartment area to the super area of the apartment is not less than 78.5% and there is no material to the contrary filed by the allottees. Therefore, I find no justification in the grievance with respect to the demand on account of increase in the super area of the apartments.

……

37. For the reasons stated hereinabove, the complaints are disposed of with the following directions:

(i) The OP is entitled to the additional demand on account of increase in the super area of the apartments……."

The said judgement of Hon'ble NCDRC has been upheld by the Hon'ble Supreme Court vide order dated 14.12.2020 in a civil appeal filed by **DLF Home Developers Ltd. Vs. Capital Greens Flat Buyers Association**.

101. There is no harm in charging for the extra area, if justifiable, at the final stage but for the sake of transparency, the respondent-promoter must share the calculations for increase in the super area based on the comparison of the originally approved building plans and finally approved building plans. The premise behind this is that the allottee must know the change in the finally approved lay-out and areas of common spaces viz-a-viz the originally approved lay-out plans and common areas.

102. The authority therefore opines that until this is done, the promoter is not entitled to payment of any excess super area over and above what has been initially mentioned in the builder buyer's agreement, least in the circumstances where such demand has been raised by the builder without giving supporting documents and justification. The Act has made it compulsory for the builders/developers to indicate the carpet area of the flat, and the problem of super area has been addressed. But regarding on-going

projects where builder buyer's agreements were entered into prior to coming into force the Act, matter is to be examined on case-to-case basis.

103. In the case of complaint no. 591 of 2019, the approximate super area of the unit at the time of signing of the agreement was shown as 1950 sq. ft. and has now been revised to 1996 sq. ft. Accordingly, as per provisions of the agreement herein above, the super area could be changed to the extent of 10%, therefore the change in super area and demand made in accordance with that is covered by the flat buyer agreement.

104. The respondent, therefore, is entitled to charge for the same at the agreed rates since, the increase in super area is far less than 10%; this, however, will remain subject to the conditions that the flats and other components of the super area in the project have been constructed in accordance with the plans approved by the department/competent authorities. In view of the above discussion, the authority holds that the demand for extra payment on account of increase in the super area from 1950 sq. ft. to 1996.17 sq. ft. by the promoter from the complainant is legal but subject to condition that before raising such demand, details have to be given to the allottee and without justification of increase in super area, any demand raised is quashed.

PART C

C.I Advance maintenance charges

Whether the respondent is justified in charging advance maintenance charges at the time of offer of possession and if yes, for what period?

105. In the following complaints, issue with respect to charging of advance maintenance has been raised:

S.No.	Complaint no.	Complaint title
2	CR/3989/2019	Richa Rana and Harendra Singh Rana Vs. Emaar MGF Land Limited
11	CR/6709/2019	Kapil Mehrotra Vs. Emaar MGF Land Limited

18	CR/157/2020	Rajiv Ranjan Verma and Ritu Verma Vs. Emaar MGF Land Limited
38	CR/4495/2019	Sachin Jain Vs. Emaar MGF Land Limited
39	CR/5605/2019	Madhusudan Gupta and Ashima Gupta Vs. Emaar MGF Land Limited
40	CR/5271/2019	Prampreet Singh Sarai and Preeti Macker Vs. Emaar MGF Land Limited
42	CR/687/2020	Rohit Kohli and Ruchi Kohli Vs. Emaar MGF Land Limited

106. For most of the issues pertaining to various charges levied by the promoter at the time of offer of possession has been raised in complaint no. 3989 of 2019 titled as **Richa Rana and Harendra Singh Rana Vs. Emaar MGF Land Ltd.** The facts of the complaint are that after paying booking amount of Rs.7,50,000/- on 22.01.2012, a unit measuring 1850 sq. ft. bearing no. PGN-12-0202 was allotted vide provisional allotment letter dated 30.01.2012. The builder buyer's agreement was executed on 05.07.2012. Based on the date of construction (21.12.2012), the possession was scheduled by 21.05.2016 including 5 months grace period. The complainants ensured payments of the demands on timely basis. The statement of account collected from the respondent office shows nil outstanding till 2016 but at the time of offer of possession imposed delayed payment charges Rs.11,51,475/-. The respondent offered the possession on 21.05.2019 i.e. more than 3 years delay. The complainants were shocked when got offer of possession as the builder imposed many unilateral and discriminatory charges. The respondent charged Rs.92,500/- as IFMS and will get interest on said amount. The builder imposed delayed payment charges on complainants of Rs.11,51,475/-. As the delivery of the apartment was due on May 2016 which was prior to coming into force of GST Act, therefore, complainants are not liable to incur additional financial burden of GST. The statutory levies, new taxes including HVAT which is illegal. The complainants submitted that at the

time of allotment, the builder imposed 3 types of PLC i.e., penthouse/top floor @ Rs.8,32,500/-, corner @ Rs.1,85,000/- and central greens PLC @ Rs6,47,500/-. Builder continuously raised the demand of PLC in payment plan and complainants had paid as demanded by builder, which was discriminatory, illegal and arbitrary. It was submitted by the complainants' that as per the Act, builder cannot charge PLC. Also, the respondent shall give rationale for charging advance maintenance charges as a precondition to handover possession.

Respondent's arguments

107. The counsel for the respondent contended that as per the contractual covenants, it is comprehensively established that it had been conveyed transparently and fairly by the respondent to the prospective allottees/purchasers that the prospective allottees/purchasers would be under a contractual obligation to bear and pay the common area maintenance charges. It had been unambiguously and explicitly recited in the contracts executed by the prospective allottees/purchasers that the prospective allottee/purchaser would be liable to pay the maintenance charges as may be determined by the respondent/the RWA/the maintenance agency so nominated/appointed to provide for the maintenance services. Such provisions for the maintenance charges have been explicitly agreed to by the prospective allottee/purchaser and now at this belated stage, the prospective allottee/purchaser cannot raise issues or concerns regarding the chargeability/demand for the maintenance charges.

108. The counsel for the respondent further submitted that it is a settled practice that is followed across the real estate sector and also otherwise the same has been duly acknowledged and confirmed in various judicial pronouncements that for making available the various common area facilities and amenities the promoter/developer and/or the entity so entrusted with the obligation

of providing and maintaining common area facilities and amenities can levy and charge, maintenance charges so as to meet the cost and expenses including but not limited to the overhead cost, expenses and management fee for the due and proper maintenance of the common area facilities and amenities. There is just and reasonable basis for levy and the demand of maintenance charges.

109. The counsel for the respondent contented that as a settled practice and as a settled industry norm, such maintenance charges are payable in advance on the basis of anticipated cost and charge and expenses to be incurred in providing the common area facilities and amenities and due adjustment is provided for any deficit/excess. Further as a prudent industry practice, both the maintenance charges as well as the electricity charges (for the power consumed within the apartment/unit) are being charged or demanded on a pre-paid basis.

110. Furthermore, the counsel for the respondent submitted that the maintenance charges are to be paid for various services rendered by the respondent/maintenance agency. In multi-storied residential and commercial complexes, various services like security, water supply, operation and maintenance of sewage treatment plant, horticulture, lighting of common areas, cleaning of common areas, garbage collection, maintenance and operation of lifts and generators etc. are required to be provided. Expenditure is required to be incurred on a consistent basis in providing these services and making available various facilities. It is precisely for this reason that a specific provision is incorporated in the builder buyer's agreement that the maintenance charges as may be determined by the respondent would be liable to be paid by the allottee.

111. According to the counsel for the respondent, the Hon'ble Supreme Court of India has held that the developer is entitled to realize maintenance charges

from the allottees/apartment purchasers. Reliance in this regard is placed upon the following case by the counsel for the respondent to support his arguments:

2010(14) SCC 1 —DLF Universal Ltd. and another. Vs. Director, Town and Country Planning Haryana and others. –Developer entitled to realize maintenance charges

C. Haryana Development and Regulation of Urban Areas Act, 1975, Section 13(3)(a)(iii) - Haryana Development and Regulation of Urban Areas Act, 1975, Section 13(3)(a)(ii) - An owner of land obtaining licence from Director of Country and Town Planning under the provisions of Haryana Development and Regulation Act to set up a colony by dividing his land into plots and sell the same to purchasers - Owner/colonizer entering into agreement with plot/flat owners and charging maintenance fee - ***The Director is not empowered to issue any directions directing the owners/colonizer to stop charging maintenance fee from the plot/flat holders and also to "delete the relevant clauses from the agreement*** *- Further held:-*

1. The Director is not authorised or empowered to review or evaluate the terms of contract and resolve the disputes, if any, between the owners/colonizers and the purchasers of plots/flats.

2. Director cannot issue direction to delete the clause or relevant clauses from the agreements mutually entered by and between the parties - The agreement by and between the owners/colonizers, agreed terms and conditions and covenant therein are purely under private law domain.

3. Director is not authorised to interfere with agreements voluntarily entered into by and between the owner/colonizer and the purchasers of plots/flats - The agreed terms and conditions by and between the parties do not require the approval or ratification by the Director nor is the Director authorised to issue any direction to amend, modify or alter any of the clauses in the agreement entered into by and between the parties.

View of the authority

112. The Act mandates under section 11(4)(d), that the developer will be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees. Section 19(6) of the Act also states that every

allottee, who has entered into an agreement for sale, to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale/the builder buyer's agreement and shall pay within stipulated time and appointed place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent and other charges, if any.

113. Maintenance charges essentially encompass all the basic infrastructure and amenities like parks, elevators, emergency exits, fire and safety, parking facilities, common areas, and centrally controlled services like electricity and water among others. Initially, the upkeep of these facilities is the responsibility of the builder who collects the maintenance fee from the residents. Once a resident's association takes shape, this duty falls upon them, and they are allowed to change or introduce new rules for consistently improving maintenance. In the absence of an association or a society, the builder continues to be in charge of maintenance. Usually, maintenance fees are charged on per flat or per square foot basis. Advance maintenance charges on the other hand accounts for the maintenance charges that builder incurs while maintaining the project before the liability gets shifted to association of owners. Builders generally demand advance maintenance charges for 6 months to 2 years in one go on the pretext that regular follow up with owners is not feasible and practical in case of ongoing projects wherein OC has been granted but CC is still pending.

114. A quick glance at the provisions of the Act may be taken in this respect to the responsibility of the promoter or project developer for providing and maintaining essential and common services at a reasonable charge payable by the flat purchasers till the time the co-operative housing society or RWA is formed.

Sect 11: Functions and Duties of the Promoter	**Sect 19: Rights and Duties of the Allottees**
Section 11(4)(d) states that the promoter shall be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees.	Section 19(6) states that every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13[1], shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, **maintenance charges**, ground rent, and other charges, if any.
Section 11(4)(g) states that the promoter shall pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project):	Section 19(7) states that the allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6)
Proviso to Section 11(4)(g) states provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are	Section 19(8) states that the obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee.

payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person.	

115. Also, **clause 11 of the Annexure A** (Agreement for Sale) to the rules provide for maintenance of the project. It states that "the promoter shall be responsible to provide and maintain essential services in the project till the taking over of the maintenance of the project by the association of the allottees". Furthermore, it provides that the cost of such maintenance has been included in the total price of the plot/unit/apartment for residential/commercial/industrial/ IT colony/ any other usage. The relevant clause is reproduced below:

> ***"11. MAINTENANCE OF THE SAID BUILDING / APARTMENT / PROJECT:***
>
> *The Promoter shall be responsible to provide and maintain essential services in the Project till the taking over of the maintenance of the project by the association of allottees or competent authority, as the case may be, upon the issuance of the occupation certificate/ part thereof, part completion certificate/ completion certificate of the project, as the case may be. The cost of such maintenance has been included in the Total Price of the Plot/ Unit/ Apartment for Residential/ Commercial/ Industrial/ IT Colony/ any other usage. 78 In case, the allottee/ association of allottees fails to take possession of the said essential services as envisaged in the agreement or prevalent laws governing the same, then in such a case, the promoter or the developer has right to recover such amount as spent on maintaining such essential services beyond his scope."*

116. From aforesaid clause, it is clear that the maintenance charges are included in the total cost of the unit and in case, the allottee/association of allottees fails to take possession, then only the promoter has right to recover such amount as spent on maintaining such essential services after coming into force of the Act.

117. However, as far as issue regarding advance maintenance charges is concerned where the said agreements have been entered into before coming into force the Act, the matter is to be dealt with as per the provisions of the

builder buyer's agreement. With respect to advance maintenance charges, the relevant clause of the builder buyer's agreement is as follows:

> *"**17. MAINTENANCE***
>
> *(a) The Allottee hereby agrees and undertakes that he/she/they/it shall enter into a separate Tripartite Maintenance Agreement in the draft provided as Annexure-9 to this Buyer's Agreement with the Maintenance Agency.*
>
> *(b) The Allottee(s) further agrees and undertakes to pay the indicative and approximate maintenance charges as may be levied by the maintenance agency for the upkeep and maintenance of the Project, its common areas, utilities, equipment's installed in the building and such other facilities forming part of the Project. Further, the Allottee(s) agrees and undertakes to pay in advance, along with the last installment specified under Payment Schedule, advance maintenance charge (AMC) equivalent to maintenance charges for a period of two years. Such charges payable by the Allottee(s) will be subject to escalation of such costs and expenses as may be levied by the Maintenance Agency. The Company reserves the right to change, modify, amend and impose additional conditions in the Tripartite Maintenance Agreement at its sole discretion from time to time."*

118. The reading of the above clauses shows that the amount towards maintenance charges being demanded by the promoter shall be utilized towards the upkeep and maintenance of the project, its common areas, utilities, equipment's installed in the building and such other facilities forming the part of the project. The maintenance of the project is essential to enjoy the basic facilities provided in the project by the promoter. Therefore, while providing these essential services, the promoter would be required to maintain sufficient funds with him. In order to meet these expenses, the demand of the promoter raised on the allottee to pay advance maintenance charges for a certain period cannot by any stretch of imagination be said to be unreasonable or unjustified. However, an embargo has to be placed on the entitlement of the promoter in this regard.

119. The next question arises herein, as to from which date, the maintenance charges can be charged or made applicable. In this regard, the authority places reference to the State Consumer Disputes Redressal Forum decision in **Shri Anil Kumar Chowdhury Vs. DLF Ltd. on 16th August 2018**, wherein it has been held as under:

> *"Maintenance Charge and Holding Charge:-*
>
> *According to Clause 10 or Clause 14.3 of the Agreement, the apartment allottee shall be liable to pay the maintenance charge on and from the date on which actual physical possession is taken or on the expiry of thirty (30) days from the date of issuance of the Notice of Possession, whichever is earlier.*
>
> *As per terms of the Agreement, the OP/developer has no authority to demand maintenance for any period prior to actual physical possession being handed over. Equally the OP/developer shall have no authority to demand any holding charge as the delay in giving possession is on their own part and they are wrongfully withholding possession till date. However, the complainant will be liable to make payment on account of government charges only upon receiving physical possession of the flat and car parking space from the OP.*
>
> *So far as claim of the complainant for common facilities or benefit like - swimming pool, tennis court etc. are concerned, the same cannot be entertained because prior to lodging complaint, no permission was sought for in accordance with Section 12(1)(c) of the Act to file the complaint in a representative capacity. Therefore, there is hardly any reason to discuss about the common areas and facilities of the complex, as alleged by the complainant……*
>
> *In view of the discussion above, the complaint is allowed on contest with the following directions:-*
>
> *The Opposite Party is directed to deliver possession and to execute the Sale Deed in favour of the complainant on payment of stamp duty and registration charges within 90 days from date after obtaining Completion Certificate from the competent authority;*
>
> *……*
>
> *The Opposite Party is directed not to claim any amount under the head of*
>
> *(a) cost of increased in area;*
>
> *(b) pro-rate charges for arranging supply of electrical energy and*
>
> *(c) Other costs including government charges from final statement of accounts,*

(d) maintenance for any period till handing over possession and

(e) any holding charge whatsoever for withholding possession;……..".

120. In yet another judgement titled as **Dr. Mudit Kumar Vs. Emaar MGF Land Limited dated 28.01.2020** passed by the State Commission, Punjab wherein it has been held that the promoter is not entitled to charge maintenance charges till the handing over of the possession of the plot to the allottee post receipt of the OC only. However, the amount accredited towards maintenance charges should be maintained in a corpus and the builder cannot transfer the proceeds or maintenance charges received from allottees to his company's account, because such money received for maintenance is not his income in any way. The logic behind it, is that a builder is only a facilitator for a limited amount of time and the onus of taking up the responsibility of maintenance of the flat and its premises is on the residents' welfare association (RWA).

121. The authority observes that since maintenance charges are applicable from the time a flat is occupied, its basic motive is to fund operations related to upkeep, maintenance, and upgrade of areas which are not directly under any individual's ownership. RERA's provisions enjoin upon the developer to see that residents don't pay ad hoc charges. Also, there should be a declaration from the developer in the documents that they are acting in own self-interest and that they are not receiving any remuneration or kick-back commission. The same has been observed by the **Telangana State Consumer Disputes Redressal Commission in its judgement dated 21.01.2021 while deciding an appeal filed by India Bulls Centrum Owners Welfare Cooperative Society**, which maintains a gated community at lower Tank Bund, in Hyderabad.

122. Thus, the authority is of the view that the respondent is entitled to collect advance maintenance charges as per the builder buyer's agreement executed

between the parties. However, the period for which advance maintenance charges (AMC) is levied should not be arbitrary and unjustified. Generally, AMC is charged by the builders/developer for a period of 6 months to 2 years. The authority is of the view that the said period is required by the developer for making relevant logistics and facilities for the upkeep and maintenance of the project. Since, the developer has already received the OC/part OC and it is only a matter of time that the completion of the project shall be achieved; its ample time for a RWA to be formed for taking up the maintenance of the project and accordingly the AMC is handed over to the RWA.

123. Keeping in view the facts above, the authority deems fit that the respondent is right in demanding advance maintenance charges at the rate prescribed therein at the time of offer of possession in view of the judgements (supra). However, the respondent shall not demand the advance maintenance charges for more than one (1) year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

C.II Holding charges

Whether the respondent is justified in demanding holding charges at the time of offer of possession?

124. In the following complaints, the complainants have sought relief w.r.t holding charges:

S. No.	Complaint no.	Complaint title
7	CR/6053/2019	Aman Monga and Roma Monga Vs. Emaar MGF Land Limited
11	CR/6709/2019	Kapil Mehrotra Vs. Emaar MGF Land Limited
20	CR/2722/2020	Nand Kishore Upadhyay Vs. Emaar MGF Land Limited
21	CR/2847/2020	Prashant Puri and Ayesha Desai Vs. Emaar MGF Land Limited

25	CR/4731/ 2020	Ghanshyam Datt Joshi and Fuhar Chhanga Singh Pandher Vs. Emaar MGF Land Limited
28	CR/670/2020	Anuranjita Kumar Vs. Emaar MGF Land Limited
39	CR/5605/2019	Madhusudan Gupta and Ashima Gupta Vs. Emaar MGF Land Limited
47	CR/4317/ 2020	Saurav Kumar Vs. Emaar MGF Land limited

125. In reference to complaint no. **6053 of 2019** titled **as Aman Monga and Roma Monga Vs. Emaar MGF Land Ltd.**, the respondent issued the letter of offer of possession on 22.10.2019 and upon which the complainants protested to the respondent over the irregularities in the unit. The complainants approached the respondent company in order to inspect their unit as to whether it is in accordance with the specifications as per the agreement. However, the respondent vide email dated 14.11.2019 refused to allow the complainants to inspect their unit. On 26.11.2019, the respondent sent an email raising several charges on account of amount overdue, to which the complainants requested the respondent vide email dated 26.11.2018 to let them inspect their unit and also informing that they were very much ready and willing to take the possession thereby delaying the possession. Therefore, the complainants have disputed the demand raised by the respondent developer on account of holding charges in their compliant. With regards to the same, it has been observed that as per sub-clause (a) of clause 11 of the builder buyer's agreement, in the event the allottee fails to take the possession of the unit within the time limit prescribed by the company in its intimation/offer of possession, then the promoter shall be entitled to charge holding charges. The relevant clauses from the builder buyer's agreement are reproduced hereunder:

> *"**11. Procedure for taking possession:***
>
> *……*

(b) Upon intimation in writing from the Company, the Allottees shall within 30 days take possession of the said unit…….. If the Allottee fails to take possession of the unit as aforesaid with the time limit prescribed by the company in its notice,……<u>the Company shall have no liability or concern thereof and further that the Company shall also be entitled to holding charges as provided under clause 13.1.</u>

13.1 (a)holding charges @ 7.50/- per sq. ft. of the Super Area of the said Unit per month for the entire period of such delay".

Arguments raised by the respondent

126. The counsel for the respondent contented that as per the contractual covenants, it can be comprehensively established that it had been conveyed transparently and fairly by the respondent to the prospective purchasers that in the event of failure on the part of a prospective purchaser to obtain possession of a unit in accordance with the offer of possession, holding charges at the rate prescribed in the builder buyer's agreement would be liable to be paid by him. The legality/validity of the builder buyer's agreements has not been challenged by the complainants. Moreover, the limitation for challenging the validity of the voluntarily and consciously executed builder buyer's agreements has expired long ago.

127. The respondent further argued that for the purpose of delivery of physical possession of any apartment, the developer has to white-wash the property, undertake painting and polishing and complete other requisite acts. The same is done by the developer under the bonafide expectations that the concerned allottee would forthwith proceed to obtain the physical possession of the apartment booked for purchase by him/her. Moreover, completion of the aforesaid aspects is also required after obtaining occupation certificate.

128. Furthermore, in accordance with the provisions contained in section 19 of the Act, it is obligatory on the allottee to make payments of the amounts prescribed under the builder buyer's agreement. Furthermore, the allottee is under a legal obligation to obtain physical possession of the unit within a period of two months for the date of issuance of the occupation certificate pertaining to the said unit.

129. The counsel for the respondent further argued that the issue with regard to legitimacy of demand of the developer pertaining to holding charges has been examined threadbare several fora/tribunals at various times. It has been held that the terms and conditions incorporated in the builder buyer's agreements are sacrosanct and the validity thereof with regard to payment of holding charges cannot be questioned by the apartment purchaser. It has further been held by this Hon'ble authority that where the builder buyer's agreements have been executed prior to coming into force of the Act, the parties are bound to fulfil their contractual obligations and cannot question the covenants in light of the aforesaid statute. It has been held in such cases that the developer is well within its right to seek payment of charges prescribed under the builder buyer's agreement from the apartment purchaser. A reliance has been placed by the counsel for the respondent on several judgements to support the demand for holding charges being valid and legal and the same are reproduced below:

> ***"DLF Universal Ltd. Vs. Shalini Thomas and Ors. (06.08.2015 - NCDRC) : MANU/CF/0872/2015***
>
> *8. For the reasons stated hereinabove, we hold that the holding charges are payable by the complainants to the petitioner-company in terms of Clause 16 of the buyers agreement. Since the possession was offered to them vide letter dated 24.8.2000 the said charges have become payable with effect from 26.11.2000 as noted in the letter of the petitioner dated 6.11.2000. As far as maintenance charges is considered, considering that the petitioner-company required 30 days time from the date of receipt of payment and completion of*

paper work to complete the finishing work in the flat, we are of the view that the said maintenance charges would be payable with effect from 26.9.2000. The conveyance deed of the apartment has already been executed and registered though it has not been handed over to the complainants. The said deed was directed to be deposited with the Registrar of this Commission to be kept in safe custody during pendency of this petition. We direct the complainants to make payment in terms of this order within four weeks from today. On such payment being made and verified the Registry shall hand over the conveyance deed of the flat to the complainants, against acknowledgement, after retaining its photocopy on record.

2015 (1) CLT 552 –

9. In our opinion, the aforesaid Clause applies only in a case where construction of the flat is delayed but despite delay, the buyer accepts possession of the said flat from the seller, and consequently, accounts have to be settled between the parties. At that stage, the buyer would pay the agreed holding charges to the seller, who will pay the agreed compensation on account of delaying the construction of the flat. The aforesaid Clause, in our opinion would not apply to a case where the buyer, on account of the delay on the part of the seller in constructing the flat, is no more interested in the flat subject matter of the agreement and wants to take refund of the amount, which he had paid to the seller. In any case, such a clause, where the seller, in case of default on the part of the buyer, seeks to recover interest from him at the rate of 24% per annum will amount to an unfair trade practice since it gives an unfair advantage to the seller over the buyer. We may note here that the enumeration of the unfair trade practices in Section 2(r) of the Act is inclusive, not exhaustive."

130. Further, the counsel for the respondent submitted that it is evident that the allottee cannot claim that merely because there was a delay on the part of the developer in undertaking the completion of the real estate project and agreed compensation for delay in delivery of the physical possession had not been paid by the developer, holding charges on this account were not payable by the allottee to the developer. The objective of incorporation of the holding charges is to ensure prompt takeover of possession by the allottee upon completion of various works by the developer. Moreover, properties relating to which physical possession has not been taken by the allottee are also required to be looked after and adequate security relating to the same is also

required to be provided by the developer. The levy of holding charges is incorporated as a deterrent to ensure that legal and contractual obligations by the allottee are also duly complied with. There is also no reason both in law and on facts on the basis of which allottee can claim that he is not liable to make payment of holding charges.

View of authority

131. It is interesting to note that the term holding charges has not been clearly defined in the builder buyer's agreement and or any other relevant document submitted by the respondent promoter. Therefore, it is firstly important to understand the meaning of holding charges which is generally used in common parlance. The term holding charges or also synonymously referred to as non-occupancy charges become payable or applicable to be paid if the possession has been offered by the builder to the owner/allottee and physical possession of the unit not taken over by allottee but the flat/unit is lying vacant even when it is in a ready-to-move condition. Therefore, it can be inferred that holding charges is something which an allottee has to pay for his own unit for which he has already paid the consideration just because he has not physically occupied or moved in the said unit. The next thing that pops up for consideration is as to what are then maintenance charges being taken by the developer/RWA. Maintenance charges are the charges, either annually or monthly, applicable to be paid by the owner/allottee once he/she has taken possession of the property/unit. These charges are paid for the general maintenance and upkeep of the building and/or society. A person purchases a flat for his own residential usage/or for letting it out further as per his own discretion and requirement. He is bound as per law to pay the maintenance charges for his flat/unit whether he is personally residing or even if the flat is kept locked and being unused. The member has to pay the full maintenance charges without any concessions and in most cases, pays

advance maintenance charges as well. Maintenance charges are applicable right from the time possession of a flat/unit is taken over by any prospective buyer/allottee. However, payment of maintenance charges is carried out on a monthly basis for the upkeep of the entire building and project. Therefore, simply understood, the flat closed/locked/vacant/not occupied for any period is equal to self-occupied, which is further equal to regular full maintenance charges and non-occupancy charges/holding charges should not be levied.

132. The Hon'ble NCDRC in its order dated 03.01.2020 in case titled as **Capital Greens Flat Buyer Association and Ors. Vs. DLF Universal Ltd., Consumer case no. 351 of 2015** held as under:

> *"36. It transpired during the course of arguments that the OP has demanded holding charges and maintenance charges from the allottees. As far as maintenance charges are concerned, the same should be paid by the allottee from the date the possession is offered to him unless he was prevented from taking possession solely on account of the OP insisting upon execution of the Indemnity-cum-Undertaking in the format prescribed by it for the purpose. If maintenance charges for a particular period have been waived by the developer, the allottee shall also be entitled to such a waiver. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment.* ***Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges*** *though it would be entitled to interest for the period the payment is delayed."* *(Emphasis supplied)*

133. The said judgment of Hon'ble NCDRC was also upheld by the Hon'ble Supreme Court vide its judgement dated 14.12.2020 passed in the civil appeal filed by DLF against the order of Hon'ble NCDRC (supra). The authority earlier, in view of the provisions of the rules in a lot of complaints decided in favour of promoters that holding charges are payable by the allottee.

However, in the light of the recent judgement of the Hon'ble NCDRC and Hon'ble Apex Court (supra), the authority concurring with the view taken therein decides that a developer/ promoter/ builder cannot levy holding charges on a homebuyer/ allottee as it does not suffer any loss on account of the allottee taking possession at a later date even due to an ongoing court case.

134. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.

C.III Interest free maintenance security (IFMS):

Whether the promoter is justified in charging Interest Free Maintenance Security (IFMS)?

135. The issue w.r.t charging of Interest Free Maintenance Security (IFMS) or Interest Bearing Maintenance Security (IBMS) has been raised in the following complaints:

S. No.	Complaint no.	Complaint title
2	CR/3989/2019	Richa Rana and Harendra Singh Rana Vs. Emaar MGF Land Limited
32	CR/3956/2020	Minu Abrol Vs. Emaar MGF Land Limited

136. In reference to complaint no. **3989 of 2019 (supra)**, the complainants submitted that the respondent has charges Rs.92,500/- as IFMS. This is a security deposit and builder will get interest on amount but has not passed it to the complainants which is illegal, arbitrary and unilateral. On the contrary,

the respondent submitted that IFMS or Interest Free Maintenance Security is payable by the complainants under clause 17 of the builder buyer's agreement. That the builder buyer's agreement does not provide for payment of any interest on the said amount to the allottees. This fact has been in the knowledge of the complainants right from the time of booking and has been duly agreed to and accepted by the complainants. Thus, it is absolutely denied that the said charges are illegal, arbitrary or unilateral as alleged by the complainant.

137. The term IFMS has not been defined in the agreement, however in common parlance, it means maintenance security on which builder does not pay any interest to the allottee. The clause 17 (c) of the builder buyer's agreement provides as under:

> *"17. MAINTENANCE:*
>
> *……*
>
> *(c) In addition to the payment of AMC to be paid by the Allottee(s), the Allottee(s) agrees and undertakes to pay interest free maintenance security (IFMS) @ Rs.50/- per sq. ft."*

138. Almost for every purchase of units in a real estate project, the consideration amount for units includes:

- Basic sale price
- The amount paid towards parking space, electricity and other
- Infrastructure Development Charges (IDC),
- External Development Charges (EDC) and
- Interest Free Maintenance Security (IFMS) (which is security not consideration)

139. IFMS is a lump sum amount that the home buyer pays to the builder which is reserved/accumulated in a separate account until a residents' association is formed. Following that, the builder is expected to transfer the total amount

to the association for maintenance expenditures. The system is useful in case of unprecedented breakdowns in facilities or for planned future developments like park extensions or tightening security. The same is a one-time deposit and is paid once (generally at the time of possession) to the builder by the buyers. The builder collects this amount to ensure availability of funds in case unit holder fails to pay maintenance charges or in case of any unprecedented expenses and keeps this amount in its custody till an association of owners is formed. IFMS needs to be transferred to association of owners (or RWA) once formed.

140. **Clause 11 of the Annexure A** (Agreement for Sale) to the rules provide for maintenance of the project. It states that "the promoter shall be responsible to provide and maintain essential services in the project till the taking over of the maintenance of the project by the association of the allottees". Furthermore, **clause 1.8(ii) of the same Annexure** provides that "the promoter shall hand over the common areas to the association of allottees". This means that once the project has been completed, the duty of maintenance of the project vests with association which further implies that the association gets vested with the power to collect funds from the resident of a project. Not only this, by virtue of these provisions, the promoter ipso facto becomes liable to transfer the amount which remains unutilized in the IFMS account.

141. It is worthwhile to mention that IFMS has been resisted by allottees on the ground that this security is kept by the builder and no interest is paid either to the allottee or accrued in the maintenance security account and kept by the builder on which interest is earned by him. Ideally, this is allottee's money and to be kept in a separate account and interest accrued on it shall be part of maintenance security. Some builders (even this builder) in other

agreements, changed the name of maintenance security as IBMS i.e., interest bearing maintenance security.

142. In the opinion of the authority, the promoter may be allowed to collect a reasonable amount from the allottees under the head "IFMS". However, the authority directs and passes an order that the promoter must always keep the amount collected under this head in a separate bank account and shall maintain the account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFMS amount and the interest accrued thereon, the promoter must provide details to the allottee. It is further clarified that out of this IFMS/IBMS, no amount can be spent by the promoter for the expenditure he is liable to incur to discharge his liability under section 14 of the Act.

C.IV GST and VAT in the event of delayed possession:

Whether the respondent is justified in demanding GST, VAT and service tax?

143. Relief w.r.t. GST, VAT and service tax has been raised in the complaints listed below:

S.No.	Complaint no.	Complaint title
2	CR/3989/2019	Richa Rana and Harendra Singh Rana Vs. Emaar MGF Land Limited
15	CR/2626/2019	Richa Rana and Harendra Singh Rana Vs. Emaar MGF Land Limited
16	CR/1532/2018	Manish Sultania and Neha Sultania Vs. Emaar MGF Land Limited
18	CR/157/2020	Rajiv Ranjan Verma and Ritu Verma Vs. Emaar MGF Land Limited
22	CR/2880/2020	Ajay Gandotra and Nishi Gandotra Vs. Emaar MGF Land Limited
28	CR/670/2020	Anuranjita Kumar VS. Emaar MGF Land Limited

30	CR/591/2019	V K Vaidh and Sons HUF VS. Emaar MGF Land Limited
40	CR/5271/2019	Prampreet Singh Sarai and Preeti Macker Vs. Emaar MGF Land Limited
42	CR/687/2020	Rohit Kohli and Ruchi Kohli Vs. Emaar MGF Land Limited

144. Regarding GST in reference to complaint no. **3989 of 2019 (supra)**, the complainant argued that the tax came into force in the year 2017, so it is a fresh tax. The possession of the apartment was supposed to be delivered in March 2016, therefore, the tax which has come into existence after due date of delivery should not be levied being unjustified since the same would not have fallen on the allottees had the same been delivered within the time stipulated in the builder buyer's agreement. On the other hand, the respondent argued that complainants are liable to pay statutory levies, new taxes including HVAT. It is wrong and denied that the respondent has illegally demanded the same from the complainants. It is submitted that in accordance with clause 9(f) of the buyer's agreement, the complainants are liable to make payment of all taxes, levies, assessments, demands, charges including but not limited to sales tax, VAT, service tax, house tax, property tax, firefighting tax etc, levied or leviable in future on the apartment, until such time as the apartment is not independently assessed to such tax, levy, fee or charge. Thus, it is absolutely wrong and emphatically denied that GST, HVAT etc applicable on the unit in question is not liable to be paid by the complainants. The HVAT demand has been raised in accordance with the assessment made under the Amnesty Scheme proposed by the State Government. It is pertinent to mention herein that all statutory dues, fees, charges, taxes et cetera are paid by the respondent to the competent authorities/State Government and the said amounts are not retained by the respondent. Thus, there is no illegality whatsoever on the part of the respondent.

145. Relevant clause from the agreement is reproduced as under:

> *"9.(f) Taxes and levies:*
>
> *In addition to the Total Consideration, the Allottee(s) shall be responsible for payment of all taxes, levies, assessments, demands or charges including but not limited to sale tax, VAT, if applicable, levied or leviable in future on the Building or Unit or any part of the project in proportion to his/her/their/its Super Area of the Unit. The Allottee understands that the aforementioned taxes are only illustrative and not exhaustive."*

146. As per the builder buyer's agreement, taxes shall be payable as per the government rules as applicable from time to time. Taxes are levied as per government norms and rules and are leviable in respect of real estate projects as per the government policies from time to time. Therefore, there is no substance in the plea of the complainants in regard to the illegality of the levying of the said taxes. However, the issue pending determination is as to whether the allottee shall be liable to pay such taxes which became payable on account of default and delay in handing over of possession by the builder beyond the due date of possession.

147. It is important to understand herein the background of transgression from VAT to GST regime and quantum of tax which shall be applicable.

148. The liability to pay Value Added Tax by the builder as works contractor has clearly been settled by the **Hon'ble Apex Court in M/s Larsen and Toubro Limited Vs State of Karnataka (2013) 46 PHT 269 (SC)** wherein it was held that the builders/developers etc. engaged in the activities of the construction of building, flat and commercial properties are covered under the definition of "works contract" and are liable to pay Sales Tax as per applicable laws of the state. The provisions of Haryana VAT Act, 2003 (herein after referred as HVAT Act) r/w Haryana Value Added Tax Rules further clarified that the agreements entered with prospective buyers for sale of constructed flats, apartments or other buildings by builders and/or

developers amount to transfer of property of goods involved in the execution of a works contract and thus liable to be subjected to VAT. The above is supported by "sale" as defined under sub-clause (ii) of section 2(1)(ze) of the HVAT Act which includes "the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract." The term "works contract" has been defined under section 2(1)(zt) which "includes any agreement for carrying out for cash, deferred payment or other valuable consideration, the assembling, construction, building, altering ,manufacturing, processing, fabrication, installation, fitting out, improvement, repair or commissioning of any movable or immovable property." "Goods" have been defined under section 2(1)(r) of the Act as under:

> *"goods" means every kind of movable property, tangible or intangible, other than newspapers, actionable claims, money, stocks and shares or securities but includes growing crops, grass, trees and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale."*

149. Thus, the provisions of Haryana Value Added Tax Act, 2003 allows charging of Value Added Tax (VAT) only on the goods transferred/utilized in the execution of a works contract. Accordingly, VAT is not chargeable on the labour, land component of the unit as well as other items which are not covered under the definition of "Goods".

150. Further, it is pertinent to point that there is no standard formula as to what percentage of VAT is to be levied on the consideration to be paid by the prospective buyer. In order to ascertain the tax liability on under-construction property; firstly, the quantification of goods involved in the under-construction property need to be calculated as per the mechanism provided by the State of Haryana vide **notification No. 19/ST-1/H.A.6/2003/S.60/2015 dated 23.07.2015**, thereafter, taxed the taxable

turnover according to the rate of tax on various goods such as steel, cement, concrete, wood etc. incorporated, utilized and transferred in the execution of the works contract. The Government of Haryana vide **notification No. 19/ST-1/H.A.6/2003/S.59A/2016 dated 12.09.2016** also provided for an amnesty scheme namely, the Haryana Alternative Tax Compliance Scheme for Contractors, 2016, for the recovery of tax, interest, penalty or other dues payable under the said Act, for the period **up to 31.03.2014**. Therein, an option was provided to the builder/ developer to discharge their Value Added Tax obligation at a flat rate of 1.05% (1% VAT +5% Surcharge on VAT) on the entire aggregate amount received or receivable for the business carried out during the year for the period prior to 31.03.2014; whether assessed or not assessed.

151. It is further noted that the majority of the builders opted for the scheme and discharged their liabilities including the respondent-promoter as per the list available on the website of the Excise and Taxation Department, Haryana. Thus, the VAT liability stands discharged by the developers including the respondent-promoter by paying lump sum tax @ 1.05% up to the period 31-03-2014.

152. That the Govt. of Haryana, Excise and Taxation Department vide **notification no. S.O.89/H.A.6/2003/S.60/2014 dated 12.08.2014** provided a lump-sum scheme in respect of builders/developers which was further amended vide another notification **no. 23/H.A.6/2003/S.60/2015 dated 24.09.2015** according to which the builder/developer can opt for this scheme **w.e.f. 01.04.2014**. Under the above scheme, a developer had an option to pay lump sum tax in lieu of tax payable by him under the Act, by way of lump sum tax calculated at the compounded rate of 1% of entire aggregate amount specified in the agreement or value specified for the purpose of stamp duty, whichever is higher, in respect of the said agreement.

The builder/developer opting for this scheme here-in-after shall be referred to as the 'Composition Developer'. **This scheme remained in force till 30.06.2017**. The purpose of the lump sum scheme was to mitigate the hardship being caused in determining the tax liability of the builders/ developers. Again, most of the builders opted/availed the benefit of the scheme. The list of the builders who opted the scheme is also available on the website of Excise and Taxation Department, Haryana. **Thus, the VAT liability for developer/builder opted for this scheme for the period 01.04.2014 to 30.06.2017 comes to 1.05%.**

153. Further, in case any builder/ developer had not opted for any of the above two schemes then the VAT liability comes to approximately 4-5 percent (maximum). It is noteworthy that the amnesty scheme was available up to 31.03.2014, however the same was silent on the issue of charging VAT @ 1.05% from the buyers/ prospective buyers whereas in the lump-sum/ composition scheme under rule 49(a) of the HVAT Rules, 2003, it was specifically mentioned that incidence of cost has to be borne by the promoter/ builder/developer only. **Thus, the builders/developers who opted for the lump-sum scheme, were not eligible to charge any VAT from the buyers/prospective buyers during the period 01-04-2014 to 30-06-2017. In other words, the developer/builder has to discharge the VAT liability out of their own pocket.**

154. A plain reading of this would indicate that all the existing applicable taxes were already included in the basic sale price of the units and through the aforesaid clause, the additional demand could be made only in respect of a fresh incidence of taxes. In the instant case, VAT has been charged up to 30.06.2017, Service Tax has been charged up to 30.06.2017 and GST has also been charged thereafter i.e. with effect from 01.07.2017. The respondent counsel argued that the taxes are levied by the state government and have to

be deposited with the state on demand, hence are justified. With respect to GST, the respondent counsel stated that this tax came into force in the year of 2017, therefore it is fresh tax and has been charged justifiably.

155. In this context, attention of the authority was drawn to the fact that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new tax regime i.e. GST, by incorporating section 171 in Central Goods and Services Tax Act, 2017/ Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below:

> *"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."*

156. The intention of the legislature was amply clear that the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of section 171 of HGST/CGST Act, 2017. As per the above said provisions of the Act, it is mandatory for the respondent to pass on the benefits of 'Input Tax Credit' by way of commensurate reduction in price of the flat/unit. Accordingly, respondent should reduce the price of the unit/consideration to be realized from the buyer of the flats commensurate with the benefit of ITC received by him.

157. The authority after hearing the parties at length is of the view that admittedly, the due date of possession of the unit was 31.03.2016 but the offer of possession has been made only on 21.05.2019. Had the unit been delivered within the due date or even with some justified delay, the incidence of GST would not have fallen on the allottee. Therefore, an additional tax burden with respect to GST was enforced upon the buyer for no fault of his since and is due to the wrongful act of the promoter in not delivering the unit within

due date of possession; also, the tax liability would have been very less as compared with the GST if levied @ 12%.

158. The authority has also perused the judgement dated 04.09.2018 in complaint no. 49/2018, titled as **Parkash Chand Arohi Vs. M/s Pivotal Infrastructure Pvt. Ltd.** of the Haryana Real Estate Regulatory Authority, Panchkula wherein it has been observed that the possession of the flat in term of buyer's agreement was required to be delivered on 1.10.2013 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainant cannot be burdened to discharge a liability which had accrued solely due to respondent's own fault in delivering timely possession of the flat. The relevant portion of the judgement is reproduced below:

> *"8. The complainant has then argued that the respondent's demand for GST/VAT charges is unjustified for two reason: (i) the GST liability has accrued because of respondent's own failure to handover the possession on time and (ii) the actual VAT rate is 1.05% instead of 4% being claimed by the respondent. The authority on this point will observe that the possession of the flat in term of buyer's agreement was required to be delivered on 1.10.2013 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainant cannot be burdened to discharge a liability which had accrued solely due to respondent's own fault in delivering timely possession of the flat. Regarding VAT, the Authority would advise that the respondent shall consult a service tax expert and will convey to the complainant the amount which he is liable to pay as per the actual rate of VAT fixed by the Government for the period extending upto the deemed date of offer of possession i.e., 10.10.2013."*

159. In appeal no. 21 of 2019 titled as **M/s Pivotal Infrastructure Pvt. Ltd. Vs. Prakash Chand Arohi**, Haryana Real Estate Appellate Tribunal, has upheld the **Parkash Chand Arohi Vs. M/s Pivotal Infrastructure Pvt. Ltd. (supra).** The relevant para is reproduced below:

> *"93. This fact is not disputed that the GST has become applicable w.e.f. 01.07.2017. As per the first Flat Buyer's Agreement dated 14.02.2011, the deemed date of possession comes to 13.08.2014 and as per the second agreement dated 29.03.2013 the deemed date of possession comes to 28.09.2016. So, taking the deemed date of possession of both*

the agreements, GST has not become applicable by that date. No doubt, in Clauses 4.12 and 5.1.2 the respondent/allottee has agreed to pay all the Government rates, tax on land, municipal property taxes and other taxes levied or leviable now or in future by Government, municipal authority or any other government authority. But this liability shall be confined only up to the deemed date of possession. The delay in delivery of possession is the default on the part of the appellant/promoter and the possession was offered on 08.12.2017 by that time the GST had become applicable. But it is settled principle of law that a person cannot take the benefit of his own wrong/default. So, the appellant/promoter was not entitled to charge GST from the respondent/allottee as the liability of GST had not become due up to the deemed date of possession of both the agreements."

160. After taking into consideration all the material facts as adduced and produced by both the parties, the authority hereby concludes as under:

i. For projects where the due date of possession was prior to 01.07.2017 (date of coming into force of GST).

No doubt as per clause 9(f) of the builder buyer's agreement, the complainant/allottee has agreed to pay all the Government rates, tax on land, municipal property taxes and other taxes levied or leviable now or in future by Government, municipal authority or any other government authority, but this liability shall be confined only up to the due date of possession. The delay in delivery of possession is the default on the part of the respondent/promoter and the possession was offered on 21.05.2019 by that time the GST had become applicable. But it is settled principle of law that a person cannot take the benefit of his own wrong/default. So, the respondent/promoter was not entitled to charge GST from the complainant/allottee as the liability of GST had not become due up to the due date of possession as per the agreements.

ii. **For projects where the due date of possession was after 01.07.2017 (date of coming into force of GST).**

For the projects where the due date of possession was/is after 01.07.2017 i.e., date of coming into force of GST, the builder is entitled for charging GST but builder has to pass the benefit of input tax credit to the buyer. That in the event the respondent-promoter has not passed the benefit of ITC to the buyers of the unit which is in contravention to the provisions of section 171(1) of the HGST Act, 2017 and has thus committed an offence as per the provisions of section 171 (3A) of the above Act. The allottee shall be at liberty to approach the State Screening Committee Haryana for initiating proceedings under section 171 of the HGST Act against the respondent-promoter. The concerned SGST Commissioner is advised to take necessary action to ensure that the benefit of ITC is passed on to the allottee in future.

iii. The final tax liability is to be re-fixed after considering the benefit u/s 171 of the SGST/CGST Act. However, the respondent-promoter shall not recover the amount charged towards GST from the allottee till the final calculation by the profiteering committee is provided and shall be payable only till the due date of possession subject to the decision and calculation of the profiteering committee.

iv. Charging of VAT

The promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT) under the amnesty scheme. The promoter shall not charge any VAT from the allottees/prospective buyers during the period 01.04.2014 to 30.06.2017 since the same was to be borne by the promoter-developer only. The respondent-promoter is directed to adjust the said amount, if charged from the allottee with the dues payable by the allottee or refund the amount if no dues are payable by the allottee.

v. With respect to the relief of service tax, advice of service tax expert should be taken about the quantum of service tax payable in given circumstances of the allottee up to the due date of offering of possession of the apartments. Accordingly, whatever service tax is payable up to the due date of offer of possession shall be demanded by the promoter and will be paid by the allottees.

C.V 'Electrification Charges'/ 'Electricity Connection Charges'/ 'Water Connection Charges'/ 'Sewerage Connection Charges':

Whether the respondent is justifying in raising demand on account of 'electrification charges'/ 'electricity connection charges'?

161. Particularly in complaint bearing no. **4495 of 2019** titled as **Sachin Jain Vs. Emaar MGF Land Ltd.**, the complainant has raised issue w.r.t legality of 'Electrification Charges', 'Electricity Connection Charges', 'Water Connection Charges', and 'Sewerage Connection Charges'. The complainant submitted that on 16.08.2019, the respondent sent a letter of possession to complainant and asked to deposit Rs.14,94,545/- under various heads. The said demand includes following: administrative charges (Rs.12,000/-), water connection charges (Rs.4,242/-), sewerage connection charges (Rs.2,097/-), electrification charges (Rs.6,531/-), electricity connection charges (Rs.68,589/-), miscellaneous expenses (Rs.2,500/-) and advance monthly charges for 12 months (Rs.1,01,220/-). The said components were not part of builder buyer's agreement, and the respondent wants to get unreasonable enrichment. On the other hand, the respondent submitted that all the dues mentioned in the notice of possession are legal and valid and are as per the terms and conditions of the builder buyer's agreement and were duly explained to the complainant at the time of offer of possession. It is submitted that the administrative charges of Rs. 12,000/- and misc. expenditure for registration charges of Rs. 2,500/- are covered under clause 7 of the builder buyer's agreement and also explained in the notice of possession; Electricity,

water and sewerage charges are covered under clause 11 (a) of the builder buyer's agreement; and advance monthly maintenance charges of Rs. 1,01,220/- are covered under clause 21 of the builder buyer's agreement.

162. The respondent promoter has drawn the attention of the authority towards the definition of "total consideration" which shall mean the amount payable for the said unit which includes the basic sale price, cost towards open/covered car park, External Development Charges (EDC), Infrastructure Development Charges (IDC) and applicable PLC (if any) details of which are provided in schedule of payment annexed as Annexure-3 to the agreement but does not include any other charges, as reserved in the builder buyer's agreement and the allottees shall be under an obligation to pay such additional cost as may be intimated to him by the company, from time to time.

163. There are two different charges which are under discussion in this issue:

i. Electricity connection charges and on similar analogy water connection charges, sewerage connection charges, water tank charges etc.

ii. Electrification charges on similar analogy sewerage system, STP, water-tank etc. charges.

Electricity Connection Charges:

164. The following provision has been made in the builder buyer's agreement in clause 11 in respect of the said charges which reads as under:

> ***11. RIGHTS AND OBLIGATIONS OF THE ALLOTTEE(S)***
>
> ***(a) Electricity, Water and Sewerage Charges***
>
> *The electricity, water and sewerage connection charges & security deposit (if any) shall be borne and paid by the Allottee(s). The Allottee(s) shall plan and distribute its electrical load in conformity with the electrical systems installed by the Developer. The Allottee(s) undertakes to pay additionally to the Developer on demand the actual cost of the*

electricity, water and sewer consumption charges and/or any other charge which may be payable in respect of the same Unit. The Allottee(s) undertakes that it shall not apply directly to Haryana Vidyut Prasaran Nigam Limited ('HVPNL') or any other electricity supply company in his individual capacity for receiving any additional load of electricity other than that being provided by the Maintenance Agency."

165. With respect to the electricity connection charges, water connection charges, sewerage connection charges, there is no doubt that all these charges are payable to various departments for obtaining service connections from the concerned departments including security deposit for sanction and release of such connections in the name of the allottee and are payable by the allottee. These connections are applied on behalf of the allottee and allottee has to make payment to the concerned department on actual basis. In case instead of paying individually for the unit if the builder has paid composite payment in respect of the abovesaid connections including security deposit provided to the units, then the promoters will be entitled to recover the actual charges paid to the concerned department from the allottee on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant viz- à-viz the total area of the particular project. The complainant/allottee will also be entitled to get proof of all such payment to the concerned department along with composite proportionate to his unit before making payment under the relevant head. In case of bulk supply of electricity, the concerned department/agency releases connection with certain terms and conditions of bulk supply and these are to be abided by the allottee. The allottee is also asked to give undertaking not to apply directly to any other electric supply company in his individual capacity for additional load of electricity other than being that provided through bulk supply arrangement. In this case, apart from bearing proportionate charges for bulk supply of electricity connection to the project, the allottee has also to bear the individual meter connection expenditure from the bulk supply point to his unit.

166. It is also clarified that there shall not be any loading or additional charges for such connection in the name of incidental charges and sometime under the name and style of informal charges which is an illegal charge, and the authority cannot be a mock spectator in such an eventuality.

167. The authority places reference to the case titled as **Shellender Singh Vs. M/s Omaxe Chandigarh Extension Developers Pvt. Ltd**. (complaint case no. 311 of 2015 dated 10.06.2016) wherein the Union Territory Consumer Disputes Redressal Commission, UT Chandigarh has held as under:

> *"25. The next question, which falls for consideration, is, as to whether the complainant is entitled to refund of Rs.61,050/- on account of other charges paid to the Opposite Parties.* ***The complainant vehemently argued that cost of electricity meter (Rs.26,050/-) is extremely higher. When the complainant disputed the charges, the Opposite Party vide letter dated 27.2.2015 (Annexure A-13) has clarified that the same were charged as per Clause 13 of the Agreement and Annexure-B annexed thereto, on account of electrical sub-station cost-1; meter cost; utility cost & as infrastructure cost/cess (Govt. levy)-1. That being the case, the complainant, in our opinion, is not entitled to refund of charges on account of proportionate cost of sub-station (Rs.10,000/-), Utility cost (Rs.4,000/-), Infra-structure cost/cess (Govt. levy-1) (Rs.21,000/-). The cost of individual electricity meter in the sum of Rs.26,050/- is undoubtedly on the higher side****. The chart (OP-4) includes pre-metering charges in the sum of Rs.13,500/- ……."*.

168. The Hon'ble NCDRC in its judgement dated **07.02.2018 in Rajni Goyal vs Supertech Limited** also has held as under:

> *"9. I have carefully considered the above referred cases contained in the allotment letter. Though the aforesaid clauses contained in the allotment letter envisages payment of maintenance charges from the date of issuance of the letter of possession, the letter dated 12.10.2015 cannot be said to be letter of possession since the OP had not even obtained the requisite occupancy certificate by the date on which the aforesaid letter was issued. Part occupancy certificate is stated to have been obtained on 02.12.2015. Thereafter, no letter offering possession was sent to the complainant. Moreover, the letter dated 12.10.2015 contains at least partly unjustified demands, for instance, interest on delayed payment amounting to Rs.1,24,993/- was*

demanded, whereas the amount which could actually have been demanded from the complainant comes to only Rs.3,166/-. Moreover, it also contained a demand for advance maintenance charges for one year which had not become payable on the date the said letter was issued, as even the occupancy certificate had not been issued by that date. The aforesaid letter also contained a demand for water connection charges amounting to Rs.25,000/- + service tax. The learned counsel for the OP relies upon the clause 41 of the allotment letter to justify the said charges. Clause 41 of the allotment letter reads as under:

> *41. THAT all the charges payable to various departments for obtaining service connections to the unit like electricity, telephone, water etc. including security deposit for sanction and release of such connections as well as informal charges pertaining thereto will be payable by the Allottee/s. The learned counsel for the OP states that in fact the demand of Rs.25,000/- was towards share of the complainant in the charges actually paid by the OP to the concerned department for obtaining the water connection. He further states that instead of paying individually, for each flat, the OP has made composite payment in respect of the water connection provided to the flats. As held by this commission vide its order dated 14.03.2017 in CC/1009/2016, Kamal Kishore & Anr. Vs. M/s Supertech Limited, if this is so, the OP will be entitled to recover the actual charges paid to the concerned department from the complainant on pro-rata basis, i.e., depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the flats in this particular project. The complainant will also be entitled to proof of such a payment to the concerned department along with a computation proportionate to her flat, before making payment under the aforesaid head……"*

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

Electrification charges:

170. License to develop a colony is granted on an application made under section 3(1) of the Haryana Development and Regulation of Urban Areas Act, 1975 and Director Town and Country Planning grant license under section 3(3)(a) of Act ibid. The developer also enters into an agreement in the prescribed form for carrying out and completion of development work in accordance with the license granted.

171. After the colonizer has laid out the colony in accordance with the approved layout plan and executed the internal development works in accordance with the approved designs and specifications, he may apply to the Director for grant of completion or part completion certificate as per section 3(6) of the Haryana Development and Regulation of Urban Areas Act, 1975.

172. The definition of the internal development works is defined in section 2(i) of the Haryana Development and Regulation of Urban Areas Act, 1975 as under:

> *2(i) "internal development works" mean –*
>
> *(i) Metaling of roads and paving of footpaths;*
>
> *(ii) Turfing and plantation with trees of opens spaces;*
>
> *(iii) Street lighting;*
>
> *(iv) Adequate and wholesome water supply;*
>
> *(v) Sewers and drains both for storm and sullage water and necessary provision for their treatment and disposal; and*
>
> *(vi) Any other work that the Director may think necessary in the interest of proper development of a colony;*

173. From the above definition, it is clear that street lighting services forms an integral part of the internal development works and promoter is duty bound to provide internal development works as per conditions of license and for obtaining part completion/ completion certificate.

174. It is the duty of the colonizer to arrange the electric connection from the outside source for electrification of their colony from Haryana Vidhyut Parsaran Nigam/Dakshin Haryana Bijlee Vitran Nigam Limited, Haryana. The installation of internal electricity distribution infrastructure as per the peak load requirement of the colony shall be the responsibility of the colonizer, for which the colonizer will be required to get the "electric(distribution) services plan/estimates" approved from the agency responsible for installation of "external electrical services" i.e., Haryana Vidhyut Parsaran Nigam/Dakshin Haryana Bijlee Vitran Nigam Limited, Haryana and complete the same before obtaining completion certificate for the colony.

175. The promoter is selling a unit for which possession is given after obtaining occupation certificate and occupation certificate is granted under code 4.10 of Haryana Building Code, 2017 wherein the competent authority grants occupation certificate only after completion of necessary infrastructural work as mentioned therein meaning thereby that the water supply, sewerage, electricity, road, drainage etc. have been provided by the promoter and it is all but natural that providing of such services is necessary for making a unit habitable and ready for possession to the allottee.

176. There may be a case of charges for some of the services separately if a specific provision alongwith quantification of the charges have been specifically provided in the builder buyer's agreement but there also acceptability and admissibility of such charges will depend on examination of such charges on case to case basis.

177. The following provision has been made in the builder buyer's agreement in clause 2 read with clause 9(a) in respect of the said charges which reads as under:

"2. COSTS & EXPENSES

*The Allottee(s) agrees and undertakes to pay all **additional amounts**, including but not limited to **any additional costs**, expenses, deposits, charges for bulk supply of electrical energy, instalment of **additional** transformers, sub-stations or any transmission line in respect of the Building as demanded by the Developer and/or the maintenance agency ("Maintenance Agency") from time to time.*

..." (emphasis supplied)

As per above provision in the builder buyer's agreement, the allottee has to pay only for the additional amounts and additional costs for installation of additional transformers, etc. which categorically concludes that such charges are payable only when the additional expenses are incurred by the promoter. As far as cost of providing basic electrification is concerned, it is to be borne by the promoter and forms part of the basic sale price otherwise on the same analogy, the builder may charge for other internal development services and external development services separately from the allottee at its own will.

178. The language in the builder buyer's agreement is so vague, that if promoter wants then he can charge for everything including boundary wall, roof etc. The Department of Town and Country Planning has provided certain norms for infrastructure and services which have been specified in the Haryana Building Code, 2017. These are necessarily to be provided as per condition of the license and accordingly it is presumed that the charges for such infrastructure and services are part of the basic sale-price of the unit. Even if it is presumed that the builder has provided for charging of such services in the builder buyer's agreement, then also he should have disclosed the basis and costing of the same so that the allottee is in a position to take decision whether to buy such unit or not. The kind of vague language used in the builder buyer's agreement is against all canons of natural justice and transparency and very safely can be referred as unfair trade practice.

179. In these cases, no such specific provision has been made in the builder buyer's agreement to charge for electrification. Accordingly, in all cases where the complainants have raised this issue of charging electrification charges, the same is disallowed.

180. The authority before taking a view in this matter has also undergone large number of builder buyer's agreements not only executed by this promoter but by several other promoters also. The practice followed by some of the builders is reasonable whereas the practice followed by some builders is so bad that it can be said to be nothing but cheating and asking for such charges at the time of offer of possession amounts to coercion as the allottee was kept in dark right from the beginning about these charges and now at the fag-end when he is seeing his dream of obtaining possession coming true, he has been put in dilemma of either paying such charges and take possession or to give up his dream home.

181. The allottee has contested the entitlement of the developer to claim these charges. Learned counsel for the respondent has contended that when there is a provision in the builder buyer's agreement with regard to payment of electrification charges etc. by the allottee to the promoter respondent, complainant is bound by the stipulation contained in the builder buyer's agreement and he cannot back out from it. According to him when a party to the contract disputes the binding nature of the signed contract, it is for him to prove the terms of the contract or circumstances in which he came to sign. His arguments go on to state that if a contract is on a standard printed form, it is for the party to accept it or not to accept it and thus the party signing the contract has to remain bound by it and is not allowed to plead ignorance. He has placed reliance on **AIR 1996 SC 2508, AIR 1980 SC 738, AIR 1975 SC 1121, 1997 (1) CCC 127, 2000 (1) Apex Court Journal 388 and 2011 (1) CPR 343 (NC)**.

182. The basic sale price of a unit also include electrification as street lighting is an integral part of internal development works and also includes disposal of sewage and sullage, water, fire protection and fire safety requirements, streetlight, electricity supply, transformers, etc. Some of these internal development works have to be done by the promoter. In this regard, it is useful to reproduce the definition of the term "Internal Development Works" as defined in section 2 (zb) of the Act. The same reads as under:

> *"2. In this Act, unless the context otherwise requires,-*
>
> *(zb) "internal development works" means roads, footpaths, water supply, sewers, drains, parks, tree planting,* ***street lighting,*** *provision for community buildings and for treatment and disposal of sewage and sullage water, solid waste management and disposal, water conservation,* ***energy management****, fire protection and fire safety requirements, social infrastructure such as education, health and other public amenities or any other work in a project for its benefit, as per sanctioned plans".*

183. External Development Charges are paid to the government in lieu of providing external infrastructure. The terms "External Development Works" has been defined in section 2 (w) of the Act as follows:

> *"2. In this Act, unless the context otherwise requires,-*
>
> *(w) "external development works" includes roads and road systems landscaping, water supply, sewerage and drainage systems,* ***electricity supply transformer****,* ***sub-station,*** *solid waste management and disposal or any other work which may have to be executed in the periphery of, or outside, a project for its benefit, as may be provided under the local laws".*

184. In the considered opinion of this authority, if the allottee has already paid these charges, then it would be unjust for him to pay further charges under the head "electrification charges" despite there being a condition for payment of these charges in the builder buyer's agreement, the allottee should not be made or compelled to pay amount towards electrification charges. Therefore, if the promoter in fact requires further money for meeting expenses to provide these basic infrastructures to the allottees in the project, the

promoter should always give a break-up of these expenses to the allottee very transparently with each and every detail.

185. Here, it would be useful to reproduce the definition of the term "occupancy certificate" as provided in section 2 (zf) of the Act. The same reads as under:

> *"occupancy certificate" means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for* ***civic infrastructure*** *such as* ***water, sanitation and electricity;*** *(emphasis supplied by us)."*

186. Occupation certificate is always provided by the competent authority to the promoter only after the completion of the building when the same is ready for possession and occupation. Unless and until the building has the electricity which also includes the power back up system and water connections, how can the same be said to be fit for occupation. Electricity is an eye and water is the soul of a dwelling unit. Therefore, if these two facilities are not provided to the allottee in the unit, the allottee himself cannot survive. Hence, charging under these heads is not justifiable for these reasons as well.

187. In view of the above discussion, the authority reaches to the conclusion that the promoter should not charge electrification charges from the allottees while issuing offer of possession letter.

C.VI Club charges:

Whether the demand raised by the respondent on account of club charges is justifiable?

188. The issue w.r.t club house charges has been raised in complaint bearing no. **5567 of 2019** titled as **N.S. Exports Pvt. Ltd. Vs. Emaar MGF Land Ltd.** The complainant has submitted that relevant clause regarding club membership registration charges is 1.2(a)(i)(7) of the builder buyer's agreement provides club membership registration charges. The complainant submitted that the club does not exist as of today and the respondent has already taken advance

money with respect to the club membership. Therefore, the said amount shall be refunded as the club is not operationalized till date. On the other hand, the respondent contended that the club membership charges are payable by the complainant under the builder buyer's agreement and the builder buyer's agreement specifically provides that the construction of the club may or may not be simultaneous with the construction of villa.

189. Clause 1.2 of the builder buyer's agreement provides total consideration of the villa and the same is reproduced as under:

> ***"1.2 Total Consideration for the Sale of the Villa***
> ***(a) Total Consideration***
> *The Total Consideration payable by the Allottee(s) to the Company for the Villa includes the Sale Price '(defined hereunder) of Rs. 53190000/-(Rupees Five Crore Thirty-One Lakh Ninety Thousand Only), External Development Charges ('EDC) of Rs. 4199- per sq. yd. of the Plot area and Infrastructure Development Charges ('IDC) of Rs.5171- per sq. yd of the Plot area. The Allottee(s) undertakes and acknowledges that the payment for EDC and IDC aggregating to a sum of Rs. 1650600/-, as on the date of LOI/License, shall be payable as and when demanded by the Company by way of separate cheque in favour of Emaar MGF Land Limited -Marbella EDC/IDC A/c. The Allottee(s) understands and confirms that the "Sale Price" means consideration payable for the said Villa along-with the plot underneath more specifically detailed in the Payment Plan. The Sale Price does not include Taxes, charges, security amount/deposits, service tax etc., and other amounts payable including but not limited to:*
> 1. *IFMS amounting to Rs.652000/- for the said Villa which shall be deposited by the Allottees). as may be decided by the Company.*
> 2. *Stamp duty, registration and incidental charges as well as expenses for execution of the Agreement and sale deed etc. which shall be borne and paid by the Allottee(s) alone.*
> 3. *A sum equivalent to the proportionate share of Taxes for the said Villa which shall be paid by the Allottee(s) to the Company.*
> 4. *IDC/ EDC, as applicable and to be paid by the Allottee(s) on a pro-rata basis.*
> 5. *The Maintenance Charges, property tax, municipal tax fees or levies of any kinds by whatever name called on the proportionate basis for the said Villa shall be payable by the Allottee(s).*
> 6. *The cost of mainline electricity connection charges, and diesel generator power back inside the Project, as applicable shall be payable by the Allottee(s).*

7. *The Club Membership Registration Charges ("CMRC") of Rs. 2,00,000/- (Rupees Two Lakhs only) for availing the membership of the Club and subsequent maintenance and development charges as may be chargeable by the Company at a later stage and shall be payable by the Allottee(s).*
8. *Any other charges or expenses as may be more particularly specified in the Buyer's Agreement."*

Clause 3(a) of the agreement provides as under:

> *"**3. CLUB MEMBERSHIP REGISTRATION CHARGES***
>
> *(a) In accordance with the development plan of the Project, the Company proposes to develop a club for recreational purposes (the **"Club"**) for the Allottee(s) and the other occupants of the Project. The Allottee(s) understands that the Club may be developed either simultaneous with or after construction of the Villa. The Allottee(s) agrees to pay all charges including but not limited to Club Membership Registration Charges ("**CMRC**") for Rs.2,00,000/- (Rupees Two Lakh Only) which shall be over and above the Total Consideration, for availing membership of the Club and shall be liable to pay Club development expenses as and when required for this purpose by the Company/Maintenance Agency."*

190. NCDRC in its judgement dated 27.01.2016 passed in **Anil Lekhi Vs. Akme Projects Ltd**. it was held that at the time of execution of sale deed, it was represented by the opposite parties that they shall provide facilities with respect to club having state of the art amenities and accordingly club membership charges were paid by the allottee. However, even after execution of the conveyance deed and receipt of the club membership fees/charges, the opposite parties had failed to provide the club facility and being aggrieved, the allottee prayed for refund of the said amount along with interest. The NCDRC observed that since the developer could not provide the club facility despite receipt of money amounts to deficiency of service and the allottee is entitled to refund of the entire amount paid towards such facility along with interest at the prescribed rate.

191. The Real Estate Regulatory Authority, Punjab in complaint no. 5 of 2018 titled as **Mandeep Kaur Sodhi Vs. M/s Janta Land Promoters Pvt. Ltd.** dated 16.08.2019 held that since the one-time club membership charges are payable on demand and are not part of the basic price of the apartment, if not raised, can be demanded only after the provision of the club has been made.

192. The authority is of the view that if the club has come into existence and the same is operational or is likely to become operational soon i.e. within reasonable period of around six months, the demand raised by the respondent for the said amenity shall be discharged by the complainants as per the terms and conditions stipulated in the agreement. However, if the club building is yet to be constructed, the respondent should prepare a plan for completion of the club and demand money regarding club membership registration charges from the members only after completion of the club.

193. Hence, in view of the above facts and circumstances and judgement passed in **Wg. Cdr. Arifur Rahman Khan (supra)** wherein, the demand of club charges in pursuance of the stipulation contained in the builder buyer's agreement executed between the promoter and the allottee has been held to be legal and justified by the Hon'ble Supreme Court of India and further the said view has been endorsed **DLF Home Developer Ltd. Vs. Capital Greens Flat Byers Association, civil appeal nos. 3864-3889 of 2020 decided on 14.12.2020;** the authority holds that the demand for "club charges" is legal and justified but club membership registration charges shall be payable once club comes in existence.

C.VII Preferential location charges:

Whether the respondent is justified in demanding preferential location charges?

194. The complainants have sought relief of refund of preferential location charges in the following complaints:

S.No.	Complaint no.	Complaint title
2	CR/3989/2019	Richa Rana and Harendra Singh Rana Vs. Emaar MGF Land Limited
7	CR/6053/2019	Aman Monga and Roma Monga Vs. Emaar MGF Land Limited
9	CR/31/2020 /3830/2019	Sunjay Pathak and Radesh Pathak Vs. Emaar MGF Land Limited
10	CR/5991/2019	Jaspal Singh Monga Vs. Emaar MGF Land Limited
11	CR/6709/2019	Kapil Mehrotra Vs. Emaar MGF Land Limited
15	CR/2626/2019	Richa Rana and Harendra Singh Rana Vs. Emaar MGF Land Limited
20	CR/2722/2020	Nand Kishore Upadhyay Vs. Emaar MGF Land Limited
25	CR/4731/ 2020	Ghanshyam Datt Joshi and Fuhar Chhanga Singh Pandher Vs. Emaar MGF Land Limited

195. In reference to complaint no. **3989 of 2019** titled as **Richa Rana and Harendra Singh Rana Vs. Emaar MGF Land Ltd.**, the complainants have raised the question about the justification of preferential location charges raised by the promoter. As per clause 1.2(d)(i) of the builder buyer's agreement, following provision has been made regarding PLC:

"1.2(d) Preferential Location Charges

The proportionate amount of the preferential location charges ('PLC') for certain units in the Project which inter alia would be charged for Central Lawn at the rate of Rs.350/- sq. ft., Golf Zone at the rate of 350/- sq. ft., Sports Zone/ Green Belt at the rate of Rs.150/- sq. ft., Corner Unit for Rs.100/- sq. ft., Ground Floor PLC for Rs. __, Penthouse PLC @ 10% of BSP, First Floor PLC @ Rs.150/- sq. ft., Second Floor PLC @ Rs.100/- sq. ft. and Third Floor PLC @Rs.50/- sq. ft. (Amounts as mentioned in Annexure 3) and if the allottee(s) opts for any such Unit, the PLC for the same shall be included in the Total Consideration payable by the Allottee(s) as set out in clause 1.2(a)(i) above for the said unit."

196. The contention raised by the allottees is that whether the PLC charged is justifiable or not. Admittedly, the complainants made the payment of Rs.6,47,500/- as 'Preferential Location Charges' towards the commitment given in the brochure of the project that it shall have a total of 8 acres of green area. The grievance of the allottees is that the unit allotted to them is not located at preferential location as stated in clause relating to preferential location charges. According to complainants/allottees, they were made to understand that the unit allotted to them will face about 8 acres of green area though in fact, no such green area exists in the whole project. On the last date of hearing, the complainants sought for refund/adjustment of the entire amount along with reasonable interest paid towards PLC since the unit is not preferentially located and they are not liable to pay the preferential location charges.

Respondent's argument

197. The respondent/developer contested the same on the following grounds:

i. That from the contractual covenants reproduced hereinabove, it is comprehensively established that it had been conveyed transparently and fairly by the respondent to the prospective purchasers/allottees that preferential location charges would be payable for the apartments/units having preferential location attributes. It has been invariably mentioned in the relevant contractual covenant that in case owing to any change in layout plan, the location of any unit, whether preferentially located or otherwise got changed to any other preferential location where the PLC were higher in that event, revised PLC would be payable by the allottees to the respondent.

ii. That it has further been provided in the aforesaid clauses that in case due to change in the layout plan, the apartment/unit ceased to be

preferentially located, in such an event, the respondent would be liable to refund only the amount of PLC paid by the allottee(s) without any interest and/or compensation and/or damages and/or costs of any nature.

iii. That even otherwise, such PLC has been levied/charged/demanded from the prospective allottee/purchaser in accordance with the then prevalent industry practice/norms and nothing unfair or unjustifiable has been demanded and such PLC is in consonance with the location and other peculiar features of the allotted apartment/unit as opted for by the prospective allottee/purchaser. It is only with the revised guidelines and norms regarding the total consideration as set out and as notified by the Haryana Real Estate Regulatory Authority Gurugram that now the promoter/developer is to provide for the total consideration without any bifurcation of the various components of the total consideration after considering and taking into account all the integral components and constituents of the total consideration. It is also to be noted that earlier, there was no bar on the promoter/developer to demand and charge PLC from the prospective allottee/purchaser on different basis details whereof were set out either in the builder buyer's agreement itself or the same was incorporated by inference into the payment plan as opted for by the prospective allottee/purchaser and forming part of the allotment letter/builder buyer's agreement. Such PLC being an integral part of the total consideration is also reflected in the consideration for the computation of the applicable stamp duty to be paid on the conveyance/sale deed and also as a part of the consideration for the sale/transfer of the apartment/unit as set out in the conveyance/sale deed.

iv. That it is settled proposition of law that parties are bound by terms and conditions incorporated in the contracts executed by them and they are not entitled to stake or assert any claim at variance with contractual covenants.

View of the authority

198. The authority has heard the arguments by both the parties at length. Needless to say, that the agreement for sale/the builder buyer's agreement executed between the parties i.e. the promoter and the allottee is binding on them and they are not entitled to avoid any terms or conditions contained herein except those terms or conditions which are against the public policy or where there are reasons to believe that the same were incorporated in the agreement by the promoter by taking benefit of his being in dominant position and the allottee had no option but to sign on the dotted lines.

199. The authority taking cognizance in the matter appointed a team of local commissioners/engineering team to visit the project site in order to substantiate the claims raised by the allottee. The team visited the site on 30.01.2021 in the presence of Sh. Satish Goel, DGM of the respondent promoter and accordingly has submitted its detailed report along with the copy of the site plan wherein the green landscaped area with mini golf course and central green landscaped area have been shown in orange and green colors respectively. The team has also filed the photographs of the project taken from different angles wherein the green areas have been clearly shown to be existing and also the copy of the brochure. The excerpts of the report are reproduced as under:

"6. CONCLUSION:

After the site inspection of the project and verifying the site plan it is concluded that:

1. *The project is complete, and occupation has been obtained by the promoter.*
2. *DTCP has approved 15757 sqm i.e., 3.9 acres area as a green area in the project and the promoter has developed the approved area as green landscaped area. Further the promoter has developed the additional areas of the project as green area i.e., area near boundary walls and around towers. Hence, after this addition, the overall green area in project will be approximately 6 to 6.5 acres.*
3. *The central green area approved in the plan is 8461 sqm i.e., 2.1 acres and the promoter has developed the area. Further balance areas in central portion of the project are also developed as green areas. Hence the total central green area in project is approximately 3.5 acres.*
4. *The basic amenities like club house (includes multipurpose hall, Gym, Restaurant, balling area, saloon area, card room, creche, swimming pool), tennis court, badminton court, basketball court, jogging track, mini golf course etc. are developed by the promoter.*
5. *24-meter roads area falling in project license area has been developed by the promoter. As on date the connectivity of project to NH-8 is through revenue rasta and project to Dwarka Expressway through internal roads of Vatika Limited. As soon as the 24-meter road work will be completed the connectivity of project will be fast from NH-8 and Dwarka Expressway."*

200. As per the brochure, the prospective purchaser of the units in the project had been made to understand that the project will consists of '8 acres central landscaped greens and park'. Also, in the welcome letter dated 09.06.2011 (in reference to complaint no. 31 of 2020), the respondent has stated that "*Beyond the brick and concrete, however, there's something unique to look forward to eight acres of beautifully landscaped, lovingly looked after central greens, basking in beautiful sun and fresh air*." It is important to note here that at the time of advertisement/brochure, the building plan was not approved by the competent authority. Furthermore, as per allotment letter dated 09.06.2011, the respondent has charged Rs.6,65,000.- on account of PLC for central greens and the applicable PLC has been indicated in the schedule of payment annexed with the allotment letter. The said term was also

incorporated in the builder buyer's agreement and the complainant has also agreed to pay PLC charges. The builder buyer's agreement has no such provision wherein the parties have agreed that the central green will be of 8 acres for which the PLC has been charged i.e., the allotment letter and builder buyer's agreement are silent as to the area of central greens. The respondent has developed the said project as per the building plan approved by the DTCP, Haryana.

201. However, as per the commission's report discussed hereinabove, the overall green area in the project is approximately 6 to 6.5 acres. Therefore, there is a variation in the description of the central landscaped greens and park as described in the brochure and the actual green area provided in the project. The brochure, in the opinion of this authority, is a primary document and also document of gravity on the basis of which allottees booked the unit, therefore, the promoter shouldn't have used such description in the brochure also.

202. In the present complaint/s, the authority observes that the agreement clearly provides that the allottee had agreed to pay preferential location charges for preferentially located unit and such preferential location charges were payable by the allottee in the manner and within such time as stated in the schedule of payment, wherever applicable. The promoter had further specifically agreed that due to any change in the layout plan, if the allotted unit ceases to be in a preferential location, the developer/promoter shall be liable to refund only the amount of preferential location charges paid by the allottee and such refund shall be adjusted in the instalment.

203. In a case reported as **Suresh Kumar Bansal Vs. Union of India dated 03.06.2016** the Delhi High Court has observed and held as follows:

"54 .....Thus, preferential location charges are charged by the builder based on the preferences of its customers. They are in one sense a measure of additional

value that a customer derives from acquiring a particular unit. Such charges may be attributable to the preferences of a customer in relation to the directions in which a flat is constructed; the floor on which it is located; the views from the unit; accessibility to other facilities provide in the complex etc……"

204. Further, the Competition Commission of India in **case no. 19 of 2010 titled as Belaire Owner's Association Vs. DLF Ltd., HUDA & Ors. dated 12.08.2011,** it has been observed as under:

"12.90……(iv.) Preferential location charges paid up-front, but when the allottee does not get the location, he only gets the refund/adjustment of amount at the time of last instalment, that too without any interest: "The Apartment Allottee hereby agrees to pay additionally as preferential location charges... the apartment Allottee has specifically agreed that due to any change in layout/building plan, the said apartment ceases to be in preferential location, the Company shall be liable to refund only the amount of preferential location charges without any interest...in the last instalment as stated in schedule of payment..."

"37. ……..The Commission considers that in case the allottee does not get apartment with preferential location, the amount taken by the Company for preferential location should be returned to the allottee with reasonable rate of interest from the date of the payment of the amount till the date the amount is returned to the allottee……"

205. Therefore, in view of the submissions made by the parties and documents on record, the authority is of the view that the amount levied towards preferential location charges is justified. The authority further observes that in such cases where the apartment/unit has ceased to be preferentially located, the amount charged for preferential location shall be refunded/adjusted. The same should be refunded to the allottee along with interest at the prescribed rate w.e.f. the date of payment made by the allottee till the amount is repaid/adjusted.

C.VIII Sale deed administrative and/or incidental/miscellaneous charges:

Whether the respondent is justified in demanding sale deed administrative and/or incidental charges and if yes, what shall be the quantum?

206. It has been brought to the notice of the authority that exorbitant and unreasonable amount is being charged by the respondent on account of administrative, legal, incidental charges etc. Most of the said terms are not even properly defined in the agreements entered between the parties. The said issue has been raised in the following complaints:

S.No.	Complaint no.	Complaint title
2	CR/3989/2019	Richa Rana and Harendra Singh Rana Vs. Emaar MGF Land Limited
13	CR/4409/2020	Arun Yadav Vs. Emaar MGF Land limited
18	CR/157/2020	Rajiv Ranjan Verma and Ritu Verma Vs. Emaar MGF Land Limited
25	CR/4731/ 2020	Ghanshyam Datt Joshi and Fuhar Chhanga Singh Pandher Vs. Emaar MGF Land Limited
38	CR/4495/2019	Sachin Jain Vs. Emaar MGF Land Limited

207. In reference to complaint no. **3989 of 2019** titled as **Richa Rana and Harendra Singh Rana Vs. Emaar MGF Land Ltd.,** the complainants have raised an issue w.r.t justification of administrative/registration charges. With respect to the **administrative charges**, the following provision has been made under clause 5 of the builder buyer's agreement and the same is reproduced for ready reference:

> *"5. SALE DEED*
>
> *The sale deed "Sale Deed" shall be executed and get registered in favour of Allottee(s) within 6 months from the date of receipt of occupation certificate, Total Consideration, PLC, additional EDC, and additional IDC, if any, late payment charges interest and other charges and subject to compliances of all other terms and conditions of this Buyer's Agreement by the Allottee(s). The cost of stamp duty, registration charges and other incidental charges and expenses will be borne by the Allottee in addition to the Total Consideration of the Unit, as and when demanded by the Company…."*

208. Also, as per the letter of offer of possession dated 02.11.2019, 'Administrative charges' are defined as "*This pertains to Lawyer fee & other expenses incurred*

at the Sub-Registrar office for execution of the Conveyance/Sale Deed in your favour".

209. The respondent in defence of his case submitted that so far has the demand of/for the administrative charges by the respondent is concerned, it is submitted that the demand and levy of such administrative charges by the respondent is strictly in accordance and in conformity with contractual covenants as incorporated in the builder buyer's agreement and as specifically agreed to by the allottee who agreed for the same after fully understanding the legal import and effect thereof. Further, quoting various citations, the respondent counsel through his written argument submitted that it is settled proposition of law that parties are bound by the terms and conditions incorporated in the contracts executed by them and they are not entitled to stake or assert any claim at variance with contractual covenants.

210. The respondent also submitted that so far as demand of miscellaneous expenses/administrative charges is concerned, the same is reasonable, rational, logical and justifiable. Such miscellaneous expenses/administrative charges are towards the cost and expenses incurred/to be incurred/to be borne towards the execution and registration of the conveyance deed/sale deed in furtherance of the builder buyer's agreement for the due transfer, grant, sale, conveyance and assignment of all the rights, title and interest in the subject property forming the subject matter of the builders buyers agreement between the respondent and the allottee which inter alia includes cost and expenses towards the procurement of stamp duty, facilitation and completion of the entire process of the execution, presentation and registration of the conveyance/sale deed, fee of the legal counsel handling the entire registration process, expenditure towards obtaining token for registration, compilation of identity documents and various printouts, doing other acts, deeds and things required for execution, presentation and

registration of sale/conveyance deed. It is reiterated that such administrative charges/other charges are extremely nominal charges which are demanded by the respondent from the purchaser/allottee of apartments/units and no unjust enrichment is made by the respondent. That the legitimate demand of the aforesaid miscellaneous expenses/administrative charges can by no stretch of imagination be alleged to be illegal, void, inconsistent with the provisions of law, including but not confined to the present Act.

211. The authority after hearing the arguments and submissions made by the parties is of the view that charges which are defined in the agreement are payable by the allottee and any charge which is not part of the agreement will not and shall not be charged/payable by the allottee. It has also been observed by the authority time and again that a lot of charges under the head of various names are being demanded from the allottee which are arbitrary and unjustified. In number of judgements by various courts, it has pointed that the terms of the agreement have been drafted mischievously and are ex-facie one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. (supra)**, wherein the Bombay HC bench held that:

> *"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."*

212. The Hon'ble Supreme Court in the matter of **Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan (supra)** held that 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 same was also reaffirmed by the Hon'ble Supreme Court in **IREO Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors. (supra)**. Therefore,

the charges so claimed under the agreement should be reasonable and agreeable by the allottee. Further, the charges should not be exorbitant and should be charged on average basis as per the normal practice in this regard.

213. With respect to the contention of the allottee regarding demand of administrative and incidental charges, the authority is of the view that the charges which have to be essentially paid by the allottee to the government/statutory bodies for getting the transfer/conveyance registered in its name and those charges are recoverable for which official receipt is issued by such government/statutory body. A similar view has been taken by the Panchkula Authority in **complaint no. 2223 of 2019 in Amit Mehra Vs. Piyush Buildwell India Ltd**. along with connected matters.

214. The administrative registration of property at the registration office is mandatory for execution of the conveyance (sale) deed between the developers (seller) and the homebuyer (purchaser). Besides the stamp duty, homebuyers also pay for execution of the conveyance/sale deed. This amount, which is given to developers in the name of registration charges, is significant and the amount can be as steep as ₹25,000 to ₹80,000. **In a circular issued on 02.04.2018, the DTP's office fixed the registration charges per flat at ₹15,000 in furtherance to several complaints received from homebuyers** that developers charge 1.5% of the total cost of a property in the name of administrative property registration charge. The authority considering the pleas of the developer-promoter is of the view that a nominal amount of up to Rs.15000/- may be charged by the promoter – developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard. For any other charges like incidental and of like nature, since the same are not defined and no quantum is specified in the builder buyer's agreement, therefore, the same cannot be charged.

C.IX Car parking charges:

Whether the promoter can sell open car parking spaces and if no, refund/ adjust the amount so paid by the complainant?

215. In the following complaints, the complainants have raised issue w.r.t car parking:

S.No.	Complaint no.	Complaint title
16	CR/1532/2018	Manish Sultania and Neha Sultania Vs. Emaar MGF Land Limited
22	CR/2880/2020	Ajay Gandotra and Nishi Gandotra Vs. Emaar MGF Land Limited
24	CR/2849/2020	Sumesh Mahendra Vs. Emaar MGF Land Limited
30	CR/591/2019	V K Vaidh and Sons HUF Vs. Emaar MGF Land Limited

216. In reference to complaint no. 1532 of 2018 titled as **Manish Sultania and Neha Sultania Vs. Emaar MGF Land Limited**, the complainants have raised a question that whether open parking spaces and parking in common basements be sold to the allottees as separate unit by the promoter.

217. For deciding this issue whether car parking can be charged or not, it would be appropriate to discuss the provision that has been made in the builder buyer's agreement regarding car parking and whether that provision is as per the applicable law. The sale price for the sale of the unit is provided in clause 1.2 (a) read with clause 1.3(a)(i) of the agreement is as under:

> *"1.2 Sale Price for Sale of Unit*
> *(a) Sale Price*
> *(i) The Sale Price of the Unit ("Total Consideration") payable by the Allottee(s) to the Company includes the basic sale price ("Basic Sale Price/BSP") of Rs. 7404275/-, cost towards covered car park of Rs. 2,50,000/-, External Development Charges ('EDC") of Rs. 240/- per sq. ft., Infrastructure Development Charges ("IDC') of Rs. 30/- per sq. ft. and applicable PLC of Rs. 1185000/-, if any, and Club Membership charges of Rs. 75000/-. In the event, the Allottee(s) opts for additional car parking space, subject to the availability, the open car park shall*

be made available at an additional sum of Rs. 1,75,000/-, which shall be added to the Total Consideration, at the time of raising of the demand notice for payment as per Schedule of Payment. Save as aforesaid, the Allottee(s) understands that the Total Consideration does not include any other charges, as reserved in this Buyer's Agreement and the Allottee(s) shall be under an obligation to pay such additional cost as may be intimated to him by the Company, from time to time. The Allottee(s) specifically understands that time is the essence with respect to the Allottee(s)' obligations and undertakes to make all payments in time, without any reminders from the Company through A/c Payee Cheque(s) / Demand Draft(s) payable at New Delhi. The Allottee(s) agrees that the payments on due dates as set out in Annexure - 3 shall be made promptly and the Company shall not be required to send any notice or demand for payment as per the Schedule of Payment.

……..

"1.3 Parking Space

(a) The Allottee(s) agrees and understands that the exclusively reserved covered car parking space assigned to the Allottee(s) shall be understood to be together with the Unit and the same shall not have any independent legal entity detached or independent from the said Unit...

(c) The Allottee(s) agrees and understands that the reserved car parking spaces or any un-allotted car parking spaces in the Project shall form part of Common Areas and facilities of the said Unit for the purpose of the declaration to be filed by the company under Haryana Apartment Ownership Act, 1983...."

218. Accordingly, sale price of the unit consists of following components- (i) basic sale price (ii) cost towards covered car parking (iii) external development charges (iv) infrastructural development charges and (v) applicable PLC, if any. The cost of parking of Rs.2,50,000/- has already been included in the sale consideration as per clause 1.2(a)(i) and Annexure 3 of the builder buyer's agreement.

219. Cost towards covered car parking is being separately provided to be paid by the allottee, hence as per builder buyer's agreement allottee is required to make payment towards covered car parking. The question is whether open car parking can be charged by the promoter. Section 3(f) of the Haryana Apartment Ownership Act, 1983 provides the definition of common areas

and facilities wherein except sub-clause (vii) i.e. such commercial activities as may be provided in the declaration, rest of the items shall form part of the common area and facilities. Section 3(f)(iii) provides that the basement parking areas, garden and storage spaces have been included in the common area and facilities apart from other parts. Section 3(f)(i) provides that land on which the building is located is also included in the definition of common area and facilities. From the definition of the common areas and facilities, it is clear that the builder has choice to declare or not to declare community and commercial facilities in the declaration, but rest of the items are part of the common areas and facilities.

220. With regard to the same, the authority is of the opinion that open parking spaces cannot be sold/charged by the promoter both before and after coming into force of the Act since it is the part of basic sale price charged against the apartment as a part of common areas. As far as issue regarding parking is concerned, the matter is to be dealt with as per the provisions of the builder buyer's agreement wherein the said agreement has been entered into before coming into force of the Act. Naturally, the open space on which car parking has been planned is also part of the common areas and by no stretch of imagination, the same can be sold by the builder to any allottee although resident welfare association for the convenience and orderly management may earmark part of the open areas as surface parking.

221. Now, we have to consider the question whether for covered car parking the builder can charge or not? Keeping in view the various provisions of the builder buyer's agreement if separate covered car parking has been provided by the builder other than car parking in the basement, then builder is entitled to charge for car parking as per builder buyer's agreement. But if the builder has provided reserved car parking only in the basement area, then the same

also can be charged, only when the allotted parking area is not included in super area.

222. In this particular case, basement has neither been included in the definition of super area nor specifically it is a part of the common area and facilities. Although as per the definition of common area given in Haryana Apartment Ownership Act, 1983, basement is the part of the common area but as the promoter has incurred cost on construction of the basement, the same may be charged by him either as part of the super area or separately. A car parking area, if allotted/reserved with a particular unit keeping in view the fact that the car parking area has been excluded from the super area then that is chargeable. Whether covered car parking provided in the basement is chargeable or not that will depend on case to case basis mentioned in the builder buyer's agreement read with the definition of common area as provided in the Haryana Apartment Ownership Act, 1983.

223. With regard to instance wherein it has been charged separately post coming into force of the Act, the authority herein discusses, in detail, the fate of such complaints. Herein, the authority places reference on the Hon'ble Supreme Court judgement in **Nahalchand Laloochand Private Limited Vs. Panchali Co-operative Housing Societies Limited (2010)9 SCC 536**, wherein while interpreting para-materia definition of common areas and facilities held that parking area, common area and facilities and that even the factum of not having taken money from the apartment owners could not change the character and nature of common area even though the builder may not have charged. The Apex Court further ruled that builders or promoters cannot sell parking spaces as independent units or flats as these are areas to be extended as common areas. A similar view was also taken in **DLF Ltd. Vs. Manmohan Lowe and others [2014(12) SCC 231]**. The **MahaRERA in the matter of Mahesh Shah & Meena Shah Vs. Sunny Vista Realtors Pvt. Ltd. &**

Persipina Developers Pvt. Ltd. vide order dated 20th January 2020, has ruled that open parking spaces fall within the definition of common areas in the Real Estate (Regulation and Development) Act, and hence developers cannot charge homebuyers for open parking spaces.

224. Reference may also be drawn to the recent judgement passed by the Hon'ble Supreme Court in **Wg. Cdr. Arifur Rahman Khan (supra)** held as under:

> *"Parking*
>
> *52 The appellants seek a refund of an amount of Rs. 2.25 lacs collected from each buyer towards car parking. The submission is that under Section 3(f) of the Karnataka Apartment Ownership Act, 1972, common areas and facilities include parking areas. According to the appellants, the flat buyers had already paid for the super area in terms of clause 1.6 of ABA including common areas and facilities which would be deemed to include car parking under the KAO Act. The relevant portion of clause 1.6 is extracted below:*
>
> *"1.6. The Allottee agrees that the Total price of the said Apartment is calculated on the basis of its Super Area only (as indicated in clause 1.1.) except the parking space, additional car parking space which are based on fixed valuation…."*
>
> *(emphasis supplied)*
>
> *53 We are unable to accede to the above submission. The ABA contained a break-up of the total price of the apartment. Parking charges for exclusive use of earmarked parking spaces were separately included in the break-up. The parking charges were revealed to the flat buyers in the brochure. The charges recovered are in terms of the agreement.*
>
> *54 The decision of this Court in Nahalchand Laloochand Private Limited v. Panchali Cooperative Housing Society Limited turned on the provisions of the Maharashtra Ownership Flats Act 1971, as explained in the subsequent decision of this Court in DLF Limited v. Manmohan Lowe. The demand of parking charges is in terms of the ABA and hence it is not possible to accede to the submission that there was a deficiency of service under this head."*

225. Further, in case titled as **DLF Home Developers Ltd. (Earlier known as DLF Universal Ltd.) and another Vs. Capital Greens Flat Buyers Association etc. [civil appeal nos. 3864-3889 of 2020]** vide order dated 14.12.2020, the Hon'ble Supreme Court while dismissing the appeal arising out of the NCDRC

matters wherein one of the issues which arose before the Hon'ble Supreme Court was whether a promoter can charge car parking from an allottee in pursuance to a stipulation made in the builder buyer's agreement executed between the promoter and allottee in respect of a unit in a project before the coming into force of the RERA Act, the Hon'ble NCDRC had in its judgement dated 03.01.2020 held that the promoter was not entitled to demand car parking charges from allottee. However, in the appeal, the Hon'ble Supreme Court while setting aside the NCDRC order in this regard held that the promoter in such a case was entitled to raise a demand in respect of car parking charges being justifiable.

226. Although, we would like to make the following observations regarding parking areas in the basement. As per section 3(f)(iii) of the Haryana Apartment Ownership Act, 1983, basement is part of the common areas and facilities as defined in the said Act. The promoter has spent money on construction of the basement, he has a right to charge the same including the basement area in the super area of the project. Basement being the common area and the vehicle parking provided therein cannot be sold to the individual allottee. If the basement area/the area for vehicle parking in the basement has not been included in the super area, then to some extent the promoter is justified in charging for the parking allotted to individuals but this allotment to the individuals on charge somehow goes against the concept of the common area which are to be shared by all the residents. If the parking area in the basement has already been included in the super area, then whatever has been collected from the individuals in the name of parking has to be deposited in the common account of the association of apartment owners. It is pertinent to mention that after coming into force of the Real Estate (Regulation and Development) Act, 2016, now parking in basement cannot be sold and it is part of the common areas to be managed by the association

of apartment owners. These agreements being executed prior to coming into force of the Act and such provisions for charging cost of parking in the basement for the individuals has been in vogue but ideally the principle as mentioned above needs to be followed.

227. Therefore, the authority is of the opinion and accordingly holds that open parking spaces cannot be sold/charged by the promoter both before and after coming into force of the Act as has been explained above in detail; however as far as issue regarding covered car parking is concerned where the said agreements have been entered into before coming into force the Act, the matter is to be dealt with as per the provisions of the builder buyer's agreement subject to that the allotted parking area is not included in super area.

228. In the instant matter, the subject unit was allotted to the complainant vide allotment letter dated 02.11.2009 and as per the said allotment letter, the respondent had charged a sum of Rs.2,50,000/- on account of car parking charges. As per clause 1.2(a)(i) and Annexure 3 of the builder buyer's agreement 18.01.2010, the allottee had agreed to pay the cost of covered car parking charges over and above the basic sale price. The cost of parking of Rs.2,50,000/- has been charged exclusive to the basic price of the unit as per the terms of the agreement. Accordingly, the promoter is justified in charging the same.

C.X Whether there has been delay in handing over the possession of the units, if yes then to what extent the delayed possession charges on delay possession is to be paid by the respondent?

229. In the following complaints, the complainants are seeking delay possession charges for the delay in handing over possession of the subject unit:

Sr. No	Complaint No./ Title/ Date of Filing	Date of execution of builder buyer agreement	Date of start of construction	Due date of possession	Offer of possession	Period for which the complainant is entitled to DPC and delay occasioned in handing over possession till 2 months from the date of offer of possession/ date of decision
1	CR/4031/2019 Varun Gupta Vs. Emaar MGF Land Limited 06.09.2019	28.04.2011 **SA-** 24.05.2013 (NL)	09.08.2012	09.08.2015	08.05.2019 **OC-** 02.05.2019 **CD-** 19.08.2019 **TC**- Rs. 92,34,474/- **AP**- Rs. 92,35,661/-	W.e.f. 09.08.2015 till 08.07.2019 3 years 10 months 29 days
2	CR/3989/2019 Richa Rana and Harendra Singh Rana Vs. Emaar MGF Land Limited 13.09.2019	05.07.2012	09.08.2012	09.08.2015	21.05.2019 **OC-** 02.05.2019 **TC**- Rs. 1,15,96,083 **AP**- Rs. 91,93,036	W.e.f. 09.08.2015 till 21.07.2019 3 years 11 months 12 days
3	CR/1227/2019 Surender Jit Singh Bhalla and Sudesh Bhalla (Through Attorney) Vs. Emaar MGF Land Limited 11.04.2019	22.06.2011	09.08.2012	09.08.2015	19.03.2018 **OC-** 10.01.2018 **UHL-** 11.08.2018 **CD-** 27.09.2018 **TC**- Rs. 1,00,82,299 **AP**- Rs. 1,02,40,724	W.e.f. 09.08.2015 till 19.05.2018 2 years 9 months 10 days
4	CR/813/2020 Mrs. Kamlesh Mittal Vs.	23.11.2011	30.11.2012	30.11.2015	22.10.2019 **OC-** 17.10.2019	W.e.f. 30.11.2015 till 07.12.2019

	Emaar MGF Land Limited 27.02.2020				**UHL**-07.12.2019 **CD**-03.01.2020 **TC**- Rs. 1,07,28,435 **AP**- Rs. 1,07,33,119	4 years 7 days
5	CR/2322/2019 Saurabh Virmani (Through Attorney) and Nikhil Virmani Vs. Emaar MGF Land Limited 29.05.2019	14.07.2011 **SA-** 26.07.2013 (NL)	09.08.2012	09.08.2015	03.05.2019 **OC-** 02.05.2019 **TC**- Rs. 96,33,499/- **AP**- Rs. 97,98,419/-	W.e.f. 09.08.2015 till 03.07.2019 3 years 10 months 24 days
6	CR/5561/2019 Kanav Sagar Dhingra Vs. Emaar MGF Land Limited 19.11.2019	28.04.2011 **SA-** 02.04.2014 (NL)	09.08.2012	09.08.2015	04.05.2019 **OC-** 02.05.2019 **UHL-** 30.07.2019 **CD-** 21.08.2019 **TC**- Rs. 92,37,993/- **AP**- Rs. 92,76,452/-	W.e.f. 09.08.2015 till 04.07.2019 3 years 10 months 25 days
7	CR/6053/2019 Aman Monga and Roma Monga Vs. Emaar MGF Land Limited 03.12.2019	05.03.2012	30.11.2012	30.11.2015	22.10.2019 **OC-** 17.10.2019 **TC**- Rs. 91,02,088/- **AP**- Rs. 89,80,632/-	W.e.f. 30.11.2015 till 22.12.2019 4 years 22 days
8	CR/357/2020/ 3111/2019 Mukteshwar	28.06.2011	09.08.2012	09.08.2015	07.05.2019 **OC-** 02.05.2019	W.e.f. 09.08.2015 till 07.07.2019

	Kumar Vs. Emaar MGF Land Limited 29.07.2019	**SA-** 08.08.2012 (NL)			**TC**- Rs. 99,71,888/- **AP**- Rs. 1,01,42,247	3 years 10 months 28 days
12	CR/4343/2020 Arun Kumar Anand Vs. Emaar MGF Land limited 21.12.2020	13.06.2011 **SA-** 19.07.2012 (NL)	09.08.2012	09.08.2015	07.05.2019 **OC-** 02.05.2019 **UHL-** 10.08.2019 **CD-** 11.09.2019 **TC**- Rs. 90,23,720/- **AP**- Rs. 90,24,539/-	W.e.f. 09.08.2015 till 07.07.2019 3 years 10 months 28 days
13	CR/4409/2020 Arun Yadav Vs. Emaar MGF Land limited 23.12.2020	01.11.2011	30.11.2012	30.11.2015	19.10.2019 **OC-** 17.10.2019 **UHL-** 07.02.2020 **CD-** 22.05.2020 **TC**- Rs. 1,04,85,736 **AP**- Rs. 1,05,36,507	W.e.f. 30.11.2015 till 19.12.2019 4 years 19 days
14	CR/1457/2019 Rohit Kumar Tripathi and Rhitu Priya Vs. Emaar MGF Land Limited 11.04.2019	16.08.2010 **SA-** 05.03.2015 (NL)	N/A	16.08.2013	Not offered **TC-** Rs. 87,47,225/- **AP-** Rs. 77,07,197/-	W.e.f. 16.08.2013 till handing over of possession Delay calculated till date of decision i.e. 12.08.2021- 7 years 11 months 27 days
15	CR/2626/2019 Richa Rana and Harendra Singh Rana Vs.	29.12.2011	N/A	29.12.2014	22.05.2020 **OC-** 15.05.2020	W.e.f. 29.12.2014 till 22.07.2020

	Emaar MGF Land Limited 04.07.2019				**TC-** Rs. 1,42,24,462 **AP-** Rs. 1,18,47,242	5 years 6 months 23 days
16	CR/1532/2018 Manish Sultania and Neha Sultania Vs. Emaar MGF Land Limited 30.10.2018	18.01.2010 **SA-** 21.11.2017 (NL)	N/A	18.01.2013	Not offered **TC-** Rs. 99,20,938/- **AP-** Rs. 94,84,137/-	W.e.f. 18.01.2013 till handing over of possession 8 years 1 months 25 days
17	CR/869/2018 Navneet Singh and Suman Singh Vs. Emaar MGF Land Limited 18.09.2018	24.03.2010 **SA-** 25.04.2011 (NL)	N/A	24.03.2013	Not offered **TC-** Rs. 72,84,108/- **AP-** Rs. 69,19,232/-	W.e.f. 24.03.2013 till handing over of possession 7 years 11 months 19 days
18	CR/157/2020 Rajiv Ranjan Verma and Ritu Verma Vs. Emaar MGF Land Limited 16.01.2020	09.02.2010	N/A	09.02.2013	06.11.2019 **OC-** 05.03.2019 **TC-** Rs. 91,42,890/- **AP-** Rs. 91,95,642/-	W.e.f. 09.02.2013 till 06.01.2020 6 years 10 months 28 days
19	CR/858/2020 Yogender Singh Verma and Vedna Verma Vs. Emaar MGF Land Ltd. 19.02.2020	01.02.2010 **SA-** 28.01.2013 (Agreement to sell)	N/A	01.02.2013	29.01.2020 **OC-** 05.03.2019 **TC-** Rs. 86,86,653/- **AP-** RS. 83,23,860/-	W.e.f. 01.02.2013 till 29.03.2020 7 years 1 months 28 days
20	CR/2722/2020 Nand Kishaor Upadhyay Vs. Emaar MGF Land Limited 01.10.2020	20.02.2010	N/A	20.02.2013	13.02.2020 **OC-** 05.03.2019 then 15.05.2020 **TC-** RS.	W.e.f. 20.02.2013 till 13.04.2020 7 years 1 months 24 days

					79,04,207/- **AP-** RS. 80,61,627/-	
21	CR/2847/2020 Prashant Puri and Ayesha Desai Vs. Emaar MGF Land Limited 05.10.2020	25.01.2010	N/A	25.01.2013	21.05.2020 **OC-** 1505.2020 **UHL-** 05.11.2020 **TC-** 87,81,060/- **AP-** Rs. 88,86,578/-	W.e.f. 25.01.2013 till 21.07.2020 7 years 5 months 26 days
22	CR/2880/2020 Ajay Gandotra and Nishi Gandotra Vs. Emaar MGF Land Limited 05.10.2020	13.01.2010 **SA-** 22.05.2015 (NL)	N/A	13.01.2013	21.05.2020 **OC-** 15.05.2020 **TC-** Rs. 88,13,017/- **AP-** Rs. 85,15,251/-	W.e.f. 22.05.2015 till 21.07.2020 5 years 1 months 29 days
23	CR/5532/2019 Deepak Jindal Vs. Emaar MGF Land Limited 04.12.2019	10.12.2010 **SA-** 07.12.2012 (NL)	N/A	10.12.2013	Not offered **TC-** Rs. 1,12,07,113 **AP-** Rs. 1,07,58,876	W.e.f. 10.12.2013 till handing over of possession Delay calculated till date of decision i.e. 12.08.2021- 7 years 8 months 2 days
24	CR/2849/2020 Sumesh Mahendra Vs. Emaar MGF Land Limited 05.10.2020	06.01.2011	N/A	06.01.2014	Not offered **OC-** 11.11.2020 **TC-** Rs. 1,07,37,618 **AP-** Rs. 94,76,075	W.e.f. 06.01.2014 till handing over of possession Delay calculated till date of decision i.e. 12.08.2021- 7 years 7 months 6 days
25	CR/4731/ 2020 Ghanshyam Datt Joshi and Fuhar Chhanga	29.05.2012 **SA-** 01.06.2012 (NL)	N/A	29.05.2014 24 months from agreement	17.11.2020 **OC-** 11.11.2020	W.e.f. 29.05.2014 till 17.01.2021 6 years 7 months 19 days

	Singh Pandher Vs. Emaar MGF Land Limited 23.12.2020				**TC-** Rs. 1,39,74,054 **AP-** Rs. 1,40,63,358	
26	CR/4754/ 2020 Vivek Mohan and Puja Kaushal Vs. Emaar MGF Land Limited 22.12.2020	04.09.2010 **SA-** 10.09.2010 (Agreement to sell)	N/A	04.09.2013	16.11.2020 **OC-** 11.11.2020 **TC-** Rs. 84,78,090/- **AP-** Rs. 85,50,742/-	W.e.f. 04.09.2013 till 16.01.2021 7 years 4 months 12 days
27	CR/5567/2019 N S Exports Pvt. Ltd. Vs. Emaar MGF Land Limited 18.11.2019	18.03.2011	27.04.2012	27.10.2014	14.11.2018 **OC-** 09.02.2018 **UHL-** 01.04.2019 **CD-** 12.04.2019 **TC-** Rs. 6,99,84,865 **AP-** Rs. 7,05,66,828	W.e.f. 27.10.2014 till 14.01.2019 4 years 2 months 18 days
28	CR/670/2020 Anuranjita Kumar Vs. Emaar MGF Land Limited 12.02.2020	27.04.2011	27.04.2012	27.10.2014	16.11.2018 **OC-** 15.10.2018 **TC-** Rs. 5,67,41,284 **AP-** Rs. 5,32,22,328	W.e.f. 27.10.2014 till 16.01.2019 4 years 2 months 20 days
29	CR/3202/2019 Neel Kamal Jha Bidya Nand Jha Vs. Emaar MGF Land Limited 02.08.2019	12.02.2008	N/A	31.12.2010	24.03.2017 **OC-** 13.02.2017 **UHL-** 05.05.2017 **CD-** 28.07.2017	W.e.f. 31.12.2010 till 05.05.2017 6 years 4 months 5 days

					TC- Rs. 1,36,56,159 **AP-** Rs. 1,36,77,364	
30	CR/591/2019 V K Vaidh and Sons HUF Vs. Emaar MGF Land Limited 13.02.2019	11.03.2008 **SA-** 06.02.2012 (NL)	N/A	31.12.2010	09.03.2018 **OC-** 25.01.2018 **UHL-** 24.05.2018 **CD-** 25.05.2018 **TC-** Rs. 1,15,40,563 **AP-** Rs. 1,15,44,181	W.e.f. 06.02.2012 till 09.05.2018 6 years 3 months 3 days
31	CR/319/2019 Sushma Sharma Mahender Kumar Sharma Vs. Emaar MGF Land Limited 04.02.2019	05.03.2008	N/A	31.12.2010	23.02.2018 **OC-** 25.01.2018 **UHL-** 09.05.2018 **CD-** 13.08.2018 **TC-** Rs. 1,22,06,293 **AP-** Rs. 1,22,08,326	W.e.f. 31.12.2010 till 23.04.2018 7 years 3 months 23 days
32	CR/3956/2020 Minu Abrol Vs. Emaar MGF Land Limited 11.11.2020	12.02.2008	N/A	31.12.2010	06.03.2018 **OC-** 25.01.2018 **UHL-** 26.04.2018 **TC-** Rs. 1,21,29,841 **AP-** Rs. 1,21,29,842	W.e.f. 31.12.2010 till 26.04.2018 7 years 3 months 26 days

33	CR/152/2019 Anubhav Guglani Vs. Emaar MGF Land Limited 31.01.2019	06.09.2010 **SA-** 24.05.2012 (NL)	13.09.2011	13.09.2014	21.02.2018 **OC-** 25.01.2018 **UHL-** 26.04.2018 **CD-** 28.05.2018 **TC-** Rs. 1,53,44,268 **AP-** Rs. 1,54,53,431	W.e.f. 13.09.2014 till 21.04.2018 3 years 7 months 8 days
34	CR/3165/2020 Hewa Private Limited Vs. Emaar MGF Land Limited 07.10.2020	13.10.2010 **SA-** 12.10.2010 (Agreement to sell)	11.06.2012	11.06.2015	16.03.2017 **OC-** 13.02.2017 **TC-** Rs. 1,42,60,199 **AP-** Rs. 1,17,75,050	W.e.f. 11.06.2015 till 16.05.2017 1 years 11 months 5 days
35	CR/3366/2020 Bhisham Tanwar Vs. Emaar MGF Land Limited 21.10.2020	10.07.2010 **SA-** 01.02.2013 (NL)	24.06.2011	24.06.2014	13.08.2019 **OC-** 08.08.2019 **UHL-** 06.02.2020 **TC-** Rs. 1,30,72,623 **AP-** Rs. 1,31,34,268	W.e.f. 24.06.2014 till 13.10.2019 5 years 3 months 19 days
36	CR/837/2019 Krishna Damarla Vs. Emaar MGF Land Limited 13.03.2019	30.12.2010	31.07.2012	31.07.2015	09.03.2018 **OC-** 25.01.2018 **UHL-** 12.11.2018 **CD-** 30.11.2018 **TC-** Rs. 1,89,09,819	W.e.f. 31.07.2015 till 09.05.2018 2 years 9 months 9 days

					AP- Rs. 1,90,03,309	
37	CR/283/2019 Vineet Mehendiratta and Neha Mehendiratta Vs. Emaar MGF Land Limited 01.02.2019	06.12.2010 **SA-** 04.12.2013 (NL)	31.07.2012	31.07.2015	09.03.2018 **OC-** 25.01.2018 **UHL-** 23.05.2018 **CD-** 13.06.2018 **TC-** Rs. 1,94,30,858 **AP-** Rs. 1,94,49,568	W.e.f. 31.07.2015 till 09.05.2018 2 years 9 months 9 days
38	CR/4495/2019 Sachin Jain Vs. Emaar MGF Land Limited 25.09.2019	12.10.2010 **SA-** 12.06.2012 (NL)	31.07.2012	31.07.2015	16.08.2019 **OC-** 08.08.2019 **TC-** Rs. 1,81,63,725 **AP-** Rs. 1,90,70,615	W.e.f. 31.07.2015 till 16.10.2019 4 years 2 months 16 days
39	CR/5605/2019 Madhusudan Gupta and Ashima Gupta Vs. Emaar MGF Land Limited 04.12.2019	08.11.2010 **SA-** 18.02.2013 (Agreement to sell)	31.07.2012	31.07.2015	16.08.2019 **OC-** 08.08.2019 **TC-** Rs. 1,67,93,908 **AP-** Rs. 1,64,13,565	W.e.f. 31.07.2015 till 16.10.2019 4 years 2 months 16 days
40	CR/5271/2019 Prampreet Singh Sarai and Preeti Macker Vs. Emaar MGF Land Limited 06.12.2019	04.10.2010	31.07.2012	31.07.2015	09.03.2018 **OC-** 25.01.2018 **UHL-** 01.03.2019 **CD-** 22.03.2019 **TC-**Rs. 1,75,09,276	W.e.f. 31.07.2015 till 09.05.2018 2 years 9 months 9 days

					AP- Rs. 1,75,14,760	
42	CR/687/2020 Rohit Kohli and Ruchi Kohli Vs. Emaar MGF Land Limited 10.02.2020	18.10.2010	31.07.2012	31.07.2015	14.08.2019 **OC-** 08.08.2019 **UHL-** 10.01.2020 **TC-** Rs. 1,82,03,108 **AP-** Rs. 1,82,06,152	W.e.f. 31.07.2015 till 14.10.2019 4 years 2 months 14 days
43	CR/3722/2020 Anurag Malhotra and Archana Malhotra Vs. Emaar MGF Land Limited 10.11.2020	17.08.2012 **SA-** 27.08.2012 (NL)	17.08.2012	17.08.2015	14.08.2019 **OC-** 08.08.2019 **TC-** Rs. 1,73,57,969 **AP-** Rs. 1,79,59,656	W.e.f. 17.08.2015 till 14.10.2019 4 years 1 months 27 days
44	CR/1847/2019 Ravinder Kumar Saraogi Vs. Emaar MGF Land Limited 26.04.2019	20.07.2010 **SA-** 31.08.2012 (NL)	25.02.2011	25.11.2013	Not offered **TC-** Rs. 62,71,273 **AP-** Rs. 60,29,925	W.e.f. 25.11.2013 till handing over of possession Delay calculated till date of decision i.e. 12.08.2021- 7 years 8 months 18 days
45	CR/5761/ 2019 Karuna Chauhan Vs. Emaar MGF Land Limited 25.11.2019	21.12.2010 **SA-** 20.07.2012 (Agreement to sell)	28.02.2011 February 2011 Respondent has admitted that the constructio n started in February 2011	28.11.2013	06.03.2019 **OC-** 05.03.2019 **TC-** Rs. 74,34,214 **AP-** Rs. 77,06,238	W.e.f. 28.11.2013 till 06.05.2019 5 years 5 months 8 days
46	CR/4113/ 2020 Bhuvnesh Chandra Varshney and Anita Varshney	13.01.2011 **SA-** 02.08.2013 (NL)	20.03.2011	20.12.2013	03.01.2020 **OC-** 24.12.2019 **TC-** Rs. 76,30,482	W.e.f. 20.12.2013 till 03.03.2020 6 years 2 months 12 days

	Vs. Emaar MGF Land limited 11.11.2020				**AP-** Rs. 76,50,261	
47	CR/4317/ 2020 Saurav Kumar Vs. Emaar MGF Land limited 07.12.2020	20.07.2010 **SA-** 09.10.2013 (NL)	25.02.2011	25.11.2013	03.01.2020 **OC-** 24.12.2019 **TC-** Rs. 62,50,598 **AP-** Rs. 58,52,317	W.e.f. 25.11.2013 till 03.03.2020 6 years 3 months 7 days
48	CR/801/ 2018 Yogesh Chhabra and Yogita Chhabra Vs. Emaar MGF Land Limited 22.08.2018	20.08.2010 **SA-** 05.12.2012 (NL)	22.05.2011	22.02.2014	Not offered **TC-** Rs. 92,00,932 **AP-** Rs. 88,38,774	W.e.f. 22.02.2014 till handing over of possession Delay calculated till date of decision i.e. 12.08.2021- 7 years 5 months 21 days
49	CR/4941/2020 Brij Lata Gulati and Sunita Lal Vs. Emaar MGF Land Limited 14.01.2021	06.03.2012	25.02.2011	25.11.2013	03.01.2020 **OC-** 24.12.2019 **TC-** Rs. 73,27,965 **AP-** Rs. 50,05,201	W.e.f. 25.11.2013 till 03.03.2020 6 years 3 months 7 days

230. With regards to complaint no**. 4031/2019 (supra)**, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

> *"**Section 18: - Return of amount and compensation***
>
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
>
> *……*
>
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every*

month of delay, till the handing over of the possession, at such rate as may be prescribed."

231. Clause 10(a) of the builder buyer's agreement provides that the possession of the subject apartment/flat was to be handed over within a period of 36 months from the date of start of construction (09.08.2012) plus grace period of 3 months for applying and obtaining the CC/OC in respect of the unit and/or the project. Clause 10 of the builder buyer's agreement is reproduced below:

> *"**10. POSSESSION***
>
> ***Time of handing over the Possession***
>
> *Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 (Thirty Six) months from the date of start of construction, subject to timely compliance of the provisions of the Buyer's Agreement by the Allottee. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of 3 (three) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project."*

232. The authority has gone through the possession clause of the agreement. At the outset it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provisions of this agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of the allottee and the commitment date for

handing over possession loses its meaning. The incorporation of such clause in the builder buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the doted lines.

233. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 (thirty-six) months from the date of start of construction and the agreement further provides that promoter shall be entitled to a grace period of 3 months for applying and obtaining completion certificate/occupation certificate in respect of said unit. The date of start of construction is 09.08.2012 as per statement of account dated 13.08.2019. The period of 36 months expired on 09.08.2015. On 21.12.2018, the respondent had applied for occupation certificate and on receipt of occupation certificate dated 02.05.2019, respondent offered possession to the complainant on 08.05.2019 subject to payment of outstanding amount and completion of necessary formalities. Thereafter, the conveyance deed was executed on 19.08.2019. As a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/ occupation certificate within the time limit prescribed by the promoter in the builder buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 3 months cannot be allowed to the promoter at this stage.

234. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate of 18% p.a. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter,

interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

> ***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
> *(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*
> *Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

235. The legislature in its wisdom in the subordinate legislation under rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

236. Taking the case from another angle, the allottees were entitled to the delayed possession charges/interest only at the rate varying from Rs.7.50/- per sq. ft. per month to Rs.15/- per sq. ft. per month as per relevant clauses of the buyer's agreement for the period of such delay; whereas, the promoter was entitled to interest ranging from 18% to 24% per annum compounded at the time of every succeeding instalment for the delayed payments. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the homer buyers. This authority 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. The clauses of the buyer's agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for

delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the buyer's agreement will not be final and binding.

237. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 12.08.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

238. **Rate of interest to be paid by complainant/allottee for delay in making payments:** The contention on behalf of respondent is that the occupation certificate in respect of the project had been received from the competent authority on 02.05.2019 and soon thereafter, offer of possession letter had been issued to the complainant on 08.05.2019. But as there had been delay in making instalments of the payment by the complainant in time, the complainant is not entitled to delay possession charges. This contention of the respondent is without merit. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

> *"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
> *Explanation. —For the purpose of this clause—*
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*

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

239. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.

240. **Validity of offer of possession:** A common contention has been raised by the counsels of the complainants that letter of offer of possession given by the respondent is not a valid offer of possession. Various reasons have been put forth by the counsels for the complainants such as unit not in habitable position, additional demands at the time of offer of possession which are not the part of the builder buyer's agreement, etc. Therefore, at this stage, the authority will clarify the concept of 'valid offer of possession'. It is necessary to clarify this concept because after valid and lawful offer of possession, liability of promoter for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession must have following components:

i. **Possession must be offered after obtaining occupation certificate-** The subject unit after its completion should have received occupation certificate from the concerned department certifying that all the basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm water drainage, electricity supply, roads and street lighting.

ii. **The subject unit should be in habitable condition-** The test of habitability is that the allottee should be able to live in the subject unit within 30 days of the offer of possession after carrying out basic cleaning works and getting electricity, water and sewer connections, etc from the relevant authorities. In a habitable unit, all the common facilities like lifts, stairs, lobbies, etc should be functional or capable of being made functional within 30 days after completing prescribed formalities. The authority is further of the view that minor defects like little gaps in the windows or minor cracks in some of the tiles, or chipping plaster or chipping paint at some places or improper functioning of drawers of kitchen or cupboards etc. are minor defects which do not render an apartment uninhabitable. Such minor defects can be rectified later at the cost of the developers. The allottees should accept possession of an apartment with such minor defects under protest. This authority will award suitable relief or compensation for rectification of minor defects after taking over of possession under protest.

However, if the subject unit is not at all habitable because the plastering work is yet to be done, flooring works is yet to be done, common services like lift etc. are non-operational, infrastructural facilities are non-operational, then the subject unit shall be deemed as uninhabitable and offer of possession of an uninhabitable unit will not be considered a legally valid offer of possession.

iii. **Possession should not be accompanied by unreasonable additional demands-** In several cases, additional demands are made and sent along with the offer of possession. Such additional demands could be of minor nature or they could be significant and unreasonable which puts heavy burden upon the allottees. An offer accompanied with

unreasonable demands beyond the scope of provisions of agreement should be termed an invalid offer of possession. Unreasonable demands itself would make an offer unsustainable in the eyes of law. The authority is of the view that if the additional demands are made by the developer, the allottees may accept possession under protest or decline to take possession raising objection against unjustified demands.

241. However, contentions regarding additional demands raised by the respondent at the time of offer of possession has been dealt extensively by the authority under different heads in Part C of this order.

242. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 10(a) of the builder buyer's agreement executed between the parties on 28.04.2011, possession of the said unit was to be delivered within a period of 36 months from the date of start of construction i.e. 09.08.2012. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 09.08.2015. In the present case, the complainant was offered possession by the respondent on 08.05.2019. Subsequently, the conveyance deed was executed between the parties on 19.08.2019. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the builder buyer's agreement dated 28.04.2011 executed between the parties.

243. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted

by the competent authority on 02.05.2019. However, the respondent offered the possession of the unit in question to the complainant only on 08.05.2019. So, it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the allottee should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 09.08.2015 till the expiry of 2 months from the date of offer of possession (08.05.2019) which comes out to be 08.07.2019.

244. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the builder buyer's agreement dated 28.04.2011 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee shall be paid, by the promoter, interest at prescribed rate as per proviso to section 18(1) of the Act read with rule 15 of the rules, for every month of delay from due date of possession till the handing over of the possession or upto two months from the valid offer of possession, if possession is not taken by the complainant. As per website of the State Bank of India i.e. https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e. 12.08.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e. 9.30%.

Directions of the authority

245. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Act hereby issues the following directions to ensure the compliance of obligations cast upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

i. Proviso to section 18(1) of the Act provides that the promoter shall be liable to pay interest for every month of delay till the handing over of the possession at such rate as may be prescribed. The manner of calculating the rate of interest has been prescribed in rule 15 of the rules. The present rate of interest is 9.30% per annum. Therefore, we hold that the respondent promoter is liable to pay interest at the rate of 9.30 % per annum on the amount paid by the complainant(s) from the due date of possession till the date of handing over of the possession of the unit or upto two months from the valid offer of possession if possession in not taken by the complainant(s), whichever is earlier.

ii. The due date of possession and amount on which interest is to be calculated for all the connected complaints are detailed in table given in para 229 of this order. Hence, the delay possession charges in those complaints based the above decision of the authority shall be squarely applicable in all the complaints except complaints no. 31/2020, 5991/2019, 6709/2019 and 250/2020 for the reasons mentioned in para 2 and 3 of this order.

iii. The arrears of such interest accrued from due date of possession till the date of order by the authority shall be paid by the promoter to the complainants(s)/allottee(s) within a period of 90 days from date of this order and interest for every month of delay shall be paid by the

promoter to the allottee(s) before 10th of the subsequent month as per rule 16(2) of the rules.

However, the allottees who have taken possession of their respective units in pursuance to offer of possession given by the respondent builder, the arrears of delayed possession charges shall be payable by the respondent-builder upto the date of actual possession or as per the provisions of section 19(10) of the Act, whichever is earlier within 90 days from the date of this order.

In cases where the respondent had made a valid offer of possession but the allottee has failed to take possession of the allotted unit within 2 months as per section 19(10) of the Act, the arrears of delayed possession charges shall be payable by the respondent builder upto that period but within 90 days from the date of this order.

iv. The amount of compensation already paid to the complainant(s) by the respondent as delay compensation as per the builder buyer's agreement shall be adjusted towards delay possession charges payable by the promoter at the prescribed rate of interest (DPC) to be paid by the respondent as per the proviso to section 18(1) of the Act.

v. Interest on the delay payments from the complainant(s) shall be charged at the prescribed rate i.e. 9.30% by the respondent/promoter which is the same as is being granted to the complainant(s) in case of delayed possession charges as per section 2(za) of the Act.

vi. The respondent shall not charge anything from the complainant(s) which is not part of the builder buyer's agreement save and except in the manner as prescribed in this order.

vii. **Increase in super area:** The authority holds that the demand for extra payment on account of increase in the super area by the respondent-promoter from the allottee(s) is legal but subject to condition that

before raising such demand, details have to be given to the allottee(s) and without justification of increase in super area, any demand raised in this regard is liable to be quashed.

viii. **Advance Maintenance Charges (AMC):** The respondent is right in demanding advance maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

ix. **Holding charges:** The respondent is not entitled to claim holding charges from the complainant(s)/allottee(s) at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3899/2020 decided on 14.12.2020 (supra).

x. **Interest Free Maintenance Security (IFMS):** It is held that the promoter may be allowed to collect a reasonable amount from the allottees under the head "IFMS". However, the authority directs that the promoter must always keep the amount collected under this head in a separate bank account and shall maintain that account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFMS amount and the interest accrued thereon, the promoter must provide details to the allottee. It is further clarified that out of this IFMS/IBMS, no amount can be spent by the promoter for the expenditure it is liable to incur to discharge its liability and obligations as per the provisions of section 14 of the Act.

xi. **GST:** For the projects where the due date of possession was prior to 01.07.2017 (date of coming into force of GST), the respondent/promoter is not entitled to charge any amount towards GST from the complainant(s)/allottee(s) as the liability of that charge had not become due up to the due date of possession as per the builder buyer's agreements. For the projects where the due date of possession was/is after 01.07.2017 i.e., date of coming into force of GST, the builder is entitled to charge GST, but it is obligated to pass the statutory benefits of that input tax credit to the allottee(s) within a reasonable period.

xii. **Charging of Value Added Tax (VAT):** The promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, the promoter cannot charge any VAT from the allottees/prospective buyers for the period 01.04.2014 to 30.06.2017 as the same was to be borne by the promoter-developer only. The respondent-promoter is bound to adjust the said amount, if charged from the allottee with the dues payable by him or refund the amount if no dues are payable by him.

xiii. **Electrification charges:** The promoter cannot charge electrification charges from the allottees while issuing offer of possession letter of a unit even though there is any provision in the builder buyer's agreement to the contrary.

xiv. **Electric, water and sewerage connection charges:** The promoter would be entitled to recover the actual charges paid to the concerned departments' from the complainant/allottee on pro-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the flat allotted to the

complainant vis-à-vis the area of all the flats in this particular project. The complainant would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads.

xv. **Club Charges:** It is held that if the club has come into existence and the same is operational or is likely to become operational soon i.e. within reasonable period of around 6 months, the demand raised by the respondent for the said amenity shall be discharged by the complainants as per the terms and conditions stipulated in the builder buyer's agreement. However, if the club building is yet to be constructed, the respondent should prepare a plan for completion of the club and demand money regarding club charges and its membership from the allottees only after completion of the club.

xvi. **Preferential Location Charges (PLC):** It is held that the amount levied towards the preferential location charges is justified as per the contractual obligations contained in the builder buyer's agreement. The authority further observes that in such cases where the apartment/unit has ceased to be preferentially located, the amount charged for preferential location shall be refunded/adjusted. The same should be refunded to the allottee along with interest at the prescribed rate w.e.f. the date of payment made by the allottee till the amount is repaid/adjusted.

xvii. **Administrative charges/ incidental charges/Miscellaneous charges:** The registration of property at the registration office is mandatory for execution of the conveyance (sale) deed between the developers (seller) and the homebuyer (purchaser). Besides the stamp duty, homebuyers also pay for execution of the conveyance/sale deed. This amount, which is given to the developers in the name of

registration charges, is significant. The authority considering the pleas of the developer-promoter directs that a nominal amount of up to Rs.15000/- can be charged by the promoter – developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard. For any other charges like incidental/miscellaneous and of like nature, since the same are not defined and no quantum is specified in the builder buyer's agreement, therefore, the same cannot be charged.

xviii. **Car parking:** It is held that open parking spaces cannot be sold/charged by the promoter both before and after coming into force of the Act of 2016 since it is the part of basic sale price charged against the unit in question as a part of common areas. However as far as the issue regarding covered car parking is concerned where the said agreements have been entered into before coming into force of the Act, the matter is to be dealt with as per the provisions of the builder buyer's agreement subject to that the allotted parking area is not included in super area. Accordingly, in the complaints where the builder has charged for covered car parking, it is justified in doing the same only when the allotted parking area is not included in super area. However, after coming into force of the Act, now the parking in basement cannot be sold and it is part of common areas to be managed by the association of apartment owners.

246. In this order, a large number of issues have been dealt with by the authority. The parties (including their counsels/authorized representatives) to the complaints in question have neither placed on record nor have informed the authority about operation of any stay granted by the Hon'ble High Court of Punjab and Haryana or Hon'ble Supreme Court of India in respect of the issues discussed hereinabove. If there is any stay in operation with respect to

issues delineated hereinabove, then findings of the authority on the said issues shall not be operative and would be subject to the decisions of the Hon'ble appellate authorities i.e. the Haryana Real Estate Appellate Tribunal, the Hon'ble High Court of Punjab and Haryana and the Hon'ble Supreme Court of India.

247. This decision shall *mutatis mutandis* apply to cases mentioned in para 4 of this order.

248. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter. There shall be separate decree in individual cases.

249. Files be consigned to registry.

12.8.21

(Samir Kumar)
Member

12/8

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Order reserved on: 15.03.2021
Announced on: 12.08.2021