# BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

**Complaint no. : 921 of 2021**
**First date of hearing : 15.03.2021**
**Date of decision : 12.10.2021**

1. Navneet Dahiya
2. Kamal Dahiya
Both RR/o: Flat no. 1206, Tower 2,
Palm Gardens, Sector 83,
Gurugram, Haryana- 122004. **Complainants**

Versus

M/s Emaar MGF Land Ltd.
Office: 306-308, Square One, C-2,
District Centre, Saket, New Delhi-110017. **Respondent**

**CORAM:**
Dr. K.K. Khandelwal **Chairman**
Shri Samir Kumar **Member**
Shri Vijay Kumar Goyal **Member**

**APPEARANCE:**
Shri Jagdeep Kumar Advocate for the complainants
Shri J.K. Dang Advocate for the respondent

## ORDER

1. The present complaint dated 24.02.2021 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. Project and unit 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. | Project name and location | Palm Gardens, Sector 83, Gurugram |
| 2. | Project area | 21.90 acres |
| 3. | Nature of the project | Group housing colony |
| 4. | DTCP license no. and validity status | 108 of 2010 dated 18.12.2010 Valid/renewed up to 17.12.2020 |
| 5. | HRERA registered/ not registered | Registered vide no. 330 of 2017 dated 24.10.2017 for towers 1, 2, 6, 8 to 12 and other facilities and amenities |
| | HRERA registration valid up to | 31.12.2018 |
| | Extension of HRERA registration certificate vide no. | 02 of 2019 dated 02.08.2019 |
| | Extension valid up to | 31.12.2019 |
| 6. | Occupation certificate granted on | 17.10.2019 [Page 122 of reply] |

| | | |
|---|---|---|
| 7. | Date of provisional allotment letter | 31.03.2012<br>[Page 50 of reply] |
| 8. | Unit no. | PGN-02-1206, 12th floor, tower no. 2<br>[Page 49 of complaint] |
| 9. | Unit measuring | 1900 sq. ft. |
| 10. | Date of execution of buyer's agreement | 28.04.2012<br>[Page 47 of complaint] |
| 11. | Payment plan | Construction linked payment plan<br>[Page 68 of complaint] |
| 12. | Total consideration as per statement of account dated 13.03.2021 at page 90 of reply | Rs.1,40,24,130/- |
| 13. | Total amount paid by the complainants as per statement of account dated 13.03.2021 at page 92 of reply | Rs.1,40,24,895/- |
| 14. | Date of start of construction as per statement of account dated 13.03.2021 at page 91 of reply | 27.08.2012 |
| 15. | Due date of delivery of possession as per clause 10(a) of the said agreement i.e. 36 months from the date of start of construction along with grace period of 3 months, for applying and obtaining the CC/OC in respect of the unit and/or the project.<br>[Page 56 of reply] | **27.08.2015**<br>[Grace period not included] |

| | | |
|---|---|---|
| 16. | **Date of offer of possession to the complainants** | 06.11.2019<br>[Page 86 of complaint] |
| 17. | Delay in handing over possession w.e.f. 27.08.2015 till 06.01.2020 i.e., date of offer possession (06.11.2019) + 2 months | 4 years 4 months 10 days |
| 18. | Unit handover letter dated | 16.12.2019<br>[Page 124 of reply] |
| 19. | Conveyance deed executed on | 07.01.2020<br>[Page 125 of reply] |

## B. Facts of the complaint

3. The complainants have made followings submissions in the complaint:

i. That Mr. Praveen Gupta & Mrs. Vibha Gupta were the original allottee, who were allotted the flat no. PGN-02-1206 having super built-up area admeasuring 1900 Sq ft. in the said project. The original allottees and the respondent entered into a buyer's agreement on 28.04.2012 and subsequently the buyer's agreement was endorsed in favour of the complainants on 28.08.2018.

ii. That the complainants purchased the said flat in the project from original allottee vide "agreement to sell" dated 28.07.2018 and endorsement on the buyer's agreement was subsequently made on 28.08.2018, thus stepping into the shoes of the original allottees. The respondent confirmed nomination of the complainants for the said flat through nomination letter dated 24.09.2018. On

24.09.2018, the respondent issued a nomination letter in which respondent confirms that the nomination formalities having completed and accordingly now the captioned property stands in the name of complainants and respondent also confirmed having received a total sum of Rs.1,30,79,558/- which is in line with "Agreement to Sell" executed between complainants and original allottees.

iii. That the complainants found buyer's agreement consisting very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature, because every clause of agreement is drafting in a one-sided way and a single breach of unilateral terms of provisional allotment letter by complainants, will cost him forfeiting of 15% of total consideration value of unit. When the complainants opposed the unfair trade practices of respondent about the delay payment charges of 24% they said this is standard rule of company and company will also compensate at the rate of Rs 7.5 per sq. ft. per month in case of delay in possession of flat by company. Complainants opposed these illegal, arbitrary, unilateral and discriminatory terms of buyer's agreement but as there is no other option left with complainants because if complainants stop the further payment of instalments, then in that case respondent forfeit 15% of total consideration value from the total amount paid by complainants.

iv. That after the endorsement was made on the buyer's agreement in favour of the complainants, the complainants with bona-fide intentions continued to make payments on the basis of the demand raised by the respondent. During the period starting from the date of endorsement on the buyer's agreement i.e., 28.08.2018, the respondent raised demands of payments vide various demand letter which were positively and duly paid by complainants. A total of more than Rs.1,40,24,897/- was paid. Thus, showing complete sincerity and interest in project and the said flat.

v. That as per Annexure-III (Schedule of Payments) of buyer's agreement, the total sale consideration exclusive of ST and GST taxes is Rs.1,33,27,551/- (Which includes the charges towards the basic price- Rs.1,08,15,750/-, exclusive/dedicated covered car parking Rs.3,00,000/-, EDC & IDC Rs.7,36,801/-, club membership Rs.50,000/-, IFMS Rs.95,000/-, PLC for corner Rs.1,90,000/-, PLC for optional upgrade package Rs.4,75,000/- and PLC central park Rs.6,65,000/-) but later at the time of possession, the respondent added Rs.1,29,140/- in sale consideration in the name of electricity connection charges and added Rs.14,160/- in the name of administrative charges without any reason for the same and that way respondent increased the sale consideration by Rs.1,43,300/- (Rs.1,29,140/- + Rs.14,160/-) without any reason which is illegal, arbitrary, unilateral and unfair trade practice. The complainants

opposed the increase in sales consideration at time of possession but respondent did not pay any attention to complainants.

vi. That as per the clause 10(a) of the said buyer's agreement dated 28.04.2012, the respondent had agreed and promised to complete the construction of the said flat and deliver its possession within a period of 36 months with 3 months grace period thereon from the date of start of construction. The date of start of construction is 27.08.2012. Therefore, the proposed possession date as per buyer's agreement was due on 27.11.2015. However, the respondent has breached the terms of said buyer's agreement and failed to fulfill its obligations and has not delivered possession of said flat within the agreed time frame of the buyer's agreement.

vii. That the offer of possession sent by the respondent through "Intimation of Possession" was not a valid offer of possession because respondent was offered the possession on 06.11.2019 with stringent condition to pay certain amounts which were never part of the buyer's agreement, and the respondent did not received the completion certificate of various other towers of the project and as on 06.11.2019 the project was delayed by approx. four years. At the time of offer of possession builder did not adjust the penalty for delay possession. The respondent did not even allow the complainants to visit the property before clearing the final demand raised by respondent along with the offer of possession.

Respondent demanded 1-year advance maintenance charges from complainants which was never agreed under the buyer's agreement and respondent also demanded a lean marked FD of Rs. 2,39,009/- in pretext of future liability against HVAT which was also unfair trade practice. The respondent gave physical handover of aforesaid property on 16.12.2019 after receiving all payments on 22.11.2019 from the complainants.

viii. That after taking possession of flat on 16.12.2019, the complainants also identified some major structural changes were done by respondent in the project in comparison to features of project narrated to complainants on 28.08.2018 at the office of respondent. The Central Park's layout was shown to complainants at the time of purchase as an area of prime attraction for which respondent charged PLC of Rs.6,47,500/- on pretext of complainant's flat facing Central Green and area of central park was told 8 acre but in reality, it is very small as compare to 8 acres and the actual size of Central Green is below 4 acres of land.

ix. That the respondent started a new charge under the heading of Common Area Electricity charge separately. The respondent with malafide intention is overcharging complainants and other buyers on the name of Common Area Electricity Charges and Fixed Monthly Electricity charges of Rs. 1460/- per month. Respondent charged the complainants for electricity supplied by the

Distribution Licensee (DHBVN) at a tariff higher than the rates for Domestic Supply category, this is illegal, arbitrary, unilateral act of respondent. The respondent using the same electricity connection for pending project activities whereas respondent should have a separate temporary electricity connection for the same. The buyer's agreement defined the formula of calculation of maintenance charges and other common charges which also include charges concerning common area electricity charges, but the respondent unilaterally charged stringent charges from complainants in the name of maintenance charges and common area electricity charges.

x. That the cause of action accrued in favour of the complainants and against the respondent on 25.03.2012 when the said flat was booked by original allottees, and it further arose when respondent failed /neglected to deliver the said flat on proposed delivery date. The cause of action is continuing and is still subsisting on day-to-day basis.

## C. Relief sought by the complainants

4. The complainants are seeking the following relief:

i. Direct the respondent to pay 18% interest on account of delay in offering possession on the amount paid by the complainants as sale consideration of the said flat from the date of payment till the date of delivery of possession.

ii. Direct the respondent to return Rs.1,43,300/- amount unreasonably charged by respondent by increasing sale price after execution of buyer's agreement between respondent and complainants.

iii. Direct the respondent to show the actual records of paying EDC and IDC to government and return the excess amount collected from complainants on account of EDC and IDC charges.

iv. Direct the respondent to return PLC of Rs. 647500/- for 'Central Park' collected from complainants.

v. Direct the respondent to charge maintenance in accordance with buyer's agreement and furnish the records and details of maintenance calculations with complainants.

vi. Direct the respondent to issue necessary instruction to complainant's bank to remove the lien marked over Fixed Deposit of Rs.2,39,009/- in favour of respondent on the pretext of future payment of HVAT.

vii. Any other relief/order or direction which this hon'ble authority may deems fit and proper considering the facts and circumstances of the present complaint.

5. 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 filed by the respondent

6. The respondent has contested the complaint on the following grounds:

i. That the complainants have filed the present complaint seeking refund of several amounts and interest for alleged delay in delivering possession of the apartment booked by the complainants. It is respectfully submitted that such complaints are to be decided by the adjudicating officer under section 71 of the Act read with rule 29 of the rules and not by this hon'ble authority. The present complaint is liable to be dismissed on this ground alone. Moreover, the adjudicating officer derives his jurisdiction from the central statute which cannot be negated by the rules made thereunder.

ii. That the present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 28.04.2012. The provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement. Moreover, the complainants cannot demand any interest from the respondent for the period during which no relationship subsisted between them.

iii. That Mr. Praveen Gupta and Ms. Vibha Gupta, original allottees were allotted an independent unit bearing no. PGN-02-1206, located on the 12th floor in the project vide provisional allotment letter dated 31.03.2012. The original allottees consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that they shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the original allottees and proceeded to allot the unit in question in their favor.

iv. That a buyer's agreement dated 28.04.2012 was executed between the original allottee and the respondent. It is reiterated that the original allottees, at the time of seeking allotment of the unit in question, represented and assured the respondent that they would abide by all the terms and conditions of the buyer's agreement. The respondent had no reason to suspect the bona-fide of the original allottees and proceeded to provisionally allot the unit in question in their favour. However, the original allottees defaulted in timely remittance of installments on time. Statement of account dated 13.03.2021 as maintained by the respondent in due course of its business reflects the delay in remittance of instalments on the part of the original allottees.

v. That clause 12 of the buyer's agreement further provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in

payment of instalments as per the payment plan incorporated in the agreement. In case of delay caused due to non- receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. The original allottees, having defaulted in payment of instalments, were thus not entitled to any compensation or any amount towards interest under the buyer's agreement. The complainants have always been conscious and aware of this fact and have preferred the instant complaint in order to obtain wrongful gain and to cause wrongful loss to the respondent.

vi. That thereafter the complainants approached the original allottees for purchasing their rights and title in the unit in question. The original allottees acceded to the request of the complainants and agreed to transfer and convey their rights, entitlement and title in the unit in question to the complainants vide agreement to sell dated 28.07.2018 executed between the original allottees and the complainants. The complainants had further executed an affidavit dated 28.08.2018 and an indemnity cum undertaking dated 28.08.2018 whereby the complainants had consciously and voluntarily declared and affirmed that they would be bound by all the terms and conditions of the provisional allotment in favour of the original allottees. It was further declared by the complainants that they, having been substituted in the place of the original allottees in respect of the provisional allotment of the unit in question, were not entitled to any compensation for delay, if any,

in delivery of possession of the unit in question or any rebate under a scheme or otherwise or any other discount, by whatever name called, from the respondent. Furthermore, it is pertinent to take into reckoning that the complainants had unambiguously and expressly agreed and acknowledged to extend the timeline for offering possession of the unit in question till March 2019 in terms of the aforesaid affidavit and indemnity-cum-undertaking. The complainants have intentionally concealed all these facts from this hon'ble authority and therefore, there is not equity in their favor.

vii. That the respondent had offered possession of the unit in question through letter of offer of possession dated 28.11.2019 to the complainants. The respondent had requested the complainants to remit the amounts mentioned in the said letter and obtain possession of the unit in question. However, the complainants did not come forward to obtain possession of the unit in question. It is submitted that the complainants did not have adequate funds at the relevant time. The complainants intentionally lingered on the matter in order to suit their own subjective interests.

viii. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The respondent had applied for occupation certificate on 11.02.2019 i.e., much prior to the amended date of delivery of possession of the unit. Occupation certificate was thereafter issued in favour of the respondent vide memo bearing no. ZP-692/AD(RA)/2019/25824 dated 17.10.2019. It is pertinent to note that once an application for grant

of occupation certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilised by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilised for implementation and development of the project.

ix. That the complainants had obtained possession of the unit in question and a unit handover letter dated 16.12.2019 had been executed by the complainants. It is submitted that prior to execution of the unit handover letter, the complainants had satisfied themselves regarding the measurements, location, dimension, development etc. of the unit in question. The complainants only after satisfying themselves with all the aspects including shape, size, location etc. of the unit in question, executed the unit handover letter stating that all the liabilities and obligations of respondent as enumerated in the allotment letter/buyer's agreement stood satisfied. Furthermore, the complainants have executed a conveyance deed dated 07.01.2020. Therefore, the transaction between the complainants and the

respondent has been concluded in January 2020 and no right or liability can be asserted by respondent or the complainants against the other. The present complaint is nothing but a gross misuse of process of law.

x. That all the charges that have been levied by the respondent upon the complainants have been levied strictly in accordance with the terms and conditions incorporated in the buyer's agreement. It is denied that any unfair trade practice has been adopted by the respondent at any time or that levy of any charges upon the complainants have been levied unilaterally. The complainants have always been conscious and aware of the fact that the basic sale price of the unit in question does not include the taxes, cesses, levies and other charges that are liable to be paid by the complainants in accordance with the terms and conditions of the buyer's agreement. The allegations of the complainants are absolutely misconceived and irrational.

xi. That the respondent has charged the EDC/IDC at the rates prescribed by the government. It is absolutely illogical on the part of the complainants to contend that PLC was required to be paid to the government or any documentary record receipt in respect thereof was liable to be provided to them by the respondent. The respondent denied that it is liable to be directed to remove lien marked over fixed deposit of Rs. 2,39,009/-.

xii. That the electricity charges are being charged as per DHBVN and HERC Guidelines for Bulk Supply Domestic Tariff Rates by the respondent from the allottees. The complainants have falsely

alleged that the respondent is overcharging the electricity charges from the allottees. Furthermore, as far as usage of the same electricity connection for pending project activities is concerned, it is submitted that the electricity being used on Project related work is being metered and charged to the respondent.

The electricity is charged from the allottees as per DHBVN/HERC guidelines in the following manner:

- Energy Charges- Rs. 6.20 per unit
- Fuel Surcharge Adjustment- Rs. 0.37 per Unit (Amended from time to time)
- Electricity Duty @ 1.5%- Rs. 0.10
- Municipal Tax @ 2.3% - Rs. 0.14

Therefore, the total Cost of electricity per unit has been quantified at Rs.6.81.

It needs to be highlighted that with effect from February 2021 the electricity rates have been revised by the DHBVN as per HERC tariff Structure for Bulk Supply Tariff Domestic category. The following tariff is applicable w.e.f Feb 2021.

- Energy Charges- Rs. 5.25 per unit
- Fuel Surcharge Adjustment- Rs. 0.37 per Unit (Amended from time to time)
- Electricity Duty @ 1.5%- Rs. 0.11
- Municipal Tax @ 2.3% - Rs. 0.13

Consequently, the total cost of electricity per unit has been revised to Rs. 5.86/-. Common area electricity charges do not include maintenance charges. Both the charges are demanded separately. The respondent has transparently and fairly levied the electricity charges upon the allottees of the project.

xiii. That the construction of the project/allotted unit in question stands completed and the respondent has already offered possession of the unit in question to the complainants. Furthermore, the project of the respondent has been registered under the Act and the rules. Registration certificate was granted by the Haryana Real Estate Regulatory Authority vide memo no. HRERA-142/2017/1712 dated 24.10.2017. It is pertinent to mention that the respondent had applied for extension of the registration and the validity of registration certificate was extended till 31.12.2019. The respondent has already delivered possession of the unit before expiry of the same and therefore there is no delay on the part of the respondent in offering possession.

xiv. That without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainants and without prejudice to the contentions of the respondent, it is submitted that the project has got delayed on account that the contractor hired by the respondent i.e. ILFS (M/s Infrastructure Leasing & Financial Services), a reputed contractor in real estate, started raising certain false and frivolous issues with the respondent due to which they had slowed down the progress of work at site. The respondent was constrained to issue several letters to ILFS requesting it to proceed and complete the construction work in accordance with the decided schedule. However, ILFS continued with its wanton acts of instigating frivolous and false disputes for reasons best known to it. It is

submitted that the respondent cannot exercise any influence over the working of ILFS. ILFS has intentionally delayed the progress of construction for which the respondent cannot be held liable either in equity or in accordance with the provisions of the buyer's agreement.

xv. That several allottees, including the complainants, have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. It is submitted that the construction of the tower in which the unit in question is situated is complete and the respondent has already offered possession of the unit in question to the complainants. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainants. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

7. 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.

## E. Jurisdiction of the authority

8. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

### E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

*Section 11(4)(a)*

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

*The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.*

***Section 34-Functions of the Authority:***

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

11. So, in view of the provisions of the Act quoted above, 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 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.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

12. One of the contentions of the respondent is that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the 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 respondent further submitted that the provisions of the Act are not retrospective in nature and the provisions of the Act cannot undo or modify the terms of buyer's agreement duly executed prior to coming into effect of the Act.

13. 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 hon'ble Bombay High Court in ***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."*

14. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya*** 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."*

15. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the buyer's 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 buyer's 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 the Act and are not unreasonable or exorbitant in nature.

**F.II Objection regarding offer of possession within the time period of extension of the registration**

16. The counsel of the respondent submitted that the project in question is registered vide no. 330 of 2017 and the same was initially valid till 31.12.2018. However, the same was extended till 31.12.2019 vide extension no. 2 of 2019. The occupation certificate was granted by the competent authority on 17.10.2019 and the possession was offered on 02.11.2019, therefore, there is no delay in offering possession in so far as respondent is concerned.

17. The authority is of the view that the promoter is obliged under the proviso to section 3 of the Act to get the on-going project registered, for a certain time period, where the completion certificate has not been issued. At the time of filing application for registration, promoter must disclose the end date [under section 4(2)(l)(C)] within which he shall be able to complete the development of the project. It is worthwhile to note that, as mentioned in the application, the development of the real estate project should be completed in all means within the stipulated end date but if the promoter fails to complete the development of the project within the end date, then as per section 6 of the Act, the promoter can apply for extension of the end date for a further period of 1 (one) year. Furthermore, the extension of registration certificate is

without prejudice to the rights of allottees as per proviso to section 18(1) of the Act regarding delay possession charges from the due date of possession till the actual handing over of possession.

18. Section 4(2)(l)(C) of the Act requires that while applying for registration of the real estate project, the promoter has to file a declaration under section 4(2)(l)(C) of the Act and the same is reproduced as under: -

> *Section 4: - Application for registration of real estate projects*
>
> *(2)The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely: —.....*
>
> *(l): -a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating: — .....*
>
> *(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be...."*

19. The time period for handing over the possession is committed by the builder as per the relevant clause of apartment buyer agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the apartment buyer agreement. The new timeline as indicated by the promoter in the declaration under section 4(2)(l)(C) is now the new timeline as indicated by him for the completion of the project. Although,

penal proceedings shall not be initiated against the builder for not meeting the committed due date of possession but now, if the promoter fails to complete the project in declared timeline, then he is liable for penal proceedings. The due date of possession as per the agreement remains unchanged and promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the apartment buyer agreement and he is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act. The same issue has been dealt by hon'ble Bombay High Court in case titled as ***Neelkamal Realtors Suburban Pvt. Ltd. and anr. vs Union of India and ors***. and has observed 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..."*

**F.III Whether the subsequent allottee who had executed an indemnity-cum-undertaking with waiver clause is entitled to claim delay possession charge.**

20. The respondent submitted that complainants in question are subsequent allottees and complainants have executed an affidavit dated 28.08.2018 and an indemnity cum undertaking dated 28.08.2018 whereby the complainants have consciously and voluntarily declared and affirmed that they would be bound by all the terms and conditions of the provisional allotment in favour of the original allottees. It was

further declared by the complainants that they, having been substituted in the place of the original allottees in respect of the provisional allotment of the unit in question, were not entitled to any compensation for delay. Also, as per affidavit dated 28.08.2018, the due date of delivery comes out to be March 2019. Therefore, the complainants are not entitled to any compensation. The authority has heard the arguments of both the parties at length. With regard to the above contentions raised by the promoter/developer, it is worthwhile to examine following four sub-issues:

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

ii. Whether delay possession charges are in the nature of statutory legal obligation of the promoter other than compensation?

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

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

i. **Whether subsequent allottee is also an allottee as per provisions of the Act?**

21. The term "allottee" as defined in the Act also includes and means the subsequent allottee, hence is entitled to the same relief as that of the

original allottee. The definition of the allottee as provided in the Act is reproduced as under:

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

22. Accordingly, following are allottees as per this definition:

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

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

23. From a bare perusal of the definition, it is clear that the transferee of an apartment, plot or building who acquires it by any mode is an allottee. This may include (i) allotment; (ii) sale; (iii) transfer; (iv) as consideration of services; (v) by exchange of development rights; or (vi) by any other similar means. It can be safely reached to the only logical conclusion that no difference has been made between the original allottee and the subsequent allottee and once the unit, plot, apartment or building, as the case may be, has been re-allotted in the name of the subsequent purchaser by the promoter, the subsequent allottee enters

into the shoes of the original allottee for all intents and purposes and he shall be bound by all the terms and conditions contained in the buyer's agreement including the rights and liabilities of the original allottee. Thus, as soon as the unit is re-allotted in his name, he will become the allottee and nomenclature "subsequent allottee" shall only remain for identification for use by the promoter. Therefore, the authority does not draw any difference between the allottee and subsequent allottee per se.

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

> *"15. So far as the issue raised by the Opposite Party that the Complainants are not the original allottees of the flat and resale of flat does not come within the purview of this Act, is concerned, in our view, having issued the Re-allotment letters on transfer of the allotted Unit and endorsing the Apartment Buyers Agreement in favour of the Complainants, this plea does not hold any water....."*

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

26. Therefore, taking the above facts into account, the authority is of the view that the term subsequent allottee has been used synonymously with the term allottee in the Act. The subsequent allottee at the time of buying a unit/plot takes on the rights as well as obligations of the original allottee vis-a-viz the same terms and conditions of the buyer's agreement entered into by the original allottee. Moreover, the amount if any paid by the subsequent or original allottee is adjusted against the unit in question and not against any individual. Furthermore, the name of the complainants/subsequent allottees has been endorsed on the same buyer's agreement which was executed between the original allottees and the promoter and no fresh buyer's agreement has been executed till date. Therefore, the rights and obligation of the complainants/ subsequent allottees and the promoter will also be governed by the said buyer's agreement.

ii. **Whether delay possession charges are in the nature of statutory legal obligation of the promoter other than compensation?**

27. It is important to understand that the Act has clearly provided interest and compensation as separate entitlement/right which the allottee can claim. An allottee is entitled to claim compensation under sections 12, 14, 18 and section 19, to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The interest is payable to the allottee by the promoter in case where there is refund or payment of delay possession charges i.e.,

interest at the prescribed rate for every month of delay. The interest to be paid to the allottee is fixed and as prescribed in the rules which an allottee is legally entitled to get and the promoter is obligated to pay. The compensation is to be adjudged by the adjudicating officer and may be expressed either lumpsum or as interest on the deposited amount after adjudgment of compensation. This compensation expressed as interest needs to be distinguished with the interest at the prescribed rate payable by the promoter to the allottee in case of delay in handing over of possession or interest at the prescribed rate payable by the allottee to the promoter in case of default in due payments. Here, the interest is pre-determined, and no adjudication is involved. Accordingly, the distinction has to be made between the interest payable at the prescribed rate under section 18 or 19 and adjudgment of compensation under sections 12, 14, 18 and section 19. The compensation shall mean an amount paid to the flat purchasers who have suffered agony and harassment, as a result of the default of the developer including but not limited to delay in handing over of the possession.

28. In addition, the quantum of compensation to be awarded shall be subject to the extent of loss and injury suffered by the negligence of the opposite party and is not a definitive term. It may be in the form of interest or punitive in nature. However, the Act clearly differentiates between the interest payable for delayed possession charges and

compensation. Section 18 of the Act provides for two separate remedies which are as under:

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

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

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

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

30. The respondent/promoter contended that the complainants/subsequent allottees shall not be entitled to any compensation/delayed possession charges since at the time of the execution of transfer documents/agreement for sale, they were well aware of the due date of possession and have knowingly waived off their right to claim any compensation for delay in handing over

possession or any rebate under a scheme or otherwise or any other discount. The respondent/ promoter had spoken about the disentitlement of compensation/delayed possession charges to the complainants/subsequent allottees who had clear knowledge of the fact w.r.t. the due date of possession and whether the project was already delayed. But despite that they have signed an affidavit extending the due date of possession as March 2019 and have executed indemnity-cum-undertaking knowingly waiving off their right of compensation.

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

32. The authority is of the view that the time period for handing over the possession is committed by the builder as per the relevant clause of the buyer's agreement and the commitment of the promoter regarding

handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the buyer's agreement. The new timeline as indicated by the promoter in the declaration under section 4(2)(l)(C) is now the new timeline as indicated by him for the completion of the project. Although, earlier, penal proceedings cannot be initiated against the builder for not meeting the committed due date of possession but now, if the promoter fails to complete the project in declared timeline, then he is liable for penal proceedings. The due date for possession as per the buyer's agreement remains unchanged and the promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the buyer's agreement and is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. The same issue has been dealt by Hon'ble Bombay High Court in case titled as ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** wherein it was held that the RERA Act does not contemplate rewriting of contract between the allottee and the promoter. The relevant para of the judgement is reproduced below:

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

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

34. In the case in hand also, though the buyer's agreement dated 28.04.2012 was executed prior to the Act coming into force but the endorsement was made in favour of the complainants/subsequent allottees on 24.09.2018 when the Act became applicable. The subsequent allottees at the time of buying the said unit takes on the rights as well as obligations of the original allottees vis-a-viz the same terms and conditions of the buyer's agreement entered into by the original allottees. Although at the time of endorsement of their name in the buyer's agreement, the due date of possession had already lapsed but the subsequent allottees as well as the promoter had the knowledge of the statutory right of delay possession charges being accrued in his favour after coming into force of the Act. Thus, the concept of quasi-retroactivity will make the provisions of the Act and the rules applicable

to the subsequent allottees. Moreover, the authority cannot ignore the settled principle of law that the waiver of statutory rights is subject to the public policy and interest vested in the right sought to be waived as reiterated by Hon'ble Supreme Court of India in ***Waman Shriniwas Kini Vs. Ratilal Bhagwandas and Co.*** (AIR 1959 SC 689). In the present situation, there is nothing which can prove that such right was waived off by the complainants/subsequent allottees for either of the two reasons quoted above. In simple words, neither they have got any private benefit by waiving of their right nor does it involve any element of public interest. Therefore, the authority is of the view that in cases where the subsequent allottees have stepped into the shoes of original allottee after coming into force of the Act and after the registration of the project in question, the delayed possession charges shall be granted w.e.f. due date of handing over possession as per the buyer's agreement.

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

35. The authority further is unable to gather any reason or has not been exposed to any reasonable justification as to why a need arose for the complainants to sign any such affidavit or indemnity-cum-undertaking and as to why the complainants have agreed to surrender their legal rights which were available or had accrued in favour of the original allottee. Thus, no sane person would ever execute such an affidavit or indemnity-cum-undertaking unless and until some arduous and/or

compelling conditions are put before him with a condition that unless and until, these arduous and/or compelling conditions are performed by him, he will not be given any relief and he is thus left with no other option but to obey these conditions. Exactly same situation has been demonstratively happened here, when the complainants/subsequent allottees have been asked to give the affidavit or indemnity-cum-undertaking in question before transferring the unit in their name otherwise such transfer may not be allowed by the promoter. Such an affidavit/undertaking/ indemnity bond given by a person thereby giving up their valuable rights must be shown to have been executed in a free atmosphere and should not give rise to any suspicion. No reliance can be placed on any such affidavit/ indemnity-cum-undertaking and the same is liable to be discarded and ignored in its totality. Therefore, this authority does not place reliance on the said affidavit/indemnity cum undertaking. To fortify this view, we place reliance on the order dated 03.01.2020 passed by Hon'ble NCDRC in case titled as **Capital Greens Flat Buyer Association and Ors. Vs. DLF Universal Ltd., Consumer case no. 351 of 2015**, wherein it was held that the execution of indemnity-cum-undertaking would defeat the provisions of section 23 and 28 of the Indian Contract Act, 1872 and therefore, would be against public policy, besides being an unfair trade practice. The relevant portion of the said judgment is reproduced herein below:

*"Indemnity-cum-undertaking*

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

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

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

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

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

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

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

affidavit/undertaking is beyond the comprehension and understanding of this authority.

40. Moreover, the counsel of the complainants drew attention of the authority towards clause 02 of the affidavit dated 28.08.2018 whereby the complainants have waived of their right with regard to the delay compensation and also undertook to execute fresh buyer's agreement as and when desired by the respondent company. This contention of the complainants came to the utter shock to the authority and the authority observes that it is a wrong practice followed by the promoters to get a bunch of documents signed by the naïve subsequent allottees while transferring the unit in question in their names. It is pertinent to mention over here that the promoters use the signing of these one-sided documents as a pre-requisite for the transfer of the subject unit and the subsequent allottees are left with no other option but to sign on these pre-printed documents as produced by the promoters. In an eventuality where the subsequent allottee refuses to sign these documents then the said transfer is not allowed by the promoters. It is a very wrong trend and practice which is being followed by the promoters and the authority is of the considered view that the arbitrary clauses of such documents favouring the promoter who is already in a very dominant position needs to be struck down so as to send a strong message to the complete lobby. In the present matter, clause 02 deserves to be discussed in this regard. In this clause two things are mentioned: *one*, extends the

timeline of delivery of possession and *the other*, waives of the right of the complainants allottees with regard to the delay compensation. It doesn't even stop here; it further talks about execution of a fresh buyer's agreement with amended terms as and when desired by the company. It is interesting to note that anything of this sort of extending the timeline of handing over possession by March 2019 and executing a fresh BBA in this regard is nowhere mentioned in the whole bunch of transfer documents or any other document. These two aspects are only accommodated very conveniently in a deceitful manner only in clause 2 of the affidavit dated 28.08.2018 and the naïve subsequent allottees without even knowing that they are being cheated and what will be the consequences signed the said documents. The authority holds that such clauses cannot be relied upon while adjudicating on such issues where these clauses play an important role.

41. The authority holds that irrespective of the execution of the affidavit/undertaking by the subsequent allottees at the time of transfer of their name as allottees in place of the original allottee in the record of the promoter does not disentitle them from claiming the delay possession charges in case there occurs any delay in delivering the possession of the unit beyond the due date of delivery of possession as promised even after executing an indemnity-cum-undertaking.

**F.IV Whether the execution of the conveyance deed extinguishes the right of the allottee to claim delay possession charges?**

42. The respondent submitted that the complainants have executed a conveyance deed on 07.01.2020 and therefore, the transaction between the complainants and the respondent has been concluded and no right or liability can be asserted by respondent or the complainants against the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case. The present complaint is nothing but a gross misuse of process of law.

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

authority and ownership of the property in question has been transferred to the buyer.

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

> *"11. **Functions and duties of promoter***
>
> *(1) XXX*
> *(2) XXX*
> *(3) XXX*
> *(4) The promoter shall—*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.*
>
> *Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.*
>
> *(b) XXX*
>
> *(c) XXX*
>
> *(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;"* *(emphasis supplied)*

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

*(1) XXX*
*(2) XXX*

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

*(emphasis supplied)*

45. This view is affirmed by the Hon'ble NCDRC in case titled as **Vivek Maheshwari Vs. Emaar MGF Land Ltd. (Consumer case no. 1039 of 2016 dated 26.04.2019)** wherein it was observed as under:

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

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

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

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

> 35. *The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeking a Deed of Conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."*

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

## G. Findings of the authority

### G.I Delay possession charges

48. **Relief sought by the complainants:** Direct the respondent to pay 18% interest on account of delay in offering possession on the amount paid

by the complainants as sale consideration of the said flat from the date of payment till the date of delivery of possession:

49. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

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

50. Clause 10(a) of the buyer's agreement dated 28.04.2012 provides time period for handing over the possession and the same is reproduced below:

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

51. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds

of terms and conditions of this agreement, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the 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.

52. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 months from the date of start of construction and further provided in agreement that promoter shall be entitled to a grace period of 3 months for applying and obtaining completion certificate/occupation certificate in respect of said unit and/or the project. The date of start of construction is 27.08.2012 as per statement

of account dated 13.03.2021. The period of 36 months expired on 27.08.2015. As a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/ occupation certificate within the time limit prescribed by the promoter in the buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 3 months cannot be allowed to the promoter at this stage.

53. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the rate of 18% p.a. 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.*

54. The legislature in its wisdom in the subordinate legislation under rule 15 of the rules has determined tne 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.

55. Taking the case from another angle, the complainants-allottees were entitled to the delayed possession charges/interest only at the rate of Rs.7.50/- per sq. ft. per month as per clause 12(a) of the buyer's agreement for the period of such delay; whereas, as per clause 1.2(b) of the buyer's agreement, the promoter was entitled to interest @ 24% per annum till the date on which such instalment is paid by the allottee to the respondent. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. This authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the buyer's agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on

the part of the promoter. These types of discriminatory terms and conditions of the buyer's agreement will not be final and binding.

56. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 12.10.2021 is 7.30%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 9.30%.

57. **Rate of interest to be paid by complainants for delay in making payments:** The respondent contended that the complainants have defaulted in making timely payments of the instalments as per the payment plan, therefore, they are liable to pay interest on the outstanding payments.

58. The authority observed that 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;"*

59. 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 delay possession charges.

60. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 10(a) of the buyer's agreement executed between the parties on 28.04.2012, possession of the booked unit was to be delivered within 36 months from the date of start of construction i.e. 27.08.2012 and it was further provided in agreement that promoter shall be entitled to a grace period of 3 months for applying and obtaining occupation certificate in respect of said unit. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 27.08.2015. Occupation Certificate has been received by the respondent on 17.10.2019 and the possession of the subject unit was offered to the complainants on 06.11.2019. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 28.04.2012 executed between the parties. It is the

failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 28.04.2012 to hand over the possession within the stipulated period.

61. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 17.10.2019. The respondent offered the possession of the unit in question to the complainants only on 06.11.2019. So, it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession, practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 27.08.2015 till the expiry of 2 months from the date of offer of possession (06.11.2019) which comes out to be 06.01.2020.

62. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent

is established. As such the complainants are entitled to delay possession at prescribed rate of interest i.e. 9.30% p.a. w.e.f. 27.08.2015 till 06.01.2020 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

**G.II Increase in sale price**

63. **Relief sought by the complainants**: Direct the respondent to return Rs.1,43,300/- amount unreasonably charged by respondent by increasing sale price after execution of buyer's agreement between respondent and complainants.

64. The complainants submitted that at the time of possession, the respondent added Rs.1,29,140/- in sale consideration in the name of electricity connection charges and added Rs.14,160/- in the name of administrative charges without any reason for the same and that way respondent increased the sale consideration by Rs.1,43,300/- (Rs.1,29,140/- + Rs.14,160/-) without any reason which is illegal, arbitrary, unilateral and unfair trade practice. On the other hand, the respondent submitted that all the charges that have been levied by the respondent upon the complainants have been levied strictly in accordance with the terms and conditions incorporated in the buyer's agreement.

65. The authority has decided the issue w.r.t. electric connection charges and administrative charges in the complaint bearing no. ***4031 of 2019***

titled as ***Varun Gupta V/s Emaar MGF Land Ltd.*** wherein the authority has held that a nominal amount of up to Rs.15,000/- can be charged by the promoter – developer for administrative charges which it may have incurred for facilitating the transfer/registration of property as has been fixed by the DTP office in this regard and the promoter would be entitled to recover the actual charges paid to the concerned departments' from the complainant/allottee on pro-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the flat allotted to the allottee vis-à-vis the area of all the flats in this particular project. The allottees would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads. Therefore, keeping in view the dictum in the aforesaid order, the complainants are liable to pay Rs.1,29,140/- towards electricity connection charges and Rs.14,160/- towards administrative charges, however, the respondent is directed to give justification/proof for the same.

**G.III Records of EDC and IDC**

66. With respect to this relief sought by the complainants regarding furnishing of records w.r.t payment of EDC and IDC to the government, the complainants are advised to approach the appropriate competent authority for the same.

**G.IV Return of PLC for central greens**

67. **Relief sought by the complainants:** Direct the respondent to return PLC of Rs. 647500/- for 'Central Park' collected from complainants.

68. The authority has decided this in the complaint bearing no. ***4031 of 2019*** titled as ***Varun Gupta V/s Emaar MGF Land Ltd.*** wherein the authority has held that the amount levied towards the preferential location charges is justified as per the contractual obligations contained in the builder buyer's agreement. The authority further observes that in such cases where the apartment/unit has ceased to be preferentially located, the amount charged for preferential location shall be refunded/adjusted. The same should be refunded to the allottee along with interest at the prescribed rate w.e.f. the date of payment made by the allottee till the amount is repaid/adjusted. Therefore, in the present complaint also, the agreement clearly provides that the complainants had agreed to pay preferential location charges for preferentially located unit and such preferential location charges were payable by the allottee in the manner and within such time as stated in the schedule of payment. Therefore, the complainants are liable to pay towards PLC charges.

**G.V Advance maintenance charges**

69. **Relief sought by the complainants:** Direct the respondent to charge maintenance in accordance with buyer's agreement and furnish the records and details of maintenance calculations with complainants.

70. The authority has decided this in the complaint bearing no. ***4031 of 2019*** titled as ***Varun Gupta V/s Emaar MGF Land Ltd.*** wherein the authority has held that the respondent is right in demanding advance maintenance charges at the rates prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

71. In the present complaint, as per clause 17(a) of the buyer's agreement, following provisions has been made with respect to the advance maintenance charges:

> *"17. MAINTENANCE*
>
> *(a) The Allottee hereby agrees and undertakes that he/she/they/it shall enter into a separate Tripartite Maintenance Agreement in the draft provided as Annexure-9 to this Buyer's Agreement with the Maintenance Agency.*
>
> *(b) The Allottee(s) further agrees and undertakes to pay the indicative and approximate maintenance charges as may be levied by the maintenance agency for the upkeep and maintenance of the Project, its common areas, utilities, equipment's installed in the building and such other facilities forming part of the Project. Further, the Allottee(s) agrees and*

*undertakes to pay in advance, along with the last installment specified under Payment Schedule, advance maintenance charge (AMC) equivalent to maintenance charges for a period of two years. Such charges payable by the Allottee(s) will be subject to escalation of such costs and expenses as may be levied by the Maintenance Agency. The Company reserves the right to change, modify, amend and impose additional conditions in the Tripartite Maintenance Agreement at its sole discretion from time to time."*

72. Keeping in view the facts above, the authority deems fit that the respondent is right in demanding advance maintenance charges at the rate prescribed therein at the time of offer of possession in view of the judgement (supra). However, the respondent shall not demand the advance maintenance charges for more than one (1) year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year. In the present complaint, the respondent has demanded Rs.74,000/- towards advance maintenance charges (@ Rs.3.25 per sq. ft.) for period of 12 months as per letter of offer of possession dated 06.11.2019. Therefore, the complainants are liable to pay Rs.74,000/- towards AMC as the same is for period of 12 months.

**G.VI Removal of lien marked on FD on pretext of future payment of HVAT**

73. **Relief sought by the complainants**: Direct the respondent to issue necessary instruction to complainant's bank to remove the lien marked over Fixed Deposit of Rs.2,39,009/- in favour of respondent on the pretext of future payment of HVAT.

74. The authority has decided this in the complaint bearing no. ***4031 of 2019*** titled as ***Varun Gupta V/s Emaar MGF Land Ltd.*** wherein the authority has held that the promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, the promoter cannot charge any VAT from the allottees/prospective buyers for the period 01.04.2014 to 30.06.2017 as the same was to be borne by the promoter-developer only. The respondent-promoter is bound to adjust the said amount, if charged from the allottee with the dues payable by him or refund the amount if no dues are payable by him.

75. In the present complaint, the respondent vide letter of offer of possession has demanded lien marked FD of Rs. 2,39,009/- towards future liability of HVAT for liability post 01.04.2014 till 30.06.2017. In light of judgement stated above, the respondent shall not demand the same.

## H. Direction of the authority

76. 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. The respondent is directed to pay the 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. 27.08.2015 till 06.01.2020 i.e., expiry of 2 months from the date of offer of possession (06.11.2019). The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.

ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The rate of interest chargeable from the complainants /allottees 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 delay possession charges as per section 2(za) of the Act.

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

iv. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent shall not demand/claim 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 decided on 14.12.2020.

77. Complaint stands disposed of.

78. File be consigned to registry.

**(Samir Kumar)**
Member

**(Vijay Kumar Goyal)**
Member

**(Dr. K.K. Khandelwal)**
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.10.2021

Judgement uploaded on 16.12.2021.