BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**301 of 2020**
First date of hearing	**:**	**20.03.2020**
Date of decision	**:**	**26.08.2021**

1. Deepika Sethi
   (Through Mrs. Narinder Sawhney Power of Attorney Holder)
2. Narinder Sawhney
   Both RR/o: H. No. 842, Ghitorni, Main MG Road to GGN Road, Opposite Metro Pillar No. 117, New Delhi-110030.

Complainants

Versus

M/s Emaar MGF Land Ltd.
Address: 306-308, 3rd floor, Square One, C2, District Centre, Saket, New Delhi -110017.

Respondent

CORAM:
Shri Samir Kumar — **Member**
Shri Vijay Kumar Goyal — **Member**

APPEARANCE:
Shri Kuldeep Kumar Kohli — Advocate for the complainants
Shri J.K. Dang along with Shri Ishaan Dang — Advocates for the respondent

ORDER

1. The present complaint dated 13.02.2020 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.

2. Since, the buyer's agreement has been executed on 31.07.2013 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 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	Gurgaon Greens, Sector 102, Gurugram.
2.	Project area	13.531 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	75 of 2012 dated 31.07.2012 Valid/renewed up to 30.07.2020
5.	Name of licensee	Kamdhenu Projects Pvt. Ltd. and another C/o Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	**Registered vide no. 36(a) of 2017 dated 05.12.2017 for 95829.92 sq. mtrs.**
	HRERA registration valid up to	**31.12.2018**
7.	HRERA extension of registration vide	**01 of 2019 dated 02.08.2019**

	Extension valid up to	**31.12.2019**
8.	Occupation certificate granted on	05.12.2018 [Page 137 of reply]
9.	Unit no.	GGN-17-0602, 6th floor, tower 17 [Page 41 of complaint]
10.	Unit measuring	1650 sq. ft.
11.	Date of execution of buyer's agreement	31.07.2013 [Page 38 of complaint]
12.	Payment plan	Construction linked payment plan [Page 55 of complaint]
13.	Total consideration as per statement of account dated 11.03.2020 [Page 106 of reply]	Rs. 1,26,07,152/-
14.	Total amount paid by the complainants as per statement of account dated 11.03.2020 [Page 108 of reply]	Rs.1,10,61,332 /-
15.	Date of start of construction as per statement of account dated 11.03.2020 [Page 106 of reply]	14.06.2013
16.	Due date of delivery of possession as per clause 14(a) of the said agreement i.e. 36 months from the date of commencement of construction (14.06.2013) + grace period of 6 months, for applying and obtaining completion certificate/ occupation certificate in respect of the unit and/or the project. [Page 47 of complaint]	14.06.2016 **[Note:** Grace period is not included**]**
17.	**Date of offer of possession to the complainants**	**18.12.2018** [Page 135 of complaint]

18.	Delay in handing over possession till 18.02.2019 i.e. date of offer of possession (18.12.2018) + 2 months	2 years 8 months 4 days

B. Facts of the complaint

4. The complainants have made the following submissions in the complaint:

i. That the complainants booked a unit in the project in question by paying an amount of Rs.7,50,000/- on 04.09.2012 and thereafter unit bearing no. GGN-17-0602 having super area of 1650 sq.ft. was allotted in favour of the complainants. The buyer's agreement was also executed between the parties on 31.07.2013. As per clause 14(a) of buyer's agreement, the respondent had to deliver the possession within a period of 36 months from the date of start of construction along with the grace period of 5 months. The date of start of construction of the project was 14.06.2013. Therefore, the delivery of the possession had to be given by 14.11.2016. As per the demands raised by the respondent, based on the payment plan, the complainants paid a sum of Rs.1,10,61,332/- towards the said apartment from 2013 till 12.12.2018. That in 2016, the complainants visited the site and were shocked to see the status of the project as no construction was going on the project site and the status of construction was not at all in consonance with the construction plan based on which the payments were collected.

ii. That due to the work at the project site moving on snail pace and upon receiving unsatisfactory response from the respondent, the complainants started to losing faith in the completion of the said project. The respondent having accepted an exorbitant amount of money from the complainants were further obligated to complete the project on time and deliver the apartment within the agreed time frame, but the respondent failed to do so.

iii. That on 18.12.2018 the complainants received the letter of offer of possession. The respondent raised many illegal demands in the offer of possession like holding charges, advance monthly maintenance for 24 months, delayed payment charges including GST @12%, administrative charges, miscellaneous expenditure for registration, IFMS, HVAT charges, etc. After receiving the offer of possession, on 02.01.2019 the complainants visited the project site and found many irregularities regarding construction. That the respondent had made representations and tall claims that the project will be completed on time. On the contrary, the respondent has failed in adhering to the representations made by him and retained the money paid by the complainants for so many years.

iv. That under clause 1.2(c) of the buyer's agreement, upon delay od 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 liable to pay merely Rs.7.50/- per

sq. ft. per month of super area for the period of delay as per clause 16(a) of the said agreement. It is submitted that such clauses are totally unjust, arbitrary and amounts to unfair trade practices as held by Hon'ble NCDRC in the case titled as *Shri Satish Kumar Pandey and Anr. V. M/s Unitech Ltd. (14.07.2015)* and also Hon'ble Bombay High Court in case titled as *Neelkamal Realtors Suburban Pvt. Ltd. V. UOI and Ors. (W.P. 2737 of 2017)*. The respondent is liable to pay delay possession charges for every month of delay at the same interest rate at which they charge interest on account of delayed payment by the complainants.

v. That as per section 11(4) of the Act, the promoter is liable to abide by the terms and agreement for sale. As per section 18 of the Act, the promoter is liable to pay interest to the allottees of an apartment, building or project for a delay or failure in handing over of such possession as per the terms and agreement for sale. Accordingly, the complainants are entitled to get interest on the paid amount at the rate as prescribed from the due date of possession as per buyer's agreement till the date of handing over of possession.

vi. That the cause of action accrued in favour of the complainants and against the respondent on the date when the respondent advertised the said project. It again arose on diverse dates when the apartment 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 till date. It continues to arise as the apartment owner has 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.

C. Relief sought by the complainants

5. The complainants have filed the present compliant for seeking following relief:

   i. Direct the respondent to handover the possession of the said unit with all amenities and specification as promised without any further delay.

   ii. Direct the respondent to pay delay interest on the total amount paid by the complainants at the prescribed rate of interest from due date of possession till date of actual physical hand over the unit.

   iii. To quash the illegal demand on account of holding charges of Rs.1,22,901/-.

   iv. To quash illegal demand on account of IFMS of Rs.82,500/-.

   v. To quash illegal demands on account of advance monthly maintenance for 24 months of Rs.1,44,540/-.

   vi. To quash the illegal demand on account of delayed payment charges of Rs.4,26,736/-.

vii. To quash illegal demand on account of HVAT security of Rs.2,98,737/- (01.04.2014 till 30.06.2017) and Rs.50,280/- (up to 31.03.2014)

viii. Pass such other order or further order(s) as this hon'ble authority may deem fit and proper in the facts and circumstances of the present case.

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 complainants have filed the present complaint seeking inter-alia compensation and interest for alleged delay in delivering possession of the unit 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 2017 and not by this authority. The present complaint is liable to be dismissed on this ground alone.

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 31.07.2013.

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 complainants for seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement. The complainants cannot claim any relief which is not contemplated under the provisions of the buyer's agreement. The interest for the alleged delay demanded by the complainants is beyond the scope of the buyer's agreement. The complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement.

iii. That the complainants were provisionally allotted apartment no. GGN-17-0602, located on the 6th floor in tower no. 17 admeasuring 1650 sq.ft. approx. super area. The complainants had opted for a construction linked payment plan. The buyer's agreement was executed between the parties on 31.07.2013. Right from the very beginning, the complainants started defaulting in making payment of instalments. Consequently, the respondent was constrained to issue demand notices and reminders for payment to the complainants. Statement of account reflects the payments made by the complainants as well as the delayed payment interest accrued as on 11.03.2020. From a perusal of the said statement, it is evident that the complainants defaulted in making payment of sale consideration

on numerous occasions and consequently became liable to pay delayed payment charges. Upon the complainants undertaking to make future payments in a timely manner, delayed payment interest amounting to Rs.1,69,366/- was waived by the respondent. However, the complainants continued to default even thereafter.

iv. That as per the terms and conditions of the buyer's agreement, the complainants are under a contractual obligation to make timely payment of all amounts payable under the buyer's agreement, on or before the due dates of payment failing which the respondent is entitled to levy delayed payment charges in accordance with clause 1.2(c) read with clauses 12 and 13 of the buyer's agreement.

v. That in the meanwhile, the respondent registered the project under the provisions of the Act. The project had been initially registered till 31.12.2018 and thereafter extended till 31.12.2019. The respondent completed construction of the tower in which the apartment in question is situated and applied for the occupation certificate in respect thereof, within the initial period of registration itself, i.e. on 13.04.2018. The occupation certificate was issued by the competent authority on 05.12.2018.

vi. That upon receipt of the occupation certificate, the respondent offered possession of the apartment in question to the complainants vide letter dated 01.02.2019 to the complainants. The complainants were called upon to remit balance amount as per the attached

statement and also to complete the necessary formalities and documentation so as to enable the respondent to hand over possession of the apartment to the complainants. Although, being in default of the buyer's agreement, the complainants were not entitled to any compensation under clause 16(c) of the buyer's agreement, nevertheless, the respondent has credited compensation amounting to Rs 3,08,799/- against the last demand raised by the respondent.

vii. That the construction of the tower in which the apartment in question is situated was commenced on 14.06.2013. The period of 36 months plus 5 months grace period expires on 14.11.2016. However, on account of delay and defaults by the complainants, the due date for delivery of possession stands extended in accordance with clause 14(b)(iv) of the buyer's agreement, till payment of all outstanding amounts to the satisfaction of the respondent. Furthermore, the respondent had completed construction of the apartment/tower by April 2018 and had applied for issuance of the occupation certificate on 13.04.2018. The occupation certificate was issued by the competent authority on 05.12.2018. It is respectfully submitted that after submission of the application for issuance of the occupation certificate, the respondent cannot be held liable in any manner for the time taken by the competent authority to process the application and issue the occupation certificate. Thus, the said period taken by the competent authority in issuing the occupation

certificate as well as time taken by Government/Statutory Authorities in according approvals, permissions etc., necessarily have to be excluded while computing the time period for delivery of possession.

viii. That the respondent denied that any illegal demands have been raised. It is wrong and denied that the complainants are not liable to pay holding charges, advance maintenance charges, delayed payment charges, GST, administrative charges, miscellaneous expenditure for registration, IFMS, HVAT etc. It is submitted that the complainants are liable to pay all the said charges in accordance with the buyer's agreement. There is no illegality with regard to the offer of possession of the demands for payment raised by the respondent.

ix. 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 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 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.

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. 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. 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."*

13. 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."

14. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the buyer's agreement subject to the condition that the same 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

15. 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 13.04.2018 and thereafter vide memo no. ZP-835-AD(RA)/2018/33193 dated 05.12.2018, the occupation certificate has been granted by the competent authority under the prevailing law. The authority cannot be a silent spectator to the deficiency in the application submitted by the promoter for issuance of occupancy certificate. It is evident from the occupation certificate dated 05.12.2018 that an incomplete application

for grant of OC was applied on 13.04.2018 as fire NOC from the competent authority was granted only on 21.11.2018 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 11.10.2018. The District Town Planner, Gurugram and Senior Town Planner, Gurugram has submitted requisite report about this project on 31.10.2018 and 02.11.2018 respectively. As such, the application submitted on 13.04.2018 was incomplete and an incomplete application is no application in the eyes of law.

16. 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 21.11.2018 and consequently the concerned authority has granted occupation certificate on 05.12.2018. Therefore, in view of the deficiency in the said application dated 13.04.2018 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 complainants

G.I Possession and delay possession charges

17. 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."*

18. Clause 14(a) of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

> "**14. POSSESSION**
>
> ***(a)*** **Time of handing over the Possession**
>
> *Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company. The Company proposes to hand over the possession of the Unit within 36 (Thirty Six) months from the date of start of construction., subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 5 (five) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project."*

19. 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.

20. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 (thirty-six) months from the date of start of construction and further provided in agreement that promoter shall be entitled to a grace period of 5 months for applying and obtaining completion certificate/occupation certificate in respect of said unit. The date of start of construction is 14.06.2013 as per statement of account dated 11.03.2020. The period of 36 months expired on 14.06.2016. 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 5 months cannot be allowed to the promoter at this stage.

21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are 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.*

22. The legislature in its wisdom in the subordinate legislation under the 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.

23. 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 16 of the buyer's agreement for the period of such delay; whereas, as per clause 13 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.

24. 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., 26.08.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

25. **Rate of interest to be paid by the complainants in case of delay in making payments:** 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;"*

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

27. 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 14(a) of the buyer's

agreement executed between the parties on 31.07.2013, possession of the said unit was to be delivered within a period of 36 months from the date of start of construction i.e. 14.06.2013. 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 14.06.2016. In the present case, the complainants were offered possession by the respondent on 18.12.2018 after receipt of occupation certificate 05.12.2018. 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 31.07.2013 executed between the parties.

28. 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 05.12.2018. However, the respondent offered the possession of the unit in question to the complainants only on 18.12.2018. 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. 14.06.2016 till the expiry of 2 months from the date of offer of possession (18.12.2018) which comes out to be 18.02.2019.

29. 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 charges at prescribed rate of the interest @ 9.30 % p.a. w.e.f. 14.06.2016 till 18.02.2019 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

30. Also, the amount of Rs.3,08,799/- (as per statement of account dated 11.03.2020) so paid by the respondent to the complainants 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 Holding charges

31. In the present complaint, the complainants have disputed the demand raised by the respondent developer on account of holding charges. On the other hand, the respondent argued that the complainants have been called upon to take possession of the said unit after making payment of the outstanding amount and complete the documentation formalities.

However, the complainants never came forward to do the same and as a result, the complainants are liable to make payment of holding charges to the respondent.

32. With regards to the same, it has been observed that as per sub-clause (b) of clause 15 of the buyer's agreement, in the event the allottee fails to take the possession of the unit within the time limit prescribed by the company in its intimation/offer of possession, then the promoter shall be entitled to charge holding charges. Clause 17 of the buyer's agreement prescribes the amount of holding charges. The relevant clauses from the buyer's agreement are reproduced hereunder:

> ***"15. PROCEDURE FOR TAKING POSSESSION:***
>
> *(a) .....*
>
> *(b) Upon intimation in writing from the Company, the Allottee) shall within thirty (30) days take possession of the said Unit..... If the Allottee fails to take possession of the Unit as aforesaid with the time limit prescribed by the Company in its notice, then the said Unit shall lie at risk, responsibility and cost of the Allottee in relation to all the outgoing cess, taxes, levies etc and the Company shall have no liability or concern thereof and further that the Company shall also be entitled to holding charges as provided under clause 17.1(a).*
>
> ***17. FAILURE TO TAKE POSSESSION***
>
> *17.1 .....*
>
> *(a) holding charges @ 7.50/- per sq. ft. of the Super Area of the said Unit per month for the entire period of such delay."*

33. It is interesting to note that the term holding charges has not been clearly defined in the builder buyer's agreement and or any other relevant document submitted by the respondent promoter. Therefore, it is firstly important to understand the meaning of holding charges which is

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

the entire building and project. Therefore, simply understood, the flat closed/locked/vacant/not occupied for any period is equal to self-occupied, which is further equal to regular full maintenance charges and non-occupancy charges/holding charges should not be levied.

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

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

35. The said judgment of Hon'ble NCDRC was also upheld by the Hon'ble Supreme Court vide its judgement dated 14.12.2020 passed in the civil appeal nos. 3864-3889/2020 filed by DLF against the order of Hon'ble NCDRC (supra). In the light of the recent judgement of the Hon'ble NCDRC and Hon'ble Apex Court (supra), the authority concurring with the view taken therein decides that a respondent/promoter cannot levy holding charges on a homebuyer/ allottee as it does not suffer any loss on account

of the allottee taking possession at a later date even due to an ongoing court case.

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

G.III Return of HVAT

37. The complainants are contending that they have been additionally burdened to pay HVAT (upto 31.03.2014) amounting to Rs.50,280/- and are being asked to give HVAT security of Rs.2,98,737/- for the period w.e.f. 01.04.2014 till 30.06.2017. On the other hand, the respondent submitted that the HVAT has been validly and legally charged by the respondent as the same are statutory charges and are liable to be passed on to the Government by the respondent.

Here, it is important to understand the background of transgression from VAT to GST regime and quantum of tax which shall be applicable.

38. 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."*

39. 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".

40. 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.

41. 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.

42. 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%.**

43. 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.

44. 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.IV Quash demand on account of advance monthly maintenance for 24 months of Rs.1,44,540/-

45. 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:

> *"21. MAINTENANCE*
>
> *(a) The Allottee hereby agrees and undertakes to enter into a separate Maintenance Agreement as per the draft provided as Annexure-IX to this Agreement with the Maintenance Agency.*
>
> *(b) The Allottee further agrees and undertakes to pay the 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. Further, the Allottee agrees and undertakes to pay in advance, along with the last installment specified under Payment Plan, advance maintenance charge (AMC) equivalent to Maintenance Charges for a period of one year or as may be decided by the company/ Maintenance Agency at its discretion. Such charges payable by the Allottee 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."*

46. 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 18.12.2018, the respondent has demanded advance maintenance charges for period of 24 months whereas the buyer's agreement mentions that the same shall be for a period of one year or as may be decided by the company/ Maintenance Agency at its discretion. 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.

47. 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;.....".

48. 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).

49. 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.

50. 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.

51. 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.V Quash IFMS charges

52. The complainants submitted that the respondent has charges Rs.82,500/- as IFMS and the same being illegal needs to be quashed. On the contrary, the respondent submitted that IFMS or Interest Free Maintenance Security is payable by the complainants 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 complainants right from the time of booking and has been duly agreed to and accepted by the complainants. Thus, it is

absolutely denied that the said charges are illegal, arbitrary or unilateral as alleged by the complainants.

53. 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:

> *"21. MAINTENANCE:*
>
> .....
>
> *(c) In addition to the payment of AMC to be paid by the Allottee, the Allottee agrees and undertakes to pay interest free maintenance security (IFMS) as and when demanded by the Company/Maintenance Agency."*

54. 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)

55. 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.

56. **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.

57. 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.

58. 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

59. 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. 14.06.2016 till 18.02.2019 i.e. expiry of 2 months from the date of offer of possession (18.12.2018). 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. Also, the amount of Rs.3,08,799/- so paid by the respondent to the complainants 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. Interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% by the respondent which is the same as is being granted to the complainants in case of delayed possession charges.

iv. 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/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 allottee with the dues payable by him or refund the amount if no dues are payable by him.

v. It is held that the promoter is allowed to collect a reasonable amount from the allottees under the head "IFMS". However, the authority directs that the promoter must always keep the amount collected under this head in a separate bank account and shall maintain that account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the

availability of IFMS amount and the interest accrued thereon, the promoter must provide details to the allottee. It is further clarified that out of this IFMS/IBMS, no amount can be spent by the promoter for the expenditure it is liable to incur to discharge its liability and obligations as per the provisions of section 14 of the Act.

vi. 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. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee.

vii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is also not entitled to 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.

60. Complaint stands disposed of.

61. File be consigned to registry.

(Vijay Kumar Goyal)
Member

(Samir Kumar)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.08.2021

Judgement uploaded on 13.01.2022.