

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

Date of decision : 30.09.2021

NAME OF THE BUILDER		PIONEER URBAN LAND AND INFRASTRUCTURE AND PRIVATE LIMITED	
PROJECT NAME		ARAYA, SECTOR-62	APPEARANCE
1	CR/3100/2020	Pioneer Urban Land and Infrastructure Limited vs. Fairway Estate Private Limited	Shri Venket Rao Shri Rishabh Gupta
2	CR/3045/2020	Pioneer Urban Land and Infrastructure Limited vs. Fairway Estate Private Limited	Shri Venket Rao Shri Rishabh Gupta
3	CR/3941/2020	Pioneer Urban Land and Infrastructure Limited vs. Fairway Estate Private Limited	Shri Venket Rao Shri Rishabh Gupta
4	CR/3030/2020	Pioneer Urban Land and Infrastructure Limited vs. Fairway Estate Private Limited	Shri Venket Rao Shri Rishabh Gupta
5	CR/3039/2020	Pioneer Urban Land and Infrastructure Limited vs. Fairway Estate Private Limited	Shri Venket Rao Shri Rishabh Gupta
6	CR/3702/2020	Pioneer Urban Land and Infrastructure Limited vs. Fairway Estate Private Limited	Shri Venket Rao Shri Rishabh Gupta
7	CR/3588/2020	Pioneer Urban Land and Infrastructure Limited vs. Fairway Estate Private Limited	Shri Venket Rao Shri Rishabh Gupta
8	CR/3053/2020	Pioneer Urban Land and Infrastructure Limited vs. Anju Agarwal	Shri Venket Rao Shri Rishabh Gupta

**CORAM:**

Shri Samir Kumar  
Shri V.K. Goyal

**Member**  
**Member**

1. This order shall dispose off all the 8 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 in the above referred matters are promoter of the projects, namely, Araya, Sector- 62. Terms and conditions of the buyer's agreements that had been executed between the parties *inter se* are also same. The fulcrum of the issue involved in all these cases pertains to failure on the part of the respondent/allottee to make necessary payments in the manner or within the time and shall pay at the proper time as specified in the agreement for sale executed inter-se between them.

**A. Unit and project related details:-**

2. The details of the complaints, replies, unit no., date of allotment letter, date of agreement, date of start of construction, the details of sale consideration, the amount paid by the respondent/allottee, date of proposed handing over the possession, delay period, due installment, have been detailed in the table below:

**HARERA**  
**GURUGRAM**

Project:- Araya, Sector-62

**Possession clause 11.2** of the said agreement 39 months from the date of excavation subject to such limitations including but not limited to obtaining the requisite Govt. approvals, sanctions, permits etc. from various departments or appropriate authorities as be provided in this agreement and the timely compliance of the provisions of the agreement by the intending allottee. The intending allottee agrees and understands that the developer shall be entitled to a grace period of one hundred and eighty days (180), after the expiry of thirty-nine (39) months, for applying and obtaining the occupation certificate in respect of the said complex.

Date of occupation certificate received on 23.07.2018 and 14.06.2019								
S. N.	Complaint no./Title/ Date of filing	Reply Status	Unit No.	Date of Allotment letter	Date of Agreement	Date of start of construction	Due Date of Possession	Offer of possession
1.	CR/3100 /2020 Pioneer Urban Land and Infrastructure Limited V/s Fairway Estates Pvt Ltd 15.10.2020	Reply received 03.08.2021	A-602, 6th floor, 4690 sq. ft.	N/A	03.06.2012	04.06.2012	04.03.2016	28.08.2018  Rs. 5,17,05,000 /- [as per memorandum customer ledger, page 182 of the complaint] AP:- Rs. 2,91,62,997 /- [as per memorandum customer ledger]
2.	CR/3045 /2020 Pioneer Urban Land and Infrastructure Limited V/s Fairway Estates Pvt Ltd 20.10.2020	Reply received 03.08.2021	801, 8th floor, 4379 sq. ft.	17.04.2012	10.06.2012	04.06.2012	04.03.2016	28.08.2018  Rs.4,73,09,159/- [as per memorandum customer ledger] AP:- Rs.1,71,72,615/- as per memorandum customer ledge
3.	CR/3941 /2020	Reply received	2102, 21st floor	19.03.2012	03.06.2012	04.06.2012	04.03.2016	28.08.2018

	Pioneer Urban Land and Infrastructure Limited V/s Fairway Estates Pvt. Ltd 02.11.2020	03.08.2021	4279 sq. ft.				Rs.4,72,71,805/- as per memorandum customer ledger page 181-182 of complaint RS.2,70,16,456/- as per memorandum customer ledger page 181-182 of complaint	
4.	CR/3030/2020 Pioneer Urban Land and Infrastructure Limited V/s Fairway Estates Pvt. Ltd. 29.10.2020	Reply received 03.08.2021	A-502, 5th floor, 4690 sq. ft.	16.03.2012	03.06.2012	04.06.2012	04.03.2016 Rs. 5,17,05,000.89/- as per memorandum customer ledger page 187 to 188 of complaint Rs.2,91,62,997/- as per memorandum customer ledger page 187 to 188 of complaint	28.08.2018



5.	CR/3039 /2020 Pioneer Urban Land and Infrastruc ture Limited V/s Fairway Estates Pvt. Ltd. 29.10.202 0	Reply receiv ed 03.08. 2021	A- 802, 8th floor, 4279 sq. ft.	19.03. 2012	03.06.20 12	04.06.2012	04.03.2016 Rs.4,72,66,1 87/- as per memorandu m customer ledger page 200 to 201 of complaint Rs.2,44,40,0 02/- as per memorandu m customer ledger page 200 to 201 of complaint	28.08.2018
6.	CR/3702 /2020 Pioneer Urban Land and Infrastruc ture Limited V/s Fairway Estates Pvt. Ltd. 29.10.202 0	Reply receiv ed 03.08. 2021	A- 902, 9th floor, 4279 sq. ft.	19.03. 2012	03.06.20 12	04.06.2012	04.03.2016 Rs.4,72,66,1 87/- as per memorandu m customer ledger page 186 to 187 of complaint Rs.2,66,54,5 96/- as per memorandu m customer ledger page 187-188 of complaint	28.08.2018
7.	CR/3588 /2020 Pioneer Urban Land and	Reply receiv ed 03.08. 2021	A- 702,7t h floor, 4403 sq. ft.	21.08. 2012	21.11.20 12	04.06.2012	04.03.2016 Rs. 5,21,57,955 /- {as per customer ledger page	28.08.2018

	Infrastruc ture Limited V/s Fairway Estates Pvt. Ltd. 29.10.202 0						186-187 of the complaint) Rs. 2,90,46,165 /- (as per customer ledger page 186-187 of the complaint	
B.	CR/3053 /2020 Pioneer Urban Land and Infrastruc ture Limited V/s Anju Agarwal 02.11.202 0	Reply receiv ed 03.08. 2021	C- 1601, 16th floor, 5514 sq.ft	25.11. 2011	17.07.20 12	04.06.2012	04.03.2016 Rs.5,76,77,9 98/- as per memorandu m customer ledger page 187-188 of complaint Rs.3,30,22,3 64/- as per memorandu m customer ledge page 187-188 of complaint	28.08.2018

**Relief sought:-** To declare the respondent as defaulter in payment and to pay all the outstanding dues as per the ABA and to allow the complainant to claim all its outstanding dues in terms of the ABA and suitably enforce complainant's right under the instant apartment.

OR

Allow the complainant to enforce the obligations of the respondent as per the ABA including termination/cancellation of the allotment and thereafter to repay such amounts, repayable, if any, in terms of the ABA.

3. The aforesaid complaints were filed under section 31 of the Act read with rule 28 of the rules by the complainant /promoter against the respondent/allottee on account of violation of the buyer's

agreement executed between the parties *inter se* in respect of said units for not paying outstanding dues which is an obligation on the part of the allottee under section 19(6) (7) of the Act *ibid* apart from contractual obligation. 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. 3100 of 2020 titled as **Pioneer Urban Land and Infrastructure Limited V/s Fairway Estates Pvt. Ltd** are taken into consideration for determining the issues in the aforesaid complaints.

**B. Facts of the complaint: -**

4. The complainant submitted that the present complaint is being preferred by the complainant before this hon'ble authority through its authorized representative namely Kapil Bansal (Manager-Legal and Secretarial), duly authorized by the board of director of the complainant company vide board resolution dated 21.01.2019, to act for or behalf of the company in respect to the respective complaint. That the respondent M/s Fairway Estates Private Ltd. is a private limited company incorporated under the company's act, 1956 and is engaged in various business elaborated under the memorandum of association. (A Copy of the Certificate of incorporation dated 20.10.2005 along with MOA and AOA is annexed hereto and marked as annexure C/2.)
5. That the respondent after fully satisfying himself with respect to the veracity of the project of the complainant made an application for booking of an apartment in the complainant project vide its application dated 12.08.2012 for the allotment of the unit bearing flat no. A-702 on 7th floor at tower-A for the tentative super area

4,403 sq. ft. or thereabout together with usage rights for 3 car parking spaces and accordingly paid an amount of Rs. 40,00,000/- as earnest money subsequent to which an allotment letter dated 21.08.2012 is issued by the complainant. That after the allotment letter dated 21.08.2012, apartment buyer's agreement was executed between the parties on 21.11.2012 subject to other agreed terms and conditions including the 'Payment Schedule' thereof for the abovementioned allotted unit for the basic sale consideration amounting to Rs.4,62,31,500/- and other applicable charges under the agreement and law. That from the bare perusal of the respective apartment buyer's agreement it is evident that the respondent had availed the construction linked plan and the schedule of payment has categorically been defined under annexure-III of the respective agreement.

6. That as per the agreement, the complainant raised a demand letter dated 28.11.2012 within 120 days of the allotment in accordance with the terms of the payment schedule amounting to Rs. 37,45,841.00/-. That the complainant send a reminder letter dated 09.01.2013 for the outstanding amount of Rs. 36,94,045/- which was overdue against the respondent in pursuance to the construction linked plan. That the complainant issued a demand letter dated 09.09.2013 to the respondent raising demand as per the agreed terms for making payment of the due amount of Rs. 3,816,399.00/- which is due to be paid till 30.09.2013. That on account of delay in making payment as per the demand letter, the complainant had issued a letter of reminder requesting therein for making payment of the due amount on 07.10.2013, 08.11.2013,



06.12.2013 and 07.01.2014 respectively to duly acknowledge the reminder letter and pay the requisite amount due on the respondent. That till 07.01.2014, a due amount of Rs. 18,57,737.00/- was pending to be cleared by the respondent.

7. That the complainant issued a demand letter dated 27.01.2014 to the respondent raising demand as per the agreed terms for making payment of the due amount of Rs. 5,069,069.00/- which is inclusive of the previous due amount of Rs. 18,57,738.00/- and interest as on 27.01.2014 amounting to Rs. 2,67,659/- which is due to be paid till 17.02.2014. That on account of delay in making payment, the complainant had issued a reminder letter to the respondent on 10.02.2014, 06.03.2014 and 08.04.2014 to make payment of the amount due after the scheduled date of payment. That as on 08.04.2014, a due amount of Rs. 48,01,406.00/- was pending to be cleared by the respondent. That the complainant issued a demand letter dated 14.04.2014 to the respondent raising demand as per the agreed terms for making payment of the due amount of Rs. 8,164,575/- which is inclusive of the previous due amount of Rs. 48,01,407.00/- and interest as on 14.04.2014 amounting to Rs. 4,19,496.00/- which is due to be paid till 05.05.2014. That the complainant again issued reminder letter dated 16.05.2014 and 06.06.2014 for making payment of the due amount and further, on 06.06.2014 an amount of Rs. 77,45,074.00/- was outstanding dues against the respondent.
8. That the complainant issued a demand letter dated 24.06.2014 to the respondent raising demand as per the agreed terms for making payment of the due amount of Rs. 1,08,82,256.00/- which is

inclusive of the previous due amount of Rs. 77,45,075.00/- and interest as on 26.06.2014 amounting to Rs. 6,60,195/- which is due to be paid till 15.07.2014. The complainant issued a reminder letter dated 08.07.2014 in respect to outstanding invoice for past overdue payment amounting to Rs. 1,02,22,057/- and such default will amount to the breach of the contract as timely payment of the overdue instalments was the essence of the contract. That the complainant issued a demand letter dated 08.09.2014 to the respondent raising demand as per the agreed terms for making payment of the due amount of Rs. 34,10,401.00/- which is inclusive of the interest amount of Rs. 8,47,702.00/- which is due to be paid till 29.09.2014. The complainant issued a reminder letter dated 08.10.2014 and 10.11.2014 to the respondent for making payment of the due amount for the respective allotted amounting to Rs. 2,14,972.00/-. That the complainant issued a demand letter dated 13.11.2014 to the respondent raising demand as per the agreed terms for making payment of the due amount of Rs. 35,53,233.00/- which is inclusive of the previous due amount of Rs. 2,14,975.00/- and interest as on 13.11.2014 of Rs. 8,61,272/- which is due to be paid till 04.12.2014.

9. That the complainant issued a reminder letter dated 11.12.2014 to the respondent for making payment of the due amount of Rs. 26,91,955.00/-. That the complainant issued a demand letter dated 22.12.2014 to the respondent raising demand as per the agreed terms for making payment of the due amount of Rs. 60,56,338.00/- which is inclusive of the previous dues amount of Rs. 26,91,958.00/- and interest as on 22.12.2014 of Rs. 8,87,394/-

which is due to be paid till 12.01.2015. That the complainant issued a reminder letter dated 08.01.2015 to the respondent for making payment of the due amount of Rs. 51,68,937.00/- specifically mentioning therein that timely payment of the instalment as well as other charges as stipulated in the payment plan is the essence of the contract and any failure on the part of the respondent to clear the outstanding dues will amount to breach of the terms and conditions of the agreement. That the complainant issued a demand letter dated 30.01.2015 to the respondent raising demand as per the agreed terms for making payment of the due amount of Rs. 86,07,082.00/- which is inclusive of the previous due amount of Rs. 51,68,940.00/- and interest till date amounting to Rs. 9,61,156.00/- which is due to be paid till 20.02.2015.

10. That the complainant issued a reminder letter dated 09.02.2015 and 05.03.2015 to the respondent for making payment of the outstanding dues amounting to Rs. 76,45,920.00/- which was due on the respondent as on 05.03.2015. That the complainant issued a demand letter dated 27.03.2015 to the respondent raising demand as per the agreed terms for making payment of the due amount of Rs. 1,12,69,566.00/- which is inclusive of the previous due amount of Rs. 76,45,923.00/- and interest as on date amounting to Rs. 11,46,657.00/- which is due to be paid till 17.04.2015. The complainant issued a reminder letter dated 15.04.2015 and 07.05.2015 to the respondent for making payment of the due amount of Rs. 1,00,21,538.00/- which is outstanding on the respondent as on 07.05.2015. That the complainant issued a demand letter dated 12.06.2015 to the respondent raising demand

as per the agreed terms for making payment of the due amount of Rs. 1,40,11,994.00/- which is inclusive of the previous due amount of Rs. 1,00,21,539.00/- and interest as due on date amounting to Rs. 15,02,099.00/- which is due to be paid till 03.07.2015. That the complainant issued a reminder letter dated 07.07.2015 to the respondent for making payment of the due amount of Rs. 1,25,09,894.00/-.

11. That the complainant issued a demand letter dated 06.08.2015 to the respondent raising demand as per the agreed terms for making payment of the due amount of Rs. 1,68,13,888.00/- which is inclusive of the previous due amount of Rs. 1,25,09,894.00/- along with an interest as on date amounting to Rs. 18,15,638.00/- which is due to be paid till 27.08.2015. That the complainant issued a reminder letter dated 12.08.2015, 09.09.2015 and 12.10.2015 to the respondent for making payment of the due amount of Rs. 1,49,98,249.00/- which was outstanding on the respondent as on 12.10.2015. That the complainant had further issued a reminder letter dated 11.01.2016 and 10.03.2016 to the respondent informing therein that despite of the fact that the complainant was raising demands as per the agreed terms in accordance with the construction linked plan, still the respondent has not made payment within the stipulated time and as till the date of issuance of the instant letter amounting to Rs. 1,74,86,604.00/-.
12. That the complainant acting in bonafide further issued a letter dated 04.05.2016 giving benefit of the interest waiver scheme to the respondent stating therein that a Principal amount of Rs. 1,74,86,604/- and interest amounting to Rs. 40,02,442.00/- as on



04.05.2016. The complainant further specifically mentions that if the instalment amount is cleared on or before 31.05.2016, the interest amounts due would substantially be waived. That the in spite of various reminders provided by the complainant and other benefit of waiver of interest subject to compliance within the stipulated time, the respondent in an arbitrary manner has neglected payment of substantially raised amount as per the demands and reminders subsequent to which the complainant again issued a reminder to the respondent on 10.01.2017 on account of non-payment of the overdue amount of Rs.1,74,86,604.44/- and interest of Rs. 61,61,267.00/-.

13. That the complainant exercising all diligence had completed the respective tower in which the allotted unit of the respondent allottee is situated and thereby had applied for the grant of an occupancy certificate before the Department of Town and Country Planning, Haryana and accordingly occupation certificate was granted to the complainant developer vide memo no.- ZP-338-C/BOL-1/SD(BS)/2018/21712 dated 23.07.2018. The complainant on 23.07.2018 raised a demand to the respondent on receipt of the occupation certificate of tower -A for making a payment of Rs. 2,01,55,277.00/- inclusive of the previous dues amounting to Rs. 1,74,86,604.44/- which stands outstanding against the respondent and is due to be paid on or before 13.08.2018. That the on account of no initiative being taken by the respondent to assist the complainant to hand over the possession of the allotted unit by complying with the mandated formalities and despite of failure of the respondent to comply by the timely payments of each due



instalments still the complainant raised a credit note on 28.08.2018 making payment to the respondent an amount of Rs. 10,58,164.00/- as penalty against delay to handover the possession as per the respective agreement. That despite of regular defaults in making payment of the due instalments, the complainant in a bonafide had credited considerable amount on account of delay in handover the possession of the unit without admitting any intentional delay on its part. the complainant completed the project by investing substantial money and duly obtained the occupancy certificate from the concerned authority and subsequently issued a letter on 28.08.2018 with respect to the intimation for possession of the allotted unit incorporating various terms and conditions to be acknowledged and complied by the respondent.

14. That as per the letter of intimation of possession, the complainant raised a demand dated 28.08.2018 as per the schedule of payment on account of "intimation of the possession" of the allotted unit asking the respondent to deposit the net amount payable by the respondent i.e. Rs. 2,30,18,341.00/- which is inclusive of the previous amount due on the respondent amounting to Rs. 2,01,55,276.60/- and also refunded an amount of Rs. 3,34,407.85/- for EDC and IDC which is to be paid on or before 18.09.2018. That the maintenance agency, Pioneer Facility Management limited, contracted to manage, and provide the maintenance services to all residents, also raised a demand to the respondent on 28.08.2018 seeking advance common area maintenance charges amounting to Rs. 2,96,145.00/- in favour of the "PFML Araya maintenance A/C".

15. That the complainant again sent a letter of intimation to the letter of intimation of interest to the respondent on account of delay in making payments of the scheduled instalments, on 28.08.2018 stating therein that the interest as on the date of the issuance of the instant letter amounted to Rs. 1,13,21,939.90/-. That taking note of the above, it is evident that the complainant promoter as per the agreed terms of the apartment buyer's agreement raised various demands in accordance with the schedule of payment as per the payment plan opted by the respondent. Further, despite the binding terms and obligation casted upon the respondent as per the instant agreement that timely payment of the due instalments will be the essence of the contract, the respondent in an arbitrary manner had considerably failed in making payment of the due instalments at requisite time for which various reminders and other intimations was raised from time to time in order to make payment for the due amount as duly raised by the complainant through demand letter. Therefore, the respondent intentionally paid no heed to acknowledge the same and also in a malafide manner neglected to pay the pending instalments and other due charges. That the respondent also did not pay any concern to the legal notice served upon them at the pretext of the complainant and thus, in had tend to prejudice the rights of the complainant in a way by hampering the construction and development of the project. That accordance to the Section 19(6) of the RERA Act, 2016 "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 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." That the complainant has violated the provisions of the act as it is the duty of the respondent to pay on time, but the respondent repeatedly failed in paying the dues and after giving many opportunities as well the respondent never cleared the dues.

16. That it is relevant to state that the respondent in an arbitrary manner in order to malafide dodge its obligations under the contract at the belated stage, had preferred an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 on false and pretended ground of unfair and arbitrary agreement, delay in possession, deficiency in services and unfair trade practices by suppressing material facts before the Hon'ble National Company Law Tribunal, New Delhi which is presently pending in the view of the validity of the amendment to the Insolvency and Bankruptcy Code by the Hon'ble Supreme Court.
17. The Hon'ble Supreme Court in the case of "**Bharti Knitting Co. vs. DHL Worldwide Courier (1996) 4 SCC 704**" observed that a person who signs a document containing contractual terms is normally bound by them even though he has not read them, and even though he is ignorant of their precise legal effect. It is seen that when a person signs a document which contains certain contractual terms, then normally parties are bound by such contract; it is for the party to establish exception in a suit. When a party to the contract disputes the binding nature of the signed





document, it is for him or her to prove the terms in the contract or circumstances in which he or she came to sign the documents. That the respondent has utterly failed to fulfil his obligations to take over the possession of the allotted unit by complying all mandated formalities and payment of other charges in time and also failing to meet its liabilities under the agreement had tend to cause mental agony, harassment and huge losses to the complainant, hence the present complaint.

**C. Reply by the respondent: -**

18. The respondent has contested the complaint on the following ground:-

- (i) That the complaint filed by the complainant is not maintainable in the eye of law. Hence, liable to be dismissed on this score alone. That the complainant has no cause of action to file the present complaint against the respondent. In view of judgment passed by the hon'ble Supreme Court, the builder cannot be compelling the allottee forcibly to take the possession of the delay project. Hence, complaint is liable to be dismissed.
- (ii) That the complainant has no locus standi to file the present complaint, thus, it may kindly be dismissed on this score alone. That present complaint is barred by limitation, hence, is liable to be dismissed. The complainant has not approached this hon'ble authority with clean hands and have intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed by them maliciously with an ulterior motive and it nothing but a sheer

abuse of process of law. That the officials of the complainant had approached the respondent Mr. Parveen Aggarwal and represented about their project under name and style "Araya" situated in Sector- 62, Gurugram alleging to be consisting of many advance technologies and amenities/infrastructures. Pursuant to the lucrative offer and strong market hold of the respondent, the husband of the respondent had shown interest in the said project and agreed to purchase a flat in the said project. The said project is stated to be high-rise tower. That believing the assurances of officials of complainant company, the respondent paid Rs. 40,00,000/- as booking amount in favour of complainant company. The complainant company also issued a welcome letter and allotment letter describing the details of the unit allotted to the respondent. The allotment letter includes the payment schedule of the apartment wherein the total sale consideration was 4,41,69,244/-.

- (iii) That on 19.3.2012, upon issuing of allotment letter, the complainant company demanded an Rs. 48,68,710/- w.r.t. "Amount due within 60 days of allotment". The respondent paid Rs. 48,68,710/- dated 15.5.2012. The complainant company again raised a demand for Rs. 33,41,883/- dated 2.6.2012 on account of "on start of excavation". The respondent paid Rs. 33,41,883/- through cheque no. 669289 dated 02.6.2012. Thus, in all an amount of Rs. 1,22,10,593/- has been paid by the husband of respondent to the complainant in lieu of said unit before execution of

agreements and when demanded. That after much follow up by the respondent as well as by her husband, the flat buyer agreement was executed on 03.06.2012 between the parties where the respondent opted for construction linked plan mentioned in annexure III- schedule of/ payment plan attached with the said agreement. The basic sale consideration of the said unit was Rs. 4,17,20,250/- calculated at the rate of Rs. 9750 per sq. ft. of super area admeasuring 4279 sq. ft. The respondent, in accordance with the demand as and when raised by the complainant from the year 2012 till year 2014, Thus in a way, the total amount paid by the respondent is Rs. 2,31,38,064/- out of total sale consideration of Rs. 4,41,69,244/- as specified in the flat buyer agreement. That the as per clause no. 11.2 of the flat buyer agreement dated 03.06.2012, the possession was to be handed over within 39 months from the date of excavation with grace period of 6 months i.e., to say, the possession was to be finally handed over to the complainant on or before 2.3.2016 (March 2016). That the complainant has failed to complete the project within 39 months after receiving an amount of Rs. 2,31,38,064/-, thus the grace period can only be provided if the project has been completed and OC has been applied. At the time, the construction was going on slow pace which will take approx. 3- 4 year to complete the construction.

- (iv) The respondent was regularly in contact with the officials of the complainant to give the final date of possession but all his request and meetings with this regard has been kept in vain

by the complainant. That from the date of delayed in possession as per the terms of builder buyer agreement, the complainant company and the respondent has various conversation through telephonic and emails to provide the final date of possession of the unit so that the respondent may also arrange the amount to pay balance sale consideration or the complainant will come to settle with the respondent but the complainant has kept all their request in vain and ultimately with ill motive, the complainant made compel to respondent to forcibly take possession of all 8 units. In the month of October -November 2017, the complainant and husband of respondent has made had various conversation w.r.t to settlement of account and getting the possession of the 5 unit after surrendering 3 unit in project Araya of the complainant. The copy of emails is attached herewith annexure R8 and certificate under section - 65B of Indian Evidence Act is attached herewith as annexure R9. The complainant company has made under impression that the settlement has arrived, and 3 units has been surrendered completing all the outstanding of 5 unit as on date. The bare reading of these emails clearly shows that no amount was due till 23.1.2019 to be paid by the respondent to the complainant and only at the time of offer of possession, the demand will be raised, and registration of sale deed will be done by the complainant company.

- (v) That on 28.8.2018, a letter received to the respondent stating that the complainant company has obtained the occupation

certificate dated 23.7.2018. After receiving such letter, the respondent along with her husband, reached the office of the complainant and requested to supply the copy of the OC where the officials have not supplied the copy of OC. The respondent raised an issue with respect to consolidation of units as discussed through mail dated 27.11.2017 till 23.1.2019 wherein the officials of the complainant company said it is still under consideration. It is germane that the complainant company has made the false and frivolous rosy pictures by conversation in front of the respondent and her husband for consolidation of 3 units has been done but the true is the units has not been consolidated and ultimately in present, burdening/ pressurizing the respondent to take possession of 8 units by filing this present complaint. The respondent has already initiated the proceedings under the NCLT against the complainant company for refund, thus, the present complaint is counter blast to the respondent to get safe from proceedings before the NCLT.

- (vi) That after filing the case by the complainant company, the respondent got the copy of occupation certificate which is not of said tower. The occupation certificate stated for tower -F not for tower- A. Thus, till date the complainant company has no occupation certificate for the Tower A. Even in the prospectus of BBA, the model under site plan is clearly mentioned about tower A,B,C,D Nowhere mentioned about tower F. The copy of the same is also attached herewith as annexure R10. The occupation certificate for tower-A has not

been received by the complainant company till date, thus the respondent has lost all her faith with the complainant company and wanted to withdraw from the project for which the respondent reserves her right to file a separate complaint of refund along with compensation before the competent court of law. It has been held by the Hon'ble Apex Court that "A person cannot be made to wait indefinitely for possession of the flat allotted to them and they are entitled to seek refund of amount paid by them, along with compensation". It has also been held by the Hon'ble Apex Court that "Inordinate delay in handing over possession of Flat to purchaser clearly amounts to deficiency in service on part of builder - Where terms of agreement wholly one sided and unfair to flat purchaser-builder could not seek to bind contractual terms." Thus, the complainant in the given circumstances, has voluntarily committed breached terms of the FBA executed and have acted arbitrarily for which they should be even prosecuted criminally for cheating, fraud, and criminal breach of trust.

19. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.
20. The Authority on the basis of information, explanation, other submission made, and the documents filed by the complainant is of considered view that there is no need of further hearing in the complaint.

**D. Jurisdiction of the authority**

21. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**D.I Territorial jurisdiction**

22. 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 completed territorial jurisdiction to deal with the present complaint.

**D.II Subject matter jurisdiction**

23. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act and duties of the allottees as per section 19(6), (7)and(10) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

**E. Findings of the authority**

24. All these cases are bunch matters in which the complainant (promoter) has come forth for the purpose of demanding payments from the buyers as per the provisions of apartment buyer's agreement signed inter se both the parties which are identical in all these cases. The total amount paid by the allottees as well as received by the promoter/builder has been taken on record. Receipts have already been placed on record. However, the promoter too has submitted account statement which has been

collated together for the purpose of commutation. The matter has been dilated at length while keeping in view all the provisions of apartment buyer's agreement i.e., clause 6.3 and clause 20 regarding cancellation of the unit and clause 23 for termination of the unit. That both the parties are equitably liable for delay payments on account of default in timely payment and non-delivery of timely possession as per various clauses of apartment buyers' agreement i.e. clause 6.3 clause 11.2 clause 20, clause 23.1, 23.2.23.4 and 23.5 for which both are equally liable.

25. Considering all the contents of the complaint and arguments extended by both the parties at length, the respondent counsel argued that :- Keeping in view the pros and cons of the matters, in the interest of justice, equity and fair play, it will be meet, if the complainant /builder be directed to give equivalent number of flats tantamount to the equivalent amount already paid/deposited by the respondents and received by the builder. As the builder complaint under no circumstance can usurp or marrow the amount received by him w.r.t. each flat being in dominant position. Notwithstanding the escalation of interest on account of default payment which he has charged and calculated at exorbitant rate of interest i.e. @ 18% per annum and which are cumulative in nature which is quite unjust on his part unilateral and inconsiderate. The builder/complainant should not be allowed to act arbitrarily as all the clauses mentioned above are in the capacity of dominating position and are one sided. There are so many "ifs" and "buts" in all these clauses which are misleading and are not straight forward in their respective approach and connotation. Had these terms and



conditions been straight, forward, in that situation such type of delayed default and increase in calculation /escalation would have been avoided . All the clauses of the apartment buyer's agreement are one sided and vitiated by legal provisions of the Contract Act. As per record the promoter/complainant too is guilty of non-delivery of timely possession as he has received occupation certificate on 23.07.2018. It is objected that occupation certificate is of 'Presidia' project ' in which no information within this regard have been supplied to the respondent. Therefore, no occupation certificate has been received to this project which also hit under section 12 of the RERA Act. Whereas due date of delivery of possession of the respective units of the complainants as per clause 11.2 of the ABA is as under :-

Sr. No.	Complaint No.	Date of agreement	Date of start of construction	Due date of possession	Offer of possession
1	3100/2020	3.6.2012	4.6.2012	4.3.2016	28.8.2018
2	3045/2020	10.6.2012	4.6.2012	4.3.2016	28.8.2018
3	3941/2020	3.6.2012	4.6.2012	4.3.2016	28.8.2018
4	3030/2020	3.6.2012	4.6.2012	4.3.2016	28.8.2018
5	3039/2020	3.6.2012	4.6.2012	4.3.2016	28.8.2018
6	3702/2020	3.6.2012	4.6.2012	4.3.2016	28.8.2018
7	3588/2020	21.11.2012	4.6.2012	4.3.2016	28.8.2018
8	3053/2020	17.7.2012	4.6.2012	04.03.2016	17.06.2019

Serial No. 1 to 7 occupation certificate received on 23.07.2018 and serial no. 8 occupation certificate received on 14.06.2019.

26. Keeping in view the above facts the respondent has delayed in offerings of possession, therefore the complainant/promoter is liable for making payment of delayed possession charges to the respondents at the rate of 9.30% per annum on the amount deposited /received by the respondents. It is noteworthy that the complainant started taking consideration amounts much prior to start of construction i.e., 04.06.2012. The counsel for respondent further submitted that the matter has been prolonged, and the promoter/complainant too has not issued them any cancellation notice till date as per clause 23.1 of ABA. However, he is misusing his right as per the provisions of section 19 (6) of the Act.

**27. BBA clause and condition:-**

**As per clause 20 Right of cancellation by the allottee:-**

*Except to the extent specifically and expressly stated elsewhere in this agreement, the intending allottee shall have the right to cancel this agreement solely in the event of the clear and unambiguous failure of the warranties of the developer that leads to frustration of the contract on that account. In such case, the allottee shall be entitled to a refund of the instalments actually paid by it along with interest thereon @6% per annum within a period of 90 days from the date of commencement to the developer in this regard less any payments made towards taxes paid by the developer or interest paid, due or payable, any other amount of a non-refundable nature. No other claim, whatsoever, monetary, or otherwise shall lie against the developer nor shall be raised otherwise or in any manner whatsoever by the allottee. Save and except to this limited extent the allottee shall not have any right to cancel this agreement on any ground whatsoever*

**23. Termination clauses as per ABA.**

*23.1 Notwithstanding anything contained in this agreement timely performance by this intending allottee of all its obligations under this agreement,*

*including without limitation its obligations to make timely payments of the sale consideration, maintenance charges and other deposits and amounts, including any interest or penalty in accordance with this agreement shall be of essence under this agreement.*

*23.2 If the intending allottee neglects, omits, ignores, or falls in the timely performance of its obligations agreed or stipulated herein for any reason whatsoever or to pay in time to the developer any of its instalments or other amounts and charges due and payable by the intending allottee by respective due dates, the developer shall be entitled to cancel the allotment and terminate this agreement.....*

*23.4 In case any breach committed by the intending allottee is incapable of rectification or is in the opinion of the developer unlikely to be rectified by the intending allottee or is such where the breach is respected or is continuing despite the intending allottee being given an opportunity to rectify the same, then this agreement may be cancelled by the developer at its sole discretion by written notice((Notice of Termination) to the intending allottee intimating him the decision of the developer to terminate the agreement and the grounds on which such action has been taken as described hereunder.*

*(i) If the developer elects to terminate this agreement the intending allottee shall have thirty (30) days from the date of issue of notice of termination by the developer to rectify the default as specified in that notice.*

*(ii) The intending allottee that if the default is not rectified within such thirty (30) days, the allotment of the said apartment under this agreement shall be automatically cancelled without any further notice and the developer shall have the right to retain, as and for liquidated damages, the entire earnest money of the sale consideration as specified in this agreement along with service tax collected*

*on various remittances interest on delayed payments, any interest paid, due or payable any other amount of a non-refundable nature.*

*23.5 Upon termination of this agreement and dispatch of the said payment by the developer the intending allottee shall have no further rights, claims, etc., against the developer and shall be deemed to have waived all such rights, claims, cause of action, interest, charges or lien arising out of and/or in relation to the agreement and/or said apartment, and the said payment shall also be deemed to be a valid and full settlement of all such rights, claims, cause of action, interest, charges or lien and a valid and complete release and discharge of the developer in respect of all such rights, claims, cause of action, interest, charges or lien. The developer shall thenceforth be free to deal with the said apartment in any manner whatsoever in its sole and absolute discretion as if this agreement had never been executed and without accounting to the intending allottee for any of the proceeds of such sale and in the event that the intending allottee has taken possession of the said apartment, then the developer shall also be entitled to re-enter and resume possession of the said apartment, and everything whatsoever contained therein and in such event, the intending allottee and/or any other person/occupant of the said apartment shall immediately vacate the said apartment and otherwise be liable to immediate ejection as an unlawful occupant/trespasser.*

28. While taking note of the respondent's reply, submissions, and arguments extended by both the parties considering them on merit, it will be appropriate to sort out the matter in the interest of justice i.e. both the parties are equally liable for delayed payments charges as well as the interest to be paid on default payments. The respondents as per his tally sheets has submitted that he has already

paid consideration amounts as given in Annexure "A" tent amounting to Rs. 21,09,55,197/- for all 8 units.

**F. Inferences Drawn:-**

**29. Dominate position by builder**

In view of the above discussion the authority has no hesitation in holding that the terms of the apartment buyer's agreement were wholly one-sided and unfair to the respondent/allottee. The law commission of India in its 199<sup>th</sup> report addressed the issue of unfair (procedure and substantive) terms in contract. The 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 reported that :

*"A contract or a term thereof is substantively unfair if such contract or the terms thereof is in itself harsh, oppressive or unconscionable to one of the parties." 6.4-A perusal of the apartment buyer's agreement dated 08.05.2012 reveals stark incongruities between the remedies available to both the parties.*

**30. Failed to deliver the possession of apartment**

Till 2014 complainants had paid a sum of Rs. 21,09,55,197 /- out of total sale consideration of around Rs. 40,00,00,000/- i.e., almost 51% of the total consideration towards the cost of the apartment. However, the promoter/complainant failed to deliver the possession of the unit, complete in all respect even after expiry of a long period of approx. 2 years despite repeated request. Hence, in view of the above respondent/allottee alleged deficiency in service on the developer's part. That excavation of the project commenced on 04.06.2012. As per clause 11.2 of the agreement the builder was required to apply for the occupation certificate by 04.09.2015 or

within a further grace period of 06 months i.e. by 04.03.2016 and offer of possession of the flat to the respondent.

The delay compensation payable by the respondent @ Rs.18/- per annum on the delayed payment for the period of delay till the date of actual payment received thereof. As per clause 6.3 of apartment buyer's agreement is held to be very nominal and unjust. Claus 6.3 is reproduced hereunder:-

- (i) *The timely payment of Total Sale Price and the other charges as mentioned herein above and as indicated in the payment plan is the essence of this Agreement.*
- (ii) *If any instalment is not paid as per the payment plan, the Developer reserves the right to charge interest @ 18% per annum on the delayed payment for the period of delay till the date till the date of actual payment received thereof.*
- (iii) .....
- (iv) .....
- (v) .....
- (vi) .....

The terms of the agreement have been drafted mischievously by the respondent and are completely one sided. Keeping in view the facts of the matter interest rate charged by the complainant/promoter on the delayed payment is one-sided and arbitrary. The rate of interest chargeable from the allottee by the promoter, in default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. Therefore, interest on the delay payments from the allottee shall be charged at the prescribed rate i.e. 9.30% by promoter.

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., 30.09.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%. It has also been observed in para 181 of **Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)**, 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."*

The builder/complainant however failed to apply for the occupancy certificate as per the stipulated in the agreement. Therefore, the builder/complainant failed to fulfil his contractual obligation of obtaining the occupancy certificate and offering the possession of the flat to the respondent/allottee within the time stipulated in the agreement or within a reasonable time. Let us examine the relevant provisions of the Act and the case law on the point. Relevant portion of section 11 (4) of the Act reads as under:

*"4 (a) The Promoter shall 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".*

31. A plain reading of this provision inter alia goes a long way to establish that the promoter is legally bound to adhere to the terms and conditions contained in the agreement for sale executed

between him and the allottee. Therefore, in the present case, as discussed hereinabove the promoter was bound to deliver the possession of the flats in question to the allottees in all probabilities on or before 04.03.2016 but he failed to do so and hence committed breach of the statutory provision contained in section 11(4) and also of the terms and conditions of the agreement relating to handing over the possession of the flats.

Here, it would be expedient to deal with the provisions contained in section 18 (1) of the Act which 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, duty 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).....

(3).....

Even a cursory reading of this provision demonstrates that if in any of the situations specified in the sub-section the promoter is unable to complete or is unable to give the possession of the apartment to the allottee he shall be liable to return the amount received by him



from the latter provided by the allottee informs the promoter that he is withdrawing from the project along with a demand to return the amount paid by him to the promoter. Unless and until there is a demand from the said of the allottee to the promoter in this behalf, the allottee shall not become entitle to seek refund of such amount.

32. Now, the Authority shall consider the case law on this point which relates to the same project "Araya" sector-62. **In Pioneer Urban Land and Infrastructure Ltd. Vs. Govindan Raghavan (2019) 5 SCC 725 the hon'ble Supreme Court of India has held as follows:-**

*"6.1.... The inordinate delay in handing over possession of the flat clearly amounts to deficiency of service. In Fortune infrastructure v. Trevor D'Lima (Fortune Infrastructure v. Trevor D'Lima, 92018) 5 SCC 442; (2018) 3 SCC (Civ) 1], this court held that a person cannot be made to wait indefinitely for possession of the flat allotted to him and is entitled to seek refund of the amount paid by him, along with compensation.*

*6.2. The respondent flat purchaser has made out a clear case of deficiency of service on the part of the appellant builder. The respondent flat purchaser was justified in terminating the apartment buyer's agreement by filing the consumer complaint and cannot be compelled to accept the possession whenever it is offered by the builder. The respondent purchaser was legally entitled to seek refund of the money deposited by him along with appropriate compensation."*

*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 practices for the purpose of selling the flats by the Builder.*

33. In a similar case, in **Wg. Cdr. Arifur Rahman Khan & Others v. DLF Southern Homes Pvt. Ltd., 2020 SCC Online SC 667** the Hon'ble Supreme Court affirmed the view taken in Pioneer (supra) and held

that the terms of the agreement authored by the developer do not maintain a level platform between the developer and the flat purchaser. 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 possession and do not reflect an even bargain. The failure of the developer to comply with the contractual obligation to provide the flat within the contractually stipulated period would amount to a deficiency of service. Given the one-sided nature of the apartment buyer's agreement, the consumer fora had the jurisdiction to award just and reasonable compensation as an incident of the power to direct removal of deficiency in service.

In a very recent case in **IREO Grace Real Tech Pvt Ltd Vs. Abhishek Khanna and Others Civil Appeal No. 5785 of 2019 decided on 11/01/2021** the Hon'ble Supreme Court of India has again dealt with this issue. In this case the apartment buyers were the divided into two categories viz. (1) the apartment buyers whose allotments fell in the phases in respect of which occupation certificates had been received and offer of possession had been made to the apartment buyers and (2) apartment buyers whose allotments fell in phase 2 in respect of which occupation certificates had not been granted so far. The apartment buyers who fell within Phase-1 were directed to pay the outstanding amount and to accept possession of the flats. But at the same time, the developer was directed to pay delay compensation for the period of delay which had occurred from 27.11.2018 till the date of offer of possession was made to the allottees. So far as allottees of category 2 were

concerned they had made part consideration, in most cases to the fourth instalments till 2017 and when they found that there was no progress being made in respect of the towers in which the apartments had been allotted to them. In such cases, the developer had made an alternate offer of allotment of apartments in phase-1 of the project. However, the Hon'ble Supreme Court held that the allottees were not bound to accept the same because of the inordinate delay in completing the construction of the towers where units were allotted to them and that the allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase-1 of the project. Hence, the allottees in category 2 were held entitled to refund of the entire amount deposited by them.

In view of the above discussion, the authority has no hesitation in holding that the terms of the apartment buyer's agreement were wholly one-sided and unfair to the respondent. The promoter/complainant could not seek to bind the allottee/respondent with such one-sided contractual terms. Both the parties were directed to settle their interse dispute amicably but despite deliberations for long, no settlement could be reached between the parties.

**G. Directions of the authority**

34. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

(i) Directed that the promoter/complainant shall give equivalent number of flats equivalent to the extent of amount paid/deposited by the buyer/respondent after adjusting the delayed possession charges, which has not been disputed by the complainant as well as due interest on delayed payments. He should not usurp or marrow the amounts paid by him in the interest of justice on flimsy grounds by way of misconstruing various clauses of apartment buyer's agreement, in a distorted manner which are invalid in the eyes of law.

35. Complaint stands disposed of.

36. File be consigned to registry.

  
(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.09.2021

  
(Vijay Kumar Goyal)

Member

Judgment uploaded on 21.12.2021

**HARERA**  
**GURUGRAM**