BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**796 of 2021**
First date of hearing	:	**12.03.2021**
Date of decision	:	**12.10.2021**

Sanjay Kapur
R/o: H.No. 661, Sector 15,
Faridabad, Haryana-121007 **Complainant**

Versus

M/s Emaar MGF Land Ltd.
Address: Emaar MGF Business Park, M.G. Road,
Sikanderpur Chowk, Sector 28, Gurugram, Haryana. **Respondent**

CORAM:

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

APPEARANCE:

Shri Kuldeep Kumar Kohli	Advocate for the complainant
Shri J.K. Dang	Advocates for the respondent

ORDER

1. The present complaint dated 09.02.2021 has been filed by the complainant/allottee 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.

2. Since, the buyer's agreement has been executed on 29.12.2010 i.e. prior to the commencement of the Act ibid, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on part of the promoter/respondent in terms of section 34(f) of the Act ibid.

A. Project and unit related details

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

S. No.	Heads	Information
1.	Project name and location	Emerald Floors Premier III at Emerald Estate, Sector 65, Gurugram
2.	Project area	25.499 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	06 of 2008 dated 17.01.2008 Valid/renewed up to 16.01.2025
5.	Name of licensee	Active Promoters Pvt. Ltd. and 2 others C/o Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	**Registered vide no. 104 of 2017 dated 24.08.2017 for 82768 sq. mtrs.**
7.	HRERA registration valid up to	**23.08.2022**
8.	Occupation certificate granted on	11.11.2020 [Page 152 of reply]

9.	Date of provisional allotment letter	08.06.2010 [Page 61 of reply]
10.	Unit no.	EFP-II-36-0401, 4th floor, building no. 36 [Page 67 of complaint]
11.	Unit measuring	1650 sq. ft.
12.	Date of execution of buyer's agreement	29.12.2010 [Page 65 of complaint]
13.	Payment plan	Construction linked payment plan [Page 99 of reply]
14.	Total consideration as per statement of account dated 03.03.2021 at page 140 of reply	Rs.93,05,164/-
15.	Total amount paid by the complainant as per statement of account dated 03.03.2021 at page 141 of reply	Rs.94,57,351/-
16.	Due date of delivery of possession as per clause 11(a) of the said agreement i.e. 36 months from the date of execution of buyer's agreement along with grace period of 3 months, for applying and obtaining the occupation certificate in respect of the unit and/or the project. [Page 80 of complaint]	**29.12.2013** [Grace period not included]
17.	**Date of offer of possession to the complainant**	17.11.2020 [Page 117 of complaint]
18.	Delay in handing over possession w.e.f. 29.12.2013 till 17.01.2021 i.e., date of offer possession (17.11.2020) + 2 months	7 years 19 days

B. Facts of the complaint

4. The complainant has made the following submissions in the complaint:

i. That the complainant was caught in the web of false promises of the agents of the respondent company, paid an initial amount of Rs. 5,00,000/- dated 16.05.2010 and was acknowledged by the respondent vide statement of account dated 25.11.2020 and accordingly filled the application form for one unit and opted for construction linked payment plan. The complainant was allotted unit being EFP-II-36-0401 in the above said project.

ii. That thereafter, a buyer's agreement was also executed between the parties on 29.12.2010. The complainant kept pursuing the matter with the representatives of the respondent as to when will they deliver the project and why construction is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of some dispute with the landowners and shortage of labor etc.

iii. That as per the demands raised by the respondent, based on the payment plan, the complainant paid a sum of Rs.94,57,351/- towards the said unit against total demands of Rs.93,05,164/- raised by the respondent from 2010 till 2020.

iv. That no offer of possession has been made in the intimation of possession letter dated 17.11.2020, which is in the nature of a notice informing the complainant that all the steps so mentioned in the

letter have to be completed within a period of 60 days of this letter and further stating that adhering to the timelines is very important.

v. That offering possession by the respondent on payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. HVAT was never, as per the Act, payable by the complainant and hence the offer of possession is not a valid offer of possession. The respondent knowing well that HVAT is not payable by the complainant has included the HVAT element in the IOP letter, as the HVAT came into existence much before the flat was sold to the complainant and hence to any stretch of imagination it cannot be believed, that if the VAT is payable by the complainant, the respondent would not have included the same in the cost on the flats sold in 2009. In any case, the Supreme Court had ruled that value added tax (VAT) cannot be imposed on buyers and builders, developers have to pay the tax (5%) for under construction flats sold during 20 June 2006 to 31 March 2010.

vi. That the respondent is insisting advance monthly maintenance charges for a period of 12 months which was never a part of the buyer's agreement and hence this demand is illegal and therefore for this reason as well the intimation of possession is an invalid offer.

vii. That the respondent is asking for Interest Free Maintenance Security as the Maintenance security is also illegal and amounts to unjust

enrichment depriving the complainant of a huge loss of interest on a sum of Rs.93.532.00 which condition was never a part of the buyer's agreement and hence for this reason as well the intimation of possession is not a valid offer of possession.

viii. That while under clause 1.2 (c) of the buyer's agreement, upon delay of payment by the allottee, the respondent can charge 24% simple interest per annum, however, on account of delay in handing over possession by the respondent, he is liable to pay merely Rs. 5.00/- per sq. ft. per month of the super area for the period of delay as per clause 13(a) of the said agreement. It is submitted that such clauses are totally unjust, arbitrary and amounts to unfair trade practice as held by the Hon'ble NCDRC in the case titled as ***Shri Satish Kumar Pandey & Anr. v/s M.s Unitech Ltd. (14.07.2015)*** and also in the judgment of Hon'ble Supreme Court in ***Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017).***

ix. That having no other option, the complainant in the month of March 2018 had to personally present herself to inquire about the status of the flat and date of possession of the flat but surprisingly the respondent and their agents again started making lame and untenable excuses and promised that delivery of possession of flat would be in the month of July 2018, but the complainant was deprived of the possession then as well.

x. That the cause of action accrued in favor of the complainant and against the respondent on the date when the respondent advertised the said project, it again arose on diverse dates when the apartments owners entered into their respective agreement, it also arose when the respondent inordinately and unjustifiably and with no proper and reasonable legal explanation or recourse delayed the project beyond any reasonable measure continuing to this day, it continues to arise as the apartment owners have not been delivered the apartments and the infrastructure facilities in the project have not been provided till date and the cause of action is still continuing and subsisting on day to day basis.

xi. That as per section 11 (4) of the Act, the promoter is liable to abide by the terms and agreement of the sale. As per section 18 of the Act, the respondent is liable to pay interest to the allottee of an apartment, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale.

C. Relief sought by the complainant

5. The complainant has filed the present compliant for seeking following relief:

i. Direct the respondent to pay to the complainant on account of interest as per the provisions of the Act before signing the sale deed together with the unambiguous intimation / offer of possession.

ii. Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties, like asking for Fixed Deposit of HVAT, which in any case is not payable by the complainant.

iii. Direct the respondent not to ask for the advance monthly maintenance charges for a period of 12 months.

iv. Direct the respondent not to ask for Interest Free Maintenance Security as the maintenance security should be interest bearing.

v. Direct the respondent not to force the complainant to sign any indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.

vi. Direct the respondent not to ask for any charges which is not as per the buyer's agreement.

vii. Pass any other relief(s) which this hon'ble authority thinks fit in the interest of justice and in favor of the complainant.

6. 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 and to plead guilty or not to plead guilty.

D. Reply by the respondent

7. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:

i. That the complainant has filed the present complaint seeking inter-alia interest and compensation for alleged delay in delivering

possession of the unit purchased by the complainant. It is respectfully submitted that complaints pertaining to compensation 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 authority. The present complaint is liable to be dismissed on this ground alone. Moreover, it is respectfully submitted that the adjudicating officer derives his jurisdiction from the central Act which cannot be negated by the rules made thereunder.

ii. That 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 29.12.2010. 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. The provisions of the Act relied upon by the complainant for seeking interest or compensation cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement. The complainant cannot claim any relief which is contrary to the provisions of the buyer's agreement. The complainant cannot demand any interest or compensation beyond or contrary to the agreed terms and conditions between the parties.

iii. That unit bearing no. EFP-II-36-0401 was provisionally allotted to the complainant vide provisional allotment letter dated 08.06.2010.

Thereafter, buyer's agreement was executed between the complainant and the respondent on 29.12.2010.

iv. That from the very beginning, the complainant defaulted in timely payment of instalments as per the payment plan. The respondent was constrained to issue notices and reminders for payment. The statement of account reflects the payments made by the complainant and the delayed payment accrued thereon as on 03.03.2021.

v. That the contractual relationship between the parties is governed by the terms and conditions of the buyer's agreement. Clause 11 of the buyer's agreement provides that subject to force majeure conditions and delay caused on account of reasons beyond the control of the respondent, and subject to the allottee not being in default of any of the terms and conditions of the same, the respondent expects to deliver possession of the unit within a period of 36 months plus three months grace period, from the date of execution of the buyer's agreement. In the case of delay by the allottee in making payment or delay on account of reasons beyond the control of the respondent, the time for delivery of possession stands extended automatically. In the present case, the complainant had defaulted in making timely payment of sale consideration as per the payment plan and consequently was not entitled to any compensation for delay under clause 13(c) of the buyer's agreement. Moreover, the time period for delivery of possession also stands automatically extended in

accordance with clause 11(b)(iv) of the buyer's agreement, till payment of all outstanding amounts to the satisfaction of the respondent. However, although not entitled to any compensation under the buyer's agreement, the complainant has been paid an amount of Rs.5,82,879/- towards compensation for delay in delivery of possession, which has been duly accepted by the complainant. Furthermore, in terms of clause 13(d) of the buyer's agreement, no compensation is payable due to delay or nonreceipt of the occupation certificate, completion certificate and/or any other permission/sanction from the competent authority.

vi. That in the meanwhile, the respondent had registered the project under the Act. The Haryana Real Estate Regulatory Authority granted registration certificate dated 24.08.2017 registering the project up to 23.08.2022. The respondent completed construction and applied on 21.07.2020 for issuance of the occupation certificate. The occupation certificate was issued by the competent authority on 11.11.2020. The respondent has thereafter offered possession of the unit to the complainant on 17.11.2020. Compensation for delay amounting to Rs.5,82,879/- has been credited/paid by the respondent in accordance with the buyer's agreement, at the time of offer of possession and which has been duly accepted by the complainant.

vii. That the respondent denied that the demand towards HVAT is illegal and unjustified. As per clause 10(f) of the buyer's agreement voluntarily executed by the complainant and the respondent, the complainant had undertaken to make payment of the VAT liability as well as all applicable taxes, whether levied or leviable in the future. Therefore, the complainant cannot claim that he is not liable to make payment of the HVAT amount as demanded by the respondent.

viii. That the respondent denied that the demand for advance maintenance charges is illegal or that the offer of possession is invalid. It is submitted that the complainant is bound to pay maintenance charges in accordance with clause 18 of the buyer's agreement. The complainant is making false and frivolous objections in order to avoid fulfilling his contractual obligations under the buyer's agreement.

ix. That the respondent denied that the demand for Interest Free Maintenance Security is illegal or amounts to unjust enrichment. It is denied that the offer of possession is illegal or invalid for any reason. In terms of clause 18(g) of the buyer's agreement, the complainant has agreed and undertaken to keep deposited interest free maintenance advance security (IFMS) and in the event of failure to pay maintenance charges, the respondent/maintenance agency is entitled to adjust maintenance dues against the IFMS deposit. Thus,

it is evident that there is no illegality with respect to the demands raised by the respondent and the allegations made by the complainant are absolutely frivolous, baseless and misconceived. Clause 18 of the buyer's agreement specifically provides that the security deposit shall be "interest free". Hence, it is ridiculous on the part of the complainant to allege that the complainant has been deprived of interest on the same.

x. That the delay, if any, in the project has got delayed on account of the following reasons which were/are beyond the power and control of the respondent. *Firstly*, the National Building Code was revised in the year 2016 and in terms of the same, all high-rise buildings (i.e. buildings having area of less than 500 sq. mtrs. and above), irrespective of area of each floor, are now required to have two staircases. In view of the practical difficulties in constructing a second staircase in a building that already stands constructed according to duly approved plans, the respondent made several representations to various Government Authorities requesting that the requirement of a second staircase in such cases be dispensed with. Eventually, so as not to cause any further delay in the project and so as to avoid jeopardising the safety of the occupants of the buildings in question including the building in which the unit in question is situated, the respondent had taken a decision to go ahead and construct the second staircase. The respondent has constructed

the second staircase as expeditiously as possible. Thereafter, upon completion of the second staircase, the respondent had obtained the occupation certificate in respect of the tower in which the unit is located and has already delivered possession of the unit in question to the complainant. *Secondly*, the defaults on the part of the contractor M/s B L Kashyap and Sons (BLK/Contractor). The progress of work at the project site was extremely slow on account of various defaults on the part of the contractor, such as failure to deploy adequate manpower, shortage of materials etc. in this regard, the respondent made several requests to the contractor to expedite progress of the work at the project site. However, the contractor did not adhere to the said requests and the work at the site came to a standstill. The arbitration proceedings titled as B L Kashyap and Sons Vs Emaar MGF Land Ltd (arbitration case number 1 of 2018) before Justice A P Shah (Retd), Sole Arbitrator have been initiated. Hon'ble arbitrator vide order dated 27.04.2019 gave liberty to the respondent to appoint another contractor w.e.f. 15.05.2019.

xi. That several allottees, including the complainant has defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualization 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. Therefore, there is no default or lapse on the part of the respondent and there in no equity in favour of the complainant. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

8. 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

9. 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

10. 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

11. 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.*

12. 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 complainant 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

13. 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.

14. 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."

15. 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."

16. 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 exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate

17. As far as contention of the respondent with respect to the exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate is concerned, the authority observed that the respondent had applied for grant of occupation certificate on 21.07.2020 and thereafter vide memo no. ZP-441-Vol.-II/AD(RA)/2020/20094 dated 11.11.2020, the occupation certificate has been granted by the competent authority under the prevailing law. The authority cannot be a silent spectator to the deficiencies in the application submitted by the promoter for issuance of occupancy certificate. It is evident from the occupation certificate dated 11.11.2020 that an incomplete application for grant of OC was applied on 21.07.2020 as fire NOC from the competent authority was granted only on 25.09.2020 which is subsequent to the filing of application for occupation certificate. Also, the Chief Engineer-I, HSVP, Panchkula has submitted his requisite report in respect of the said project on 22.09.2020 and 24.09.2020. The District Town Planner, Gurugram and Senior Town

Planner, Gurugram has submitted requisite reports' about this project on 21.09.2020 and 23.09.2020 respectively. As such, the application submitted on 21.07.2020 was incomplete and an incomplete application is no application in the eyes of law.

18. The application for issuance of occupancy certificate shall be moved in the prescribed forms and accompanied by the documents mentioned in sub-code 4.10.1 of the Haryana Building Code, 2017. As per sub-code 4.10.4 of the said Code, after receipt of application for grant of occupation certificate, the competent authority shall communicate in writing within 60 days, its decision for grant/ refusal of such permission for occupation of the building in Form BR-VII. In the present case, the respondent has completed its application for occupation certificate only on 25.09.2020 and consequently the concerned authority has granted occupation certificate on 11.11.2020. Therefore, in view of the deficiency in the said application dated 21.07.2020 and aforesaid reasons, no delay in granting occupation certificate can be attributed to the concerned statutory authority.

G. Findings on the reliefs sought by the complainant

G.I Possession and delay possession charges

19. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

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

20. Clause 11(a) of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

"**11. 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 months from the date of execution of Buyer's Agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of three months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project."

21. 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 complainant 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.

22. **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 execution of buyer's agreement dated 29.12.2010 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. The period of 36 months expired on 29.12.2013. 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.

23. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the

prescribed rate of interest. 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.*

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

25. Taking the case from another angle, the complainant-allottee was entitled to the delayed possession charges/interest only at the rate of Rs.5/- per sq. ft. per month as per clause 13 of the buyer's agreement for the period of such delay; whereas, as per clause 1.2(c) of the buyer's agreement, the promoter was entitled to interest @ 24% per annum at the time of every succeeding instalment for the delayed payments. The functions of the authority are to safeguard the interest of the aggrieved person, may be

the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the 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.

26. 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 marginal cost of lending rate +2% i.e., 9.30%.

27. **Rate of interest to be paid by the complainant in case of delay in making payments:** The respondent contended that the complainant has defaulted in making timely payments of the instalments as per the payment plan, therefore, she is liable to pay interest on the outstanding payments.

28. 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;"*

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

30. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 11(a) of the buyer's agreement executed between the parties on 29.12.2010, the possession of the booked unit was to be delivered within 36 months from the date of execution of buyer's agreement 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 29.12.2013. Occupation certificate has been received by the respondent on 11.11.2020 and the possession of the subject unit was offered to the complainant on 17.11.2020. 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 complainant as per the terms and conditions of the buyer's agreement dated 29.12.2010 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 29.12.2010 to hand over the possession within the stipulated period.

31. 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 11.11.2020. The respondent offered the possession of the unit in question to the complainant only on 17.11.2020. So, it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 months'

of reasonable time is being given to the complainant keeping in mind that even after intimation of possession, practically she has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 29.12.2013 till the expiry of 2 months from the date of offer of possession (17.11.2020) which comes out to be 17.01.2021. The complainant is also directed to take possession of the unit in question within 2 months from the date of this order.

32. 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 complainant is entitled to delay possession at prescribed rate of interest i.e. 9.30% p.a. w.e.f. 29.12.2013 till 17.01.2021 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

33. Also, the amount of Rs.5,82,879/- (as per statement of account dated 03.03.2021) so paid by the respondent to the complainant towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

G.II Return of HVAT

34. The complainant is contending that he have been additionally burdened to pay HVAT. On the other hand, the respondent submitted that the HVAT

has been validly and legally charged by the respondent as per clause 10(f) of the buyer's agreement and the same are statutory charges and are liable to be passed on to the Government by the respondent.

35. The authority observed that the liability to pay Value Added Tax by the builder as works contractor has clearly been settled by the **Hon'ble Apex Court in M/s Larsen and Toubro Limited Vs State of Karnataka (2013) 46 PHT 269 (SC)** wherein it was held that the builders/developers etc. engaged in the activities of the construction of building, flat and commercial properties are covered under the definition of "works contract" and are liable to pay Sales Tax as per applicable laws of the state. The provisions of Haryana VAT Act, 2003 (herein after referred as HVAT Act) r/w Haryana Value Added Tax Rules further clarified that the agreements entered with prospective buyers for sale of constructed flats, apartments or other buildings by builders and/or developers amount to transfer of property of goods involved in the execution of a works contract and thus liable to be subjected to VAT. The above is supported by "sale" as defined under sub-clause (ii) of section 2(1)(ze) of the HVAT Act which includes "the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract." The term "works contract" has been defined under section 2(1)(zt) which "includes any agreement for carrying out for cash, deferred payment or other valuable consideration, the assembling, construction, building, altering, manufacturing, processing, fabrication,

installation, fitting out, improvement, repair or commissioning of any movable or immovable property." "Goods" have been defined under section 2(1)(r) of the Act as under:

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

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

37. Further, it is pertinent to point that there is no standard formula as to what percentage of VAT is to be levied on the consideration to be paid by the prospective buyer. In order to ascertain the tax liability on under-construction property; firstly, the quantification of goods involved in the under-construction property need to be calculated as per the mechanism provided by the State of Haryana vide **notification No. 19/ST-1/H.A.6/2003/S.60/2015 dated 23.07.2015**, thereafter, taxed the taxable turnover according to the rate of tax on various goods such as steel, cement, concrete, wood etc. incorporated, utilized and transferred in the execution of the works contract. The Government of Haryana vide **notification No. 19/ST-1/H.A.6/2003/S.59A/2016 dated 12.09.2016** also provided for an amnesty scheme namely, the Haryana Alternative

Tax Compliance Scheme for Contractors, 2016, for the recovery of tax, interest, penalty or other dues payable under the said Act, for the period **up to 31.03.2014**. Therein, an option was provided to the builder/ developer to discharge their Value Added Tax obligation at a flat rate of 1.05% (1% VAT +5% Surcharge on VAT) on the entire aggregate amount received or receivable for the business carried out during the year for the period prior to 31.03.2014; whether assessed or not assessed.

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

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

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

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

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

G.III Quash demand on account of advance monthly maintenance for a period of 12 months

42. As far as issue regarding advance maintenance charges is concerned where the said agreements have been entered into before coming into force the Act, the matter is to be dealt with as per the provisions of the builder buyer's agreement. With respect to advance maintenance charges, the relevant clause of the buyer's agreement is as follows:

> *"18. MAINTENANCE*
>
> *(a) The Allottee(s) hereby agrees and undertakes that he/she/they/it shall enter into a separate Tripartite Maintenance Agreement in the draft provided at Annexure – 9 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 installed in the building and such other facilities forming part of the Project. 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."*

43. The reading of the above clauses shows that the amount towards maintenance charges being demanded by the promoter shall be utilized towards the upkeep and maintenance of the project, its common areas, utilities, equipment's installed in the building and such other facilities forming the part of the project. In the present case, as per offer of possession letter dated 17.11.2020, the respondent has demanded advance maintenance charges for period of 12 months whereas the buyer's agreement does not mention any time period for which the advance maintenance charges shall be payable. The maintenance of the project is essential to enjoy the basic facilities provided in the project by the promoter. Therefore, while providing these essential services, the promoter would be required to maintain sufficient funds with him. In order to meet these expenses, the demand of the promoter raised on the allottee to pay advance maintenance charges for a certain period cannot by any stretch of imagination be said to be unreasonable or unjustified. However, an embargo has to be placed on the entitlement of the promoter in this regard.

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

"Maintenance Charge and Holding Charge:-

According to Clause 10 or Clause 14.3 of the Agreement, the apartment allottee shall be liable to pay the maintenance charge on and from the date on which actual physical possession is taken or on the expiry of thirty (30) days from the date of issuance of the Notice of Possession, whichever is earlier.

As per terms of the Agreement, the OP/developer has no authority to demand maintenance for any period prior to actual physical possession being handed over. Equally the OP/developer shall have no authority to demand any holding charge as the delay in giving possession is on their own part and they are wrongfully withholding possession till date. However, the complainant will be liable to make payment on account of government charges only upon receiving physical possession of the flat and car parking space from the OP.

So far as claim of the complainant for common facilities or benefit like - swimming pool, tennis court etc. are concerned, the same cannot be entertained because prior to lodging complaint, no permission was sought for in accordance with Section 12(1)(c) of the Act to file the complaint in a representative capacity. Therefore, there is hardly any reason to discuss about the common areas and facilities of the complex, as alleged by the complainant.....

In view of the discussion above, the complaint is allowed on contest with the following directions:-

The Opposite Party is directed to deliver possession and to execute the Sale Deed in favour of the complainant on payment of stamp duty and registration charges within 90 days from date after obtaining Completion Certificate from the competent authority;

.....

The Opposite Party is directed not to claim any amount under the head of

(a) cost of increased in area;

(b) pro-rate charges for arranging supply of electrical energy and

(c) Other costs including government charges from final statement of accounts,

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

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

45. In yet another judgement titled as **Dr. Mudit Kumar Vs. Emaar MGF Land Limited dated 28.01.2020** passed by the State Commission, Punjab wherein it has been held that the promoter is not entitled to

charge maintenance charges till the handing over of the possession of the unit to the allottee post receipt of the OC only. However, the amount accredited towards maintenance charges should be maintained in a corpus and the builder cannot transfer the proceeds or maintenance charges received from allottees to his company's account, because such money received for maintenance is not his income in any way. The logic behind it, is that a builder is only a facilitator for a limited amount of time and the onus of taking up the responsibility of maintenance of the flat and its premises is on the residents' welfare association (RWA).

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

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

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

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

G.IV Provide interest on IFMS charges

49. The complainant submitted that the respondent has charged Rs.82,500/- as IFMS and the same being illegal needs to be quashed and deprive the complainant of huge loss of interest on the sum so paid. On the contrary, the respondent submitted that IFMS or Interest Free Maintenance

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

50. The term IFMS has not been defined in the agreement, however in common parlance, it means maintenance security on which builder does not pay any interest to the allottee. The clause 21 (c) of the buyer's agreement provides as under:

> *"18. MAINTENANCE:*
>
> .....
>
> *(c) In addition to the payment of maintenance charges to be paid by the Allottee(s), the Allottee(s) agrees and undertakes to pay interest free maintenance security ('IFMS') as applicable, which shall be intimated at the time of handover of the possession of the said Unit."*

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

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

52. IFMS is a lump sum amount that the home buyer pays to the builder which is reserved/accumulated in a separate account until a residents' association is formed. Following that, the builder is expected to transfer the total amount to the association for maintenance expenditures. The system is useful in case of unprecedented breakdowns in facilities or for planned future developments like park extensions or tightening security. The same is a one-time deposit and is paid once (generally at the time of possession) to the builder by the buyers. The builder collects this amount to ensure availability of funds in case unit holder fails to pay maintenance charges or in case of any unprecedented expenses and keeps this amount in its custody till an association of owners is formed. IFMS needs to be transferred to association of owners (or RWA) once formed.

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

54. It is worthwhile to mention that IFMS has been resisted by allottees on the ground that this security is kept by the builder and no interest is paid

either to the allottee or accrued in the maintenance security account and kept by the builder on which interest is earned by him. Ideally, this is allottee's money and to be kept in a separate account and interest accrued on it shall be part of maintenance security. Some builders (even this builder) in other agreements, changed the name of maintenance security as IBMS i.e., interest bearing maintenance security.

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

H. Directions of the authority

56. 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 complainant from due date of possession i.e. 29.12.2013 till 17.01.2021 i.e., expiry of 2 months from the date of offer of possession (17.11.2020). The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.

ii. Also, the amount of Rs.5,82,879/- so paid by the respondent to the complainant towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The rate of interest chargeable from the complainant /allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.

iv. The complainant is directed to take possession of the unit in question within 2 months from the date of this order.

v. 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 allottee/complainant 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.

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

vii. The respondent is right in demanding advance maintenance charges at the rates' prescribed in the buyer's agreement at the time of offer of possession for a period of 12 months.

viii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/allottee 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.

57. Complaint stands disposed of.

58. File be consigned to registry.

(Vijay Kumar Goyal)
Member

(Samir Kumar)
Member

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

Dated: 12.10.2021

Judgement uploaded on 16.1.2.2021.