

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

Complaint no. : 44 of 2021
First date of hearing: 16.03.2021
Date of decision : 20.07.2021

1. Sunil Tandon
2. Neeru Tandon

Complainants

Both RR/o: 115 DDA, Multistory Building,
Pocket-8, Sector 12, Dwarka, New Delhi -
110075

Versus

Athena Infrastructure limited
Regd. office: M-62 & 63, 1st floor, Connaught
Place, New Delhi-110001

Respondent

CORAM:

Shri Samir Kumar
Shri Vijay Kumar Goyal

Member
Member

APPEARANCE:

Shri. Pawan Kumar Ray
Shri. Rahul Yadav

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 18.01.2021 has been filed by the complainants/allottees in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that

the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project related details:

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

S. No.	Heads	Information
1.	Name and location of the project	"Indiabulls Enigma" Sector 110, Gurugram
2.	Nature of the project	Residential complex
3.	Project area	15.6 acres
4.	DTCP License	213 of 2007 dated 05.09.2007 valid till 04.09.2024 10 of 2011 dated 29.01.2011 valid till 28.01.2023
	Name of the licensee	M/s Athena Infrastructure Pvt. Ltd.
		64 of 2012 dated 20.06.2012 valid till 19.06.2023
	Name of the licensee	Varali properties
5.	HRERA registered/ not registered	Registered vide no. i. 351 of 2017 dated 20.11.2017 valid till 31.08.2018 ii. 354 of 2017 dated 17.11.2017 valid till 30.09.2018

		iii. 353 of 2017 dated 20.11.2017 valid till 31.03.2018 iv. 346 of 2017 dated 08.11.2017 valid till 31.08.2018
6.	Date of execution of flat buyer's agreement	15.09.2011 (As per page 24 of the complaint)
7.	Unit no.	C-052, 5 th floor, Tower/Block C (As on page 28 of the complaint)
8.	Super Area	3350 sq. Ft.
9.	Payment plan	Construction linked payment plan (As per page 42 of the complaint)
10.	Total consideration	Rs. 1,74,72,935/- (As per page 57 of the complaint)
11.	Total amount paid by the complainants	Rs. 1,70,39,445/- (As per customer ledger dated 09.10.2019 on page 59 of complaint)
12.	Due date of delivery of possession (As per clause 21 of the agreement: The Developer shall endeavour to complete the construction of the said building /Unit within a period of three years, with a six months grace period thereon from the date of execution of the Flat Buyers Agreement subject to timely payment by the Buyer(s) of Total Sale Price payable according to the Payment Plan applicable to him or as demanded by the Developer. The Developer on completion of the construction /development shall	15.03.2015 (Grace period of 6 months is allowed)

	<i>issue final call notice to the Buyer, who shall within 60 days thereof, remit all dues and take possession of the Unit)</i>	
13.	Offer of possession	Not offered
14.	Occupation Certificate	Not received for Tower C
15.	Delay in delivery of possession till the date of decision i.e. 20.07.2021	6 years 10 months 05 days

B. Facts of the complaint

3. That the complainants booked a unit in the luxurious residential project of the respondent, namely, "INDIABULLS ENIGMA at Sector-110, Gurugram in the month of June 2011 and the possession was supposed to be delivered by September 2014. However, the respondent has failed to complete the project within the promised time and offer possession of the unit to the complainants. There is a delay of more than 6 years in delivery of possession. Being aggrieved, the complainants have preferred the present complaint for directing the respondent to deliver immediate possession of the unit with delay interest.
4. That the respondent company made several representations of their project to the complainants alluring them to book a flat in their project "**Indiabulls Enigma**". The respondent has made several claims pertaining to the architecture and the landscape of the project such as single point access gated community with 24*7

security, convenient shops and departmental stores within the complex, all existing amenities like schools, shopping mall, jogging tracks, quaint walking trails, skating rink, cricket nets, pool tables and kids play area, health club sauna, gym, yoga and aerobics lounge, spa, jacuzzi, swimming pool, relaxing pool, tennis court, coffee shops, kids play area, traffic free podium, party lawn with barbeque counter.

5. That the complainants were impressed by the highlights of the projects as represented by the company's agent and representatives. The complainants trusted the reputation and the representations made by their agents/ representatives regarding the amenities and the assurance of delivery of possession within the promised time frame and decided to book an apartment in the project of the respondent. In the month of June 2011, the complainants applied for allotment of residential flat in the aforesaid project and paid Rs. 5,00,000/- as booking amount to the respondent for the unit and opted for construction linked payment plan their payment plan.
6. That a flat buyer agreement was executed between the parties on 15.09.2011 and vide the said agreement allotment of unit no. C052 on 5th floor of tower C admeasuring 3350 sq. Ft. in the project was made.

7. That a flat buyers agreement was entered into between the parties on 09.12.2011, under which the complainants were constrained to accept various arbitrary and unilateral clauses made in favour of the respondent company. That there was no scope of attaining any mutuality at that time as the complainants has already paid a considerable amount towards the booking of the apartment and could not risk the allotment.
8. That the complainants applied for a loan through an application dated 14.06.2012. On 07.07.2012, the State Bank of India sanctioned a loan of Rs. 70,00,000/- to the complainants. Thereafter, on 11.07.2012, a tripartite agreement was entered into between the complainants with the respondent and State Bank of India. It is pertinent to mention that the complainants have been paying the loan with an interest of 10.85% per annum.
9. That as per clause 6 of the flat buyer's agreement certain mandatory charges were to be added to the basic sale consideration and shall be payable as and when demanded by the developer unless otherwise stated specifically in the agreement. That the said clause of the apartment buyer agreement is reiterated herein below:

"Clause 6: Total Sale Price of the unit shall be the Basic Price plus the following mandatory charges which shall be payable as and when demanded by the developer unless otherwise stated specifically in this Agreement.

- (i) *Preferential location charges (PLC) of Rs.200/- per sq. ft. of the super area (wherever applicable)*
- (ii) *Cost of installation of electricity meter, security deposit, energizing charges, etc.*
- (iii) *Stamp duty and other incidental charges payable directly to the competent authority for registration and execution of Conveyance/Transfer Deed of the unit.*
- (iv) *Proportionate charges for provision of any other items/facilities not specifically mentioned in this Agreement as may be required by any authorities or considered appropriate by the developer.*
- (v) *Security Deposit @ Rs.100/- per sq. ft. of the super area of the Unit towards timely payments of maintenance charges, payable at the time of taking over possession of the Unit.*
- (vi) *Club House charges Rs.200000/- (Rupees Two Lakh(s) Only) to be paid as and when demanded.*
- (vii) *Any changes in EDC/IDC charges with retrospective effect and/or any other charges, levies, taxes, duties, cess or imposition imposed by the Central or State Government or any authorities.*
- (viii) *Proportionate share of all taxes imposed on the Project Land, if any; the proportionate share being calculated in the ratio of super area of the said Unit to the total super area of all the Units in the said complex."*

10. That as per clause 21 of the flat buyer's agreement, the respondent proposed to offer possession of the said apartment within 3 years from the date of execution of agreement with a grace period of 6 months. The agreement was executed on 15.09.2011, therefore, as per clause 21, the possession was to be offered by 15.03.2015. The respondent miserably failed to deliver possession by the promised date of 15.03.2015.

11. That till September 2015, the complainants have paid a total sum of Rs. 1,70,39,445/- to the respondent for the said unit i.e. the complainants made a payment of around 95% of the total consideration of the apartment. It is pertinent to mention that the

respondent has failed in delivering the possession of the unit to the complainants even after receiving almost full consideration of the apartment and they have made all the payments in time with regard to the said unit and have made regular payments to the respondent as and when demanded but the respondent did not adhere to their end of the agreement and is eagerly waiting for delivery of possession of the said unit. The respondent has made default in delaying the possession of the apartment to the complainants and there has been a delay of more than 6 years 3 months in delivering possession of the unit.

12. That the terms and conditions of the agreement were one-sided, unfair and unilateral and were beneficially to the respondent only and were detrimental to the complainants. All the provisions were drawn in favour of the respondent and the complainants were penalized heavily in case of delay in payment of instalment. That as per the flat buyer agreement, the respondent have charged biased interest from the complainants. On one hand, in case of delay in payment of instalment by the complainants, the respondent was entitled to charge an exorbitant rate of interest @18% compounded quarterly as per clause 11 of the agreement. Whereas on the other hand, as per clause 22, the respondent agreed to pay a meagre compensation @ Rs. 5/per sq. Ft. per month of the super

area in case of delay in offer of possession. The said clauses of the flat buyer agreement are also in clear contravention of the provision of the Real Estate (Regulation and Development) Act, 2016 which has clarified the position that the interest payable by the promoter in case of default.

13. That the complainants have made numerous requests to the respondent for the delivery of possession, but they failed to respond to the same. When the complainants wrote an email to the respondent asking the date of delivery of possession, the respondent failed to give any positive reply to the complainants and instead gave an intimation of an appointment which was scheduled on 04.01.2020 at 12.00 hrs. It is submitted that on personal visit at the site, the complainants were shocked to see the actual status of the project which was lagging far behind from the schedule. The complainants could not see the actual flat due to non-operative lift and was also informed by the representatives of the respondent that their flat is still under construction.
14. That the complainants were given no opportunity to go through the terms of the agreement prior to the execution of the same. The complainants were made to execute a one-sided, arbitrary and unilateral agreement which was deliberately designed to favour the respondent. The complainants, who had already made the payment

of the booking amount and further instalments, could not have risked losing the money by objecting to the unilateral construction of the flat buyer agreement dated 15.09.2011.

15. That as per clause 9 of the flat buyer's agreement, the respondent has reserved its right to forfeit the earnest money along with interest and cost of delayed payment in case of any delay in payment made by the complainants. The relevant extract of the said clause is reiterated herein below:

"Clause 9 The Developer and the Buyer hereby agree that the earnest money for the purpose of this Flat Buyer Agreement shall be calculated @15% of the Basic Selling Price of the unit. The Buyer hereby authorises the Developer to forfeit the earnest money along with the interest and cost on delayed payments in case of non-fulfilment of the terms and conditions herein contained"

16. That the unilateral and one-sided agreement is often been criticized and set aside by the Hon'ble Apex Court and other tribunals and the commissions in the country and are considered abuse of dominant position and an act of unfair trade practice by the developers. In the case of **Pioneer Urban Land and Infrastructure Limited versus Govindan Raghavan** bearing Civil Appeal no. 12238/2018, the Hon'ble Apex Court after going through one such one sided agreement had held as follows:

"6.7 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 practice for the purpose of selling the flats by the Builder."

Also, The Law Commission of India in its **199th report**, addressed the issue of 'Unfair (Procedure & Substantive) Terms in Contract'. The Law Commission inter-alia recommended that legislation be enacted to counter such unfair terms in contracts. In the draft legislation provided in the report, it was stated that: -

"A contract or a term thereof is substantively unfair if such contract or the term therefrom is in itself harsh, oppressive or unconscionable to one of the parties."

That the provisions of the flat buyer's agreement in relation to the compensation are unilateral and lopsided in nature and they should not be read in while deciding the amount of compensation for the complainants.

17. That as per the settled position of law, the possession is to be handed over to the allottee within a reasonable period and the allottee cannot be made to wait for possession for an indefinite period of time. In the present case it has been a delay of more 6 years 3 months from the date of delivery of possession of the said apartment. The complainants have been waiting for the possession even after diligently making payments as per the demands of the respondent.

18. That the complainants requested several times to the respondent for the redressal of his grievances, but the respondent have never responded to the requests of the complainants. It is requested that the hon'ble authority may direct the respondent to complete the construction and provide adequate delay interest to the complainants for the delay caused herein and it cannot be expected to endlessly wait for the possession. This principle has been settled by the Hon'ble Apex Court in the case of the **Fortune Infrastructure and Ors versus Trevor D'Lima and Ors.**
19. That the complainants have been deprived form the use of their flat for several months. It is submitted that during such time the complainants have been mentally and physically harassed by the respondent having been made run from pillar to post. Therefore, this hon'ble authority needs to grant delay interest to complainants for the problems caused. Further, the Act, 2016 provides that in case the developer/promoter fails to deliver the possession of the unit as per the terms of the agreement for sale, the complainants are entitled to seek the refund to their money along with prescribed rate of interest. It further states that in case, the buyer is interested in retaining the possession of the unit, the respondent company shall be responsible for making payment of the prescribed rate of interest for each month of delay till actual delivery of apartment.

C. Relief sought by the complainants:

20. The complainants have sought following relief:

- i. Direct the respondent to deliver immediate possession of the flat in a habitable condition along with all the promised amenities and facilities and to the satisfaction of the complainants after obtaining a valid occupation certificate.
- ii. Direct the respondent to pay compensation for delay in the form of interest on the amount paid by the complainants as per the prescribed rate of interest from the promised date of delivery of possession till the actual delivery of possession
- iii. Direct the respondent not to include any charges in the final statement which are not the part of the agreement and not agreed upon by the parties

21. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

22. That the present compliant filed by the complainants is outside the preview of this authority as the complainants themselves approached the respondent and showed interest to book unit in the project to be developed by the respondent. Thereafter the complainants post understanding the terms & conditions of the

agreement(s) had voluntarily executed flat buyer agreement with the respondent on 08.08.2011 (*sic: 15.09.2011*).

23. It is submitted that as per the terms of the agreement, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the subject transferred unit, the same shall be adjudicated through the arbitration mechanism as detailed therein. Clause no. 49 is being reproduced hereunder:

"Clause 49: All or any dispute arising out or touching upon or in relation to the terms of this Application and/or Flat Buyers agreement including the interpretation and validity of the terms thereof and the rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through Arbitration. The arbitration shall be governed by Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereof for the time being in force. The venue of the arbitration shall be New Delhi and it shall be held by a sole arbitrator who shall be appointed by the Company and whose decision shall be final and binding upon the parties. The Applicant(s) hereby confirms that he/she shall have no objection to this appointment even if the person so appointed as the Arbitrator, is an employee or advocate of the company or is otherwise connected to the Company and the Applicant(s) confirms that notwithstanding such relationship / connection, the Applicant(s) shall have no doubts as to the independence or impartiality of the said Arbitrator. The courts in New Delhi alone shall have the jurisdiction over the disputes arising out of the Application/Apartment Buyers Agreement"

Thus, in view of above Section 49 of flat buyer's agreement, it is humbly submitted that, the dispute, if any, between the parties are to be referred to arbitration.

24. It is respectfully submitted that the relationship between the complainants and the respondent is governed by the document dated 15.09.2011 executed between them. It is pertinent to

mention herein that the instant complaint of the complainants is further falsifying her claim from the very fact that, the complainants has filed the instant claim on the alleged delay in delivery of possession of the provisionally booked unit however the complainants with malafide intention have not disclosed, in fact concealed the material fact from the hon'ble authority.

25. That it is pertinent to mention here that from the very beginning it was in the knowledge of the complainants, that there is a mechanism detailed in the flat buyer's agreement which covers the exigencies of inordinate delay caused in completion and handing over of the booked unit i.e. enumerated in the "clause 22" of duly executed flat buyer's agreement, which is at page 43 of the flat buyer's agreement filed by the complainants along with their complaint. The respondent carves leave of this authority to refer & rely upon the clause 22 of flat buyer's agreement which is being reproduced hereunder:

"Clause 22 in the eventuality of developer failing to offer the possession of the unit to the buyers within the time as stipulated herein, except for the delay attributable to the buyer/force majeure / vis- majeure conditions, the developer shall pay to the buyer penalty of Rs. 5/- (rupees five only) per square feet (of super area) per month for the period of delay. The date of submitting application to the concerned authorities for issue of completion / part completion/ occupancy/ part occupancy certificate of the complex shall be treated as the date of completion of the unit for the purpose of his Clause / Agreement." ...

That the complainants being fully aware, having knowledge and are now evading from the truth of its existence and does not seem to be satisfied with the amount offered in lieu of delay. It is thus obvious

that the complainants are rescinding from the duly executed contract between the parties.

26. It is submitted that the present complaint is not maintainable, and the period of delivery as defined in clause 21 of flat buyer's agreement is not sacrosanct as in the said clause it is clearly stated that "the developer shall endeavour to complete the construction of the said building/unit" within the stipulated time. Clause 21 of the said agreement has been given a selective reading by the complainants even though he conveniently relies on same. The clause reads:

"The developer shall endeavour to complete the construction of the said building/unit within a period of three years, with a six months grace period thereon from the date of execution of these Flat Buyer' Agreement subject to timely payment by the Buyer(s) of Total Sale Price payable according to the Payment Plan applicable to his or as demanded by the Developer..."

The reading of the said clause clearly shows that the delivery of the unit / apartment in question was subject to timely payment of the instalments towards the basic sale price. As shown in the preceding paras the complainants have failed in observing his part of liability of the said clause.

27. That the basis of the present complaint is that there is a delay in delivery of possession of the unit in question, and therefore, interest on the deposited amount has been claimed by virtue of the present complaint. It is further submitted that the flat buyer's agreement itself envisages the scenario of delay and the compensation thereof. Therefore, the contention that the

possession was to be delivered within 3 years and 6 months of execution of the flat buyer's agreement is based on a complete misreading of the agreement.

28. That the bare perusal of clause 22 of the agreement would make it evident that in the event of the respondent failing to offer possession within the proposed timelines, then in such a scenario, the respondent would pay a penalty of Rs.5/- per sq. Ft. per month as compensation for the period of such delay. The aforesaid prayer is completely contrary to the terms of the inter-se agreement between the parties. The said agreement fully envisages delay and provides for consequences thereof in the form of compensation to the complainants. Under clause 22 of the agreement, the respondent is liable to pay compensation at the rate of Rs.5/- per sq. Ft. per month for delay beyond the proposed timeline. The respondent craves leave of this authority to refer & rely upon the clause 22 of flat buyer's agreement, which is being reproduced as:

"Clause 22 : In the eventuality of Developer failing to offer the possession of the unit to the Buyers within the time as stipulated herein, except for the delay attributable to the Buyer/force majeure / vis-majeure conditions, the Developer shall pay to the Buyer penalty of Rs. 5/- (Rupees Five only) per square feet (of super area) per month for the period of delay"

That the complainants being aware, having knowledge and having given consent of the above mentioned clause/terms of flat buyer's agreement, is now evading themselves from contractual

obligations inter-alia from the truth of its existence and does not seem to be satisfied with the amount offered in lieu of delay. It is thus obvious that the complainants are also estopped from the duly executed contract between the parties.

29. That it is a universally known fact that due to adverse market conditions viz. delay due to reinitiating of the existing work orders under GST regime, by virtue of which all the bills of contractors were held between, delay due to the directions by the Hon'ble Supreme Court and National Green Tribunal whereby the construction activities were stopped, non-availability of the water required for the construction of the project work & non-availability of drinking water for labour due to process change from issuance of HUDA slips for the water to totally online process with the formation of GMDA, shortage of labour, raw materials etc., which continued for around 22 months, starting from February'2015.
30. That as per the license to develop the project, EDCs were paid to the state government and the state government in lieu of the EDCs was supposed to lay the whole infrastructure in the licensed area for providing the basic amenities such as drinking water, sewerage, drainage including storm water line, roads etc. That the state government terribly failed to provide the basic amenities due to which the construction progress of the project was badly hit.
31. That furthermore, the Ministry of Environment and Forest (hereinafter referred to as the "MoEF") and the Ministry of Mines (hereinafter referred to as the "MoM") had imposed certain

restrictions which resulted in a drastic reduction in the availability of bricks and availability of kiln which is the most basic ingredient in the construction activity. The MoEF restricted the excavation of top soil for the manufacture of bricks and further directed that no manufacturing of clay bricks or tiles or blocks can be done within a radius of 50 (fifty) kilometres from coal and lignite based thermal power plants without mixing at least 25% of ash with soil. The shortage of bricks in the region and the resultant non-availability of raw materials required in the construction of the project also affected the timely schedule of construction of the project.

32. That in view of the ruling by the Hon'ble Apex Court directing for suspension of all the mining operations in the Aravalli hill range in state of Haryana within the area of approx. 448 sq. kms in the district of Faridabad and Gurgaon including Mewat which led to a situation of scarcity of the sand and other materials which derived from the stone crushing activities , which directly affected the construction schedules and activities of the project.
33. Apart from the above, the following circumstances also contributed to the delay in timely completion of the project:
 - a) That commonwealth games were organized in Delhi in October 2010. Due to this mega event, construction of several big projects including the construction of commonwealth games village took place in 2009 and onwards in Delhi and NCR region. This led to an extreme shortage of labour in the NCR region as most of the labour force got employed in said projects required for the

commonwealth games. Moreover, during the commonwealth games the labour/workers were forced to leave the NCR region for security reasons. This also led to immense shortage of labour force in the NCR region. This drastically affected the availability of labour in the NCR region which had a ripple effect and hampered the development of this complex.

b) Moreover, due to active implementation of social schemes like National Rural Employment Guarantee Act and Jawaharlal Nehru National Urban Renewal Mission, there was a sudden shortage of labour/workforce in the real estate market as the available labour preferred to return to their respective states due to guaranteed employment by the Central /State Government under NREGA and JNNURM schemes. This created a further shortage of labour force in the NCR region. Large numbers of real estate projects, including our project were struggling hard to timely cope up with their construction schedules. Also, even after successful completion of the commonwealth games, this shortage continued for a long period of time. The said fact can be substantiated by newspaper article elaborating on the above-mentioned issue of shortage of labour which was hampering the construction projects in the NCR region.

c) Further, due to slow pace of construction, a tremendous pressure was put on the contractors engaged to carry out various activities in the project due to which there was a dispute with the contractors resulting into foreclosure and termination of their contracts and we had to suffer huge losses which resulted in

delayed timelines. That despite the best efforts, the ground realities hindered the progress of the project.

d) Inability to undertake the construction for approx. 7-8 months due to Central Government's Notification about Demonetization: The respondent had awarded the construction of the project to one of the leading construction companies of India. The said contractor/ company could not implement the entire project for approx. 7-8 months w.e.f from 9-10 November 2016 the day when the central government issued notification about demonetization. During this period, the contractor could not make payment in cash to the labour. During demonetization, the cash withdrawal limit for companies was capped at Rs. 24,000 per week initially whereas cash payments to labour on the site of magnitude of the project in question is Rs. 3-4 lakhs approx. per day and the work at site got almost halted for 7-8 months as bulk of the labour being unpaid went to their hometowns, which resulted into shortage of labour. Hence the implementation of the project in question got delayed on account of the issues faced by contractor due to the said notification of central government. That the said event of demonetization was beyond the control of the respondent company, hence the time period for offer of possession should deemed to be extended for 6 months on account of the above.

e) Orders passed by National Green Tribunal: In last four successive years i.e. 2015-2016-2017-2018, Hon'ble National Green Tribunal has been passing orders to protect the environment of the country and especially the NCR region. The Hon'ble NGT had

passed orders governing the entry and exit of vehicles in NCR region. Also, the hon'ble NGT has passed orders with regard to phasing out the 10-year-old diesel vehicles from NCR. The pollution levels of NCR region have been quite high for couple of years at the time of change in weather in November every year. The contractor of respondent could not undertake construction for 3-4 months in compliance of the orders of hon'ble National Green Tribunal. Due to this, there was a delay of 3-4 months as labour went back to their hometowns, which resulted in shortage of labour in April -May 2015, November- December 2016 and November- December 2017. The district administration issued the requisite directions in this regard.

In view of the above, construction work remained very badly affected for 6-12 months due to the above stated major events and conditions which were beyond the control of the respondent and the said period would also require to be added for calculating the delivery date of possession if any. Copy of press release of Environment Pollution (Prevention and Control) Authority (EPCA) for stopping of construction activity in 2018.

f) Non-Payment of Instalments by Allottees: Several other allottees were in default of the agreed payment plan, and the payment of construction linked instalments was delayed or not made resulting in badly impacting and delaying the implementation of the entire project.

g) Inclement Weather Conditions viz. Gurugram: Due to heavy rainfall in Gurugram in the year 2016 and unfavourable weather conditions, all the construction activities were badly affected as the whole town was waterlogged and gridlocked as a result of which the implementation of the project in question was delayed for many weeks. Even various institutions were ordered to be shut down/closed for many days during that year due to adverse/severe weather conditions.

h) Nationwide lockdown due to Outbreak of COVID-19 : In view of the outbreak of COVID-19, the Government of India took various precautionary and preventive steps and issued various advisories, time to time, to curtail the spread of COVID 19 and declared a complete lockdown in India, commencing from 24th March, 2020 midnight thereby imposing several restrictions mainly non-supply of non-essential services during the lockdown period, due to which all the Construction work got badly effected across the country in compliance to the lockdown notification. Additionally, the spread of COVID 19 was even declared a 'Pandemic 'by World Health Organization on March 11, 2020, and COVID-19 got classified as a "Force Majeure" event, considering it a case of natural calamity i.e. circumstances to be beyond the human control, and being a force majeure period.

Further, the Haryana Real Estate Regulatory Authority Gurugram also vide its circular / notification bearing no. No.9/3-2020 HARERA/GGM (Admn), dated 25.05.2020 extended the completion

date / revised completion date or extended completion date automatically by 6 months, due to outbreak of corona virus.

34. That it is pertinent to mention that the project of the respondent i.e., Indiabulls Enigma, which is being developed in an area of around 19.856 acres of land, in which the applicant has invested its money is an on-going project and is registered under The Real Estate (Regulation and Development) Act, 2016 and the respondent has already completed 95% construction of the alleged tower wherein the unit was booked by the complainants. It is further pertinent to mention that the respondent is in process of obtaining Occupational Certificate for the same and shall handover the possession of units to its respective buyers post grant of Occupational Certificate from the concerned authority.
35. That based upon the past experiences the respondent has specifically mentioned all the above contingencies in the flat buyer's agreement executed between the parties and incorporated them in "Clause 39" which is being reproduced hereunder:

Clause 39: "The Buyer agrees that in case the Developer delays in delivery of the unit to the Buyer due to:-

- a. Earthquake, Floods, fire, tidal waves, and/or any act of God, or any other calamity beyond the control of developer.*
- b. War, riots, civil commotion, acts of terrorism.*
- c. Inability to procure or general shortage of energy, labour, equipment, facilities, materials or supplies, failure of transportation, strikes, lock outs, action of labour unions or other causes beyond the control of or unforeseen by the developer.*
- d. Any legislation, order or rule or regulation made or issued by the Govt or any other Authority or,*
- e. If any competent authority(ies) refuses, delays, withholds, denies the grant of necessary approvals for the Unit/Building or,*

- f. If any matters, issues relating to such approvals, permissions, notices, notifications by the competent authority(ies) become subject matter of any litigation before competent court or,*
- g. Due to any other force majeure or vis majeure conditions,*

Then the Developer shall be entitled to proportionate extension of time for completion of the said complex....."

In addition to the reasons as detailed above, there was a delay in sanctioning of the permissions and sanctions from the departments.

36. That the respondent also draws attention to Section 4(2)(1)(c) of The Act of 2016 which enables the developer / promoter to revise the date of completion of project and hand over possession. The provisions of RERA enables the promoter to give fresh timeline independent of the time period stipulated in the agreements for sale entered between him and the allottees so that he is not visited with penal consequences laid down under RERA. It is also submitted that the respondent at the time of registration of the project gave revised date for completion of same and also completed the same before expiry of that period, therefore, under such circumstances the respondent is not liable to be visited with penal consequences as laid down under RERA. It is also most humbly submitted that the only liability of respondent has is under the flat buyer agreement according to which the company is liable to pay a delay penalty at the rate of Rs. 5 per sq. mtr. per month for the period of delay to the complainants.

37. That the flat buyer's agreement has been referred to, for the purpose of getting the adjudication of the instant complaint i.e. the flat buyer agreement dated 15.09.2011 executed much prior to coming into force of the Act of 2016 and the rules of 2017. Further the adjudication of the instant complaint for the purpose of granting interest and compensation, as provided under Act of 2016 has to be in reference to the flat buyer's agreement for sale executed in terms of said Act and said rules and no other agreement, whereas, the flat buyer's agreement being referred to or looked into in this proceedings is an agreement executed much before the commencement of RERA and such agreement as referred herein above. Hence, cannot be relied upon till such time the new agreement to sell is executed between the parties. Thus, in view of the submissions made above, no relief can be granted to the complainants.

38. That the respondent has made huge investments in obtaining requisite approvals and carrying on the construction and development of 'INDIABULLS ENIGMA' project not limiting to the expenses made on the advertising and marketing of the said project. Such development is being carried on by developer by investing all the monies that it has received from the buyers/customers and through loans that it has raised from financial

institutions. In spite of the fact that the real estate market has gone down badly the respondent has managed to carry on the work with certain delays caused due to various above mentioned reasons and the fact that on an average more than 50% of the buyers of the project have defaulted in making timely payments towards their outstanding dues, resulting into inordinate delay in the construction activities, still the construction of the project "INDIABULLS ENIGMA" has never been stopped or abandoned and has now reached its pinnacle in comparison to other real estate developers/promoters who have started the project around similar time period and have abandoned the project due to such reasons.

39. That a bare perusal of the complaint will sufficiently elucidate that the complainants have miserably failed to make a case against the respondent and has merely alleged about delay on part of the respondent in handing over of possession but have failed to substantiate the same. The fact is that the respondent, has been acting in consonance with the flat buyer's agreement dated 15.09.2011 executed and no contravention in terms of the same can be projected on the respondent. That the complainants have made false and baseless allegations with a mischievous intention to retract from the agreed terms and conditions duly agreed in flat buyer's agreement entered between the parties. In view of the

same, it is submitted that there is no cause of action in favour of the complainants to institute the present complaint.

40. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents.

E. Jurisdiction of the authority

41. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per the provisions of section 11(4) (a) of the act of 2016 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent:

F.1 Objection regarding complainants is in breach of agreement for non-invocation of arbitration.

42. The respondent has raised an objection that the complainants have not invoked arbitration proceedings as per the provisions of flat buyer's agreement which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated w.r.t arbitration in the buyer's agreement:

"Clause 49: All or any dispute arising out or touching upon or in relation to the terms of this Application and/or Flat Buyers agreement including the interpretation and validity of the terms thereof and the rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through Arbitration The arbitration shall be governed by Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereof for the time being in force. The venue of the arbitration shall be New Delhi and it shall be held by a sole arbitrator who shall be appointed by the Company and whose decision shall be final and binding upon the parties. The Applicant(s) hereby confirms that he/she shall have no objection to this appointment even if the person so appointed as the Arbitrator, is an employee or advocate of the company or is otherwise connected to the Company and the Applicant(s) confirms that notwithstanding such relationship / connection, the Applicant(s) shall have no doubts as to the independence or impartiality of the said Arbitrator. The courts in New Delhi alone shall have the jurisdiction over the disputes arising out of the Application/Apartment Buyers Agreement"

43. The respondent contended that as per the terms & conditions of the application form duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the provisional booked unit by the complainants, the same shall be adjudicated through arbitration mechanism. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars

the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017*, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows: -

"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or

other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.

...
56. *Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the aforesaid kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."*

44. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court - in case titled as *M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018* has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

45. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainants is well within their rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and Act of 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

F.II. Objection regarding delay due to force majeure

46. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as commonwealth games held in Delhi, shortage of labour due to implementation of various social schemes by Government of India, slow pace of construction due to a dispute with the contractor, , demonetisation, lockdown due to covid-19

various orders passed by NGT and weather conditions in Gurugram and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. First of all the unit in question was booked in the year 2011 and its possession was to be offered by 15.03.2015 so the events taking place such as holding of common wealth games, dispute with the contractor, implementation of various schemes by central govt. etc. do not have any impact on the project being developed by the respondent. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

F.III Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

47. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the flat buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. 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. 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. 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:

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.....

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."

48. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

49. 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. 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/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

G. Findings regarding relief sought by the complainants.

Relief sought by the complainants: Direct the respondent to deliver immediate possession of the along with all the promised amenities and facilities and to the satisfaction of the complainants.

G.1 Admissibility of delay possession charges

50. In the present complaint, the complainants intend 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

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

51. As per clause 21 of the flat buyer's agreement dated 15.09.2011, the possession of the subject unit was to be handed over by of 15.03.2015. Clause 21 of the flat buyer's agreement provides for handover of possession and is reproduced below:

As per clause 21 : The Developer shall endeavour to complete the construction of the said building /Unit within a period of three years, with a six months grace period thereon from the date of execution of the Flat Buyers Agreement subject to timely payment by the Buyer(s) of Total Sale Price payable according to the Payment Plan applicable to him or as demanded by the Developer. The Developer on completion of the construction /development shall issue final call notice to the Buyer, who shall within 60 days thereof, remit all dues and take possession of the Unit.

52. The flat buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoters and buyers/allottees are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials,

commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted flat buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision about stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyers/allottees in case of delay in possession of the unit. In pre-RERA period it was a general practice among the promoters/developers to invariably draft the terms of the apartment buyer's agreement in a manner that benefited only the promoters/developers. It had arbitrary, unilateral, and unclear clauses that either blatantly favoured the promoters/developers or gave them the benefit of doubt because of the total absence of clarity over the matter.

53. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set 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 in 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 allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat 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 dotted lines.

54. **Admissibility of grace period:** The respondent promoter has proposed to complete the construction of the said building/ unit within a period of 3 years, with six months grace period thereon from the date of execution of the flat buyer's agreement. In the present case, the promoter is seeking 6 months' time as grace period. The said period of 6 months is allowed to the promoter for the exigencies beyond the control of the promoter. Therefore, the due date of possession comes out to be 15.03.2015.
55. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges 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.*

56. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
57. 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., 20.07.2021 is @ 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
58. 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;”*

Therefore, interest on the delay payments from the complainants 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 complainants in case of delayed possession charges.

59. On consideration of the circumstances, the evidence and other record and submissions made by the complainants and the respondent and based on the findings of the authority regarding contravention as per provisions of Act, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 21 of the flat buyer's agreement executed between the parties on 15.09.2011, possession of the booked unit was to be delivered within a period of 3 years from the date of execution of the agreement with a grace period of 6 months, which comes out to be 15.03.2015.

Accordingly, the non-compliance of the mandate contained in section 11 (4)(a) of the Act on the part of the respondent is

established. As such the complainants are entitled for delayed possession charges @9.30% p.a. w.e.f. from due date of possession i.e. 15.03.2015 till handing over of possession as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

H. Directions of the authority:

60. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the act of 2016:
- i. The respondent shall pay interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 15.03.2015 till handing over of possession as per section 18(1) of the act of 2016 read with rule 15 of the rules.
 - ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order and thereafter monthly payment of interest to be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month;
 - iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall

be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- v. The respondent shall not charge anything from the complainants which is not the part of buyer's agreement. The respondent is not entitled to charge holding charges from the complainants/allottees 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. 3864-3889/2020 on 14.12.2020

61. Complaint stands disposed of.

62. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Vijay Kumar Goyal)

Member

Dated:20.07.2021

HARERA
GURUGRAM