

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

Complaint no. : 3693 of 2021
Complaint filed on : 24.09.2021
First date of hearing: 19.10.2021
Date of decision : 15.12.2021

Yash Kumar
R/o: E-57, Jeewan Park, Pankha Road,
New Delhi-110059, Delhi.

Complainant

Versus

M/s Emaar MGF Land Ltd.
Office: 306-308, 3rd floor, Square One, C-2,
District Centre, Saket, New Delhi-110017.

Respondent

CORAM:

Dr. K.K Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Jagdeep Kumar
Shri Harshit Batra

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 24.09.2021 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 25.04.2013 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 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	Gurgaon Greens, Sector 102, Gurugram, Haryana
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
	HRERA extension of registration vide	01 of 2019 dated 02.08.2019
	Extension valid up to	31.12.2019

7.	Occupation certificate granted on	30.05.2019 [annexure R3, page 94 of reply]
8.	Allotment letter dated	27.01.2013 [annexure P1, page 32 of complaint]
9.	Unit no.	GGN-22-0101, 1 st floor, building no. 22 [annexure P2, page 45 of complaint]
10.	Unit measuring	1650 sq. ft. [Page 45 of complaint]
11.	Date of execution of buyer's agreement	25.04.2013 [annexure P2, page 42 of complaint]
12.	Payment plan	Construction linked payment plan [Page 73 of complaint]
13.	Total consideration as per statement of account dated 20.10.2021 at page 181 of reply	Rs.1,38,36,252/-
14.	Total amount paid by the complainant as per statement of account dated 20.10.2021 at page 182 of reply	Rs.1,38,36,835/-
15.	Date of start of construction as per statement of account dated 20.10.2021 at page 181 of reply	19.06.2013
16.	Due date of delivery of possession as per clause 14(a) of the said agreement i.e. 36 months from the date of start of construction (19.06.2013) + grace period of 5 months, for applying and obtaining completion certificate/ occupation certificate in respect of the unit and/or the project. [Page 58 of complaint]	19.06.2016 [Note: Grace period is not included]
17.	Date of offer of possession to the complainant	31.05.2019 [annexure R4, page 97 of reply]
18.	Unit handover dated	30.07.2019 [annexure P5, page 103 of complaint]
19.	Conveyance deed executed on	08.08.2019 [annexure R5, page 109 of reply]

20.	Delay in handing over possession w.e.f. 19.06.2016 till 31.07.2019 i.e. date of offer of possession (31.05.2019) + 2 months	3 years 1 month 12 days
21.	Delay compensation already paid by the respondent in terms of the buyer's agreement as per statement of account dated 20.10.2021 at page 182 of reply	Rs.3,75,929/-

B. Facts of the complaint

4. The complainant made the following submissions in the complaint:
- That somewhere in the month of December 2012, the respondent through its business development associate approached the complainant with an offer to invest and buy a flat in the proposed project of respondent. On 27.12.2012, the complainant had a meeting with the respondent where the respondent explained the project details and highlighted the amenities of the project like Joggers Park, Joggers Track, rose garden, 2 swimming pool, amphitheater and many more. Relying on these details, the complainant enquired about the availability of flat on 1st floor in tower 22 which was a unit consisting area of 1650 sq. ft. It was assured to the complainant that the respondent has already processed the file for all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The respondent had also

shown the brochures and advertisement material of the said project to him and assured that the allotment letter and builder buyer agreement for the said project would be issued to him within one week of booking. The complainant, relying upon those assurances and believing them to be true, booked a residential flat bearing no. 0101 on 1st floor in tower no. 22 in the said project measuring approximately super area of 1650 sq. ft. Accordingly, he paid Rs. 7,50,000/- as booking amount on 27.12.2012.

- ii. That on 27.01.2013, approximately after 1 month, the respondent issued a provisional allotment letter containing very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature because every clause was drafted in a one-sided way and a single breach of unilateral terms of provisional allotment letter by complainant, will cost him forfeiture of 15% of total consideration value of unit. Respondent exceptionally increased the net consideration value of flat by adding EDC, IDC and PLC and when complainant opposed the unfair trade practices of respondent, he was informed that EDC, IDC and PLC are just the government levies, and they are as per the standard rules of government. Further, the delay payment charges will be imposed @ 24% which is standard rule of company and company will also compensate at the rate of Rs. 7.50/- per sq. ft. per month in case of delay in possession of flat by company.

Complainant opposed these illegal, arbitrary, unilateral and discriminatory terms of provisional allotment letter but there was no other option left with him because if he stops the further payment of installments then in that case, respondent may forfeit 15% of total consideration value from the total amount paid by the complainant. Thereafter, on 25.04.2013, the buyer's agreement was executed on similar illegal, arbitrary, unilateral and discriminatory terms narrated by respondent in provisional allotment letter.

- iii. That as per Annexure III (Schedule of Payments) of buyer's agreement, the sales consideration for the said flat was Rs.1,28,83,400/- (which includes the charges towards basic price of Rs.1,11,37,500/-; EDC & IDC of Rs. 5,70,900/-, club membership of Rs.50,000/-, IFMS of Rs.82,500/-, car park of Rs.3,00,000/-, PLC for 1st floor of Rs.2,47,500/- and PLC for central greens of Rs.4,95,000/-) exclusive of service tax and GST. But later at the time of possession, the respondent added Rs.30,076/- in sale consideration and increased sale consideration to Rs.1,29,13,476/- without any reason for the same and the respondent also charged IFMS of Rs.82,500/- separately whereas IFMS charges were already included in sale consideration. That way the respondent charges IFMS twice from the residents. The respondent increased the sale consideration by Rs.1,12,576/- (Rs30,076/ + Rs82,500/)

without any reason which is illegal, arbitrary and unfair trade practice.

- iv. That as per the clause 14 of the said buyer's agreement dated 25.04.2013, the respondent had agreed and promised to complete the construction of the said flat and deliver its possession within a period of 36 months with a five (5) months grace period thereon from the date of start of construction. The proposed possession date as per buyer's agreement was due on 19.06.2016. However, the respondent has breached the terms of said buyer's agreement and failed to fulfill its obligations and has not delivered possession of said flat within the agreed time frame of the buyer's agreement.
- v. That from the date of booking 27.12.2012 and till 31.05.2018, the respondent had raised various demands for payment of installments towards sale consideration of the said flat and the complainant had duly paid and satisfied all those demands as agreed in the flat buyer's agreement without any default or delay on his part and had also otherwise fulfilled his part of obligations as agreed in the flat buyer's agreement. The complainant was and had always been ready and willing to fulfill his part of agreement, if any pending.
- vi. That as per the statement dated 03.08.2021, issued by the respondent, the complainant had already paid Rs.1,34,60,910/- towards total sale consideration and applicable taxes as demanded

by the respondent from time to time and now nothing is pending to be paid on the part of complainant. Although, the respondent charged Rs.1,12,576/- extra from the complainant.

- vii. That the possession was offered by respondent through letter "Intimation of Possession" dated 31.05.2019 which was not a valid offer of possession because respondent had offered the possession with stringent condition to pay certain amounts which were never part of agreement. At the time of offer of possession, builder adjusted the delay penalty @ Rs.7.5/- sq. ft. per month (from proposed handing over date 19.06.2016 to actual date of offer of possession i.e., 31.05.2019). Respondent demanded Rs.1,44,540/- towards two-year advance maintenance charges from complainant which was never agreed under the buyer's agreement and respondent also demanded a lien marked FD of Rs. 3,55,698/- on pretext of future liability against HVAT which are also unfair trade practice. The respondent demanded Rs.6,09,000/- towards e-stamp duty and Rs.50,000/- towards registration charges of above said unit in addition to final demand raised by respondent along with offer of possession. The respondent gave physical handover of aforesaid property on 30.07.2019.
- viii. That after taking possession of flat on 30.07.2019, the complainant also identified some major structural changes which were done by respondent in project in comparison to features of project narrated

to him on 27.12.2012 at the office of respondent. The area of the central park was told 8 acres but in reality, it is very small as compared to 8 acres; respondent-built car parking underneath 'Central Park', respondent charged PLC of Rs.4,95,000/- from the complainant on the pretext of Central Park. Respondent did many structural changes and cut down on the internal features of the project based on which the respondent sold this flat to the complainant and other buyers of this project.

- ix. That on 21.06.2019, complainant telephonically informed the respondent that the respondent is creating anomaly by not compensating the complainant for delay possession charges at the rate of interest specified as per the Act. The complainant made it clear to the respondent that if it does not compensate the complainant at the same rate of interest then the complainant will approach the appropriate forum to get redressal.
- x. That the respondent has acted in a very deficient, unfair, wrongful, fraudulent manner by not delivering the said flat within the agreed timelines as agreed in the buyer's agreement and otherwise. That on 31.05.2019, there has been total delay of 3 years. The cause of action accrued in the favour of the complainant and against the respondent on 27.12.2012 when the said flat was booked by the complainant, and it further arose when respondent failed/neglected to deliver the said flat on proposed delivery date.

The cause of action is continuing and is still subsisting on day-to-day basis.

C. Relief sought by the complainant

5. The complainant is seeking the following relief:

- i. Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on the amount paid by the complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession.
- ii. Direct the respondent to issue necessary instruction to the complainant's bank to remove lien marked over fixed deposit of Rs.2,52,929/- in favour of the respondent on pretext of future payment of HVAT for the period of 01.04.2014 to 30.06.2017.
- iii. Direct the respondent to return Rs.1,12,576/- amount unreasonably charged by respondent by increasing sale price after execution of buyer's agreement between the respondent and complainant.
- iv. Any other relief/order or direction which this hon'ble authority may deems fit and proper considering the facts and circumstances of the present complaint.

D. Reply filed by the respondent

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

- i. That the complainant took the physical possession of the unit on 30.07.2019 which is reflected in the "Unit Handover Letter" dated 30.07.2019. The handover advice letter was given to the complaint

- on 18.07.2019. The complainant is in the peaceful possession of the unit since more than two years and the present complaint is filed with a malafide intention.
- ii. That the allottee being interested in the real estate development of the respondent under the name and style of "Gurgaon Greens" situated at Sector 102, Gurugram, Haryana tentatively applied for provisional allotment of the unit vide application who was allotted unit no. GGN-22-0101 on first floor in building/tower no. 22, having a super area of 1650 sq. ft. vide an allotment letter dated 27.01.2013 and consequently through the buyer's agreement dated 25.04.2013.
 - iii. That the respondent has complied with all of its obligations, not only with respect to the agreement with the complainants but also as per the concerned laws, rules and regulations thereunder and the local authorities. That despite the innumerable hardships being faced by the respondent, the respondent completed the construction of the project and applied for part occupation certificate vide an application dated 31.12.2018 before the concerned authority and successfully attained the occupation certificate dated 30.05.2019. It is to be noted that the construction of all the booked apartments has been completed, out of which 563 units were handed at the time of filing this complaint.
 - iv. That thereafter, and only after obtaining the requisite permissions, the respondent legally offered the possession of the unit to the complainants on 31.05.2019. Consequently, the possession of the unit was taken by the complainants on 30.07.2019 and the

conveyance deed was executed on 08.08.2019. The complainant after having executed the conveyance deed for more than two years, taking peaceful possession of the unit, and having enjoyed such possession for such a long period, the complainants should not be entitled to claim the interest on the delayed possession. The complaint should be liable to be dismissed with heavy costs. Thus, the present complaint is devoid of any cause of action and is nothing but an abuse process of Law. It is submitted that a contract is deemed to be concluded after execution of conveyance deed. It is also submitted that the complainant had himself signed a unit hand over letter where it is stated that the complainant upon acceptance of possession, the liabilities and obligations of the company as enumerated in the allotment letter/buyer's agreement stands satisfied.

- v. That the complainant assented to pay the monies against the unit through a construction linked plan. However, have defaulted in making the payment against the unit. A number of payment request letters and reminders at various instances had been sent to the respondent for payment of dues. That the delivery of possession of the unit by the complainant was *"subject to the Allottee having timely complied with all the terms and conditions of this Agreement and not being in default under any provisions of this Agreement and compliance with all provisions, formalities, documentation etc..."* as per clause 14(a) of the buyer's agreement. That despite the default caused by the complainant in fulfilling its obligations, the respondent did not default and instead completed

the construction of the project without having regular payment of monies by the allottees like the complainant. That as is known and practically understood that regular and timely payments by the allottees are pertinent towards the completion of a real estate project, yet, without the same being done in the present case, the respondent has shown an exemplary conduct as a real estate promoter which should be duly taken into account.

- vi. That without accepting the contents of the complaint in any manner whatsoever, the *bonafide* conduct of the respondent has to be highlighted as the respondent has raised various credit memos for TDS certificate, for GST Migration, Rs.82,091/- on account of anti-profiting, for compensation credited on IOP amounting to Rs. 3,75,929/-; for EPR credited to customer amounting to Rs.2,378/- as is evident from the statement of accounts dated 20.10.2021. Without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the allottees/complainants towards the basic principle amount of the unit in question and not on any amount credited by the respondent, or any payment made by the allottees/complainants towards delayed payment charges or any taxes/statutory payments etc.
- vii. That the construction of the project/allotted unit in question already stands completed and the respondent has already offered possession of the unit in question to the complainant. Furthermore, the project of the respondent has been registered under Act and the rules. Registration certificate was granted by the

Haryana Real Estate Regulatory Authority vide memo no. HRERA-139/2017/2294 dated 05.12.2017. It is pertinent to mention that the respondent had applied for extension of the registration and the validity of registration certificate was extended till 31.12.2019.

- viii. That the Annexure III of the buyer's agreement is annexed herewith, the contents of which are a matter of record and do not require specific mention. It is denied that the respondent increased the charges without any reason. It is categorically submitted that the charges of the agreement are agreed to between the parties wilfully and voluntarily, without any protest. A detail of the amounts charged are evident from the agreement and the statement of accounts dated 20.10.2021. It is submitted that the charge for IFMS has been charged as per the buyer's agreement.
- ix. That the respondent never asked for extra amount from the complainants and the demand raised were always according to the payment plan and the agreement and no amount demanded is unfair trade practice. That all the charges levied are a part of the agreement, as was agreed between the parties. That it is categorically submitted that the complainant was informed about the payment of HVAT for the period of 01.04.2014 – 30.06.2017, a payment reserved to be made to the Haryana Government, and not the respondent. That the payments charges are lawful and as agreed. That the complainant was communicated and made to understand the creation of lien and payment of HVAT.

E. Jurisdiction of the authority

7. 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

8. 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

9. Section 11(4)(a) of the Act 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) The promoter shall-

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

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.

10. 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 and provisions of the Act are not retrospective in nature

11. The respondent raised an objection that the provisions of the Act are not retrospective in nature and the provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into force 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 **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."
12. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-
- "34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."
13. 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 in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of the Act, rules and regulations made thereunder 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

14. 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 31.12.2018 and thereafter vide memo no. ZP-835-AD(RA)/2018/13010 dated 30.05.2019, 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 30.05.2019 that an incomplete application for grant of OC was applied on 31.12.2018 as fire NOC from the competent authority was granted

only on 19.03.2019 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 22.03.2019. The District Town Planner, Gurugram and Senior Town Planner, Gurugram has submitted requisite report about this project on 19.04.2019 and 22.04.2019 respectively. As such, the application submitted on 31.12.2018 was incomplete and an incomplete application is no application in the eyes of law.

15. 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 22.04.2019 and consequently the concerned authority has granted occupation certificate on 30.05.2019. Therefore, in view of the deficiency in the said application dated 31.12.2018 and aforesaid reasons, no delay in granting occupation certificate can be attributed to the concerned statutory authority.

F.III Whether signing of unit hand over letter or indemnity-cum-undertaking at the time of possession extinguishes the right of the allottee to claim delay possession charges.

16. The respondent contended that at the time of taking possession of the subject flat vide unit hand over letter dated 30.07.2019, the complainant had certified himself to be fully satisfied with regard to the measurements, location, direction, developments et cetera of the unit and also admitted and acknowledge that he does not have any claim of any nature whatsoever against the respondent and that upon acceptance of possession, the liabilities and obligations of the respondent as enumerated in the allotment letter/buyer's agreement, stand fully satisfied. The relevant para of the unit handover letter relied upon reads as under:

"The Allottee, hereby, certifies that he / she has taken over the peaceful and vacant physical possession of the aforesaid Unit after fully satisfying himself / herself with regard to its measurements, location, dimension and development etc. and hereafter the Allottee has no claim of any nature whatsoever against the Company with regard to the size, dimension, area, location and legal status of the aforesaid Home.

Upon acceptance of possession, the liabilities and obligations of the Company as enumerated in the allotment letter/Agreement executed in favour of the Allottee stand satisfied."

17. At times, the allottee is asked to give the indemnity-cum-undertaking before taking possession. The complainant has waited long for his cherished dream home and now when it is ready for possession, he either has to sign the indemnity-cum-undertaking and take possession or to keep struggling with the promoter if indemnity-cum-undertaking is not signed by him. Such an undertaking/ indemnity bond given by a

person thereby giving up his valuable rights must be shown to have been executed in a free atmosphere and should not give rise to any suspicion. If a slightest of doubt arises in the mind of the adjudicator that such an agreement was not executed in an atmosphere free of doubts and suspicions, the same would be deemed to be against public policy and would also amount to unfair trade practices. No reliance can be placed on any such indemnity-cum-undertaking and the same is liable to be discarded and ignored in its totality. Therefore, this authority does not place reliance on such indemnity-cum-undertaking. To fortify this view, the authority place reliance on the NCDRC 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**, wherein it was held that the execution of indemnity-cum-undertaking would defeat the provisions of sections 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being an unfair trade practice. The relevant portion of the said judgment is reproduced herein below.

"Indemnity-cum-undertaking

30. *The developer, while offering possession of the allotted flats insisted upon execution of the indemnity-cum-undertaking before it would give possession of the allotted flats to the concerned allottee.*

Clause 13 of the said indemnity-cum-undertaking required the allottee to confirm and acknowledge that by accepting the offer of possession, he would have no further demands/claims against the company of any nature, whatsoever. It is an admitted position that the execution of the undertaking in the format prescribed by the developer was a pre-requisite condition, for the delivery of the

possession. The opposite party, in my opinion, could not have insisted upon clause 13 of the Indemnity-cum-undertaking. The obvious purpose behind such an undertaking was to deter the allottee from making any claim against the developer, including the claim on account of the delay in delivery of possession and the claim on account of any latent defect which the allottee may find in the apartment. The execution of such an undertaking would defeat the provisions of Section 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being an unfair trade practice. Any delay solely on account of the allottee not executing such an undertaking would be attributable to the developer and would entitle the allottee to compensation for the period the possession is delayed solely on account of his having not executed the said undertaking-cum-indemnity."

18. The said judgment of NCDRC was also upheld by the Hon'ble Supreme Court vide its judgement dated 14.12.2020 passed in civil appeal nos. 3864-3889 of 2020 against the order of NCDRC.
19. It is noteworthy that section 18 of the Act stipulates for the statutory right of the allottee against the obligation of the promoter to deliver the possession within stipulated timeframe. Therefore, the liability of the promoter continues even after the execution of indemnity-cum-undertaking at the time of possession. Further, the reliance placed by the respondent counsel on the language of the handover letter that the allottees had waived off their right by signing the said unit handover letter is superficial. In this context, it is appropriate to refer case titled as **Mr. Beatty Tony Vs. Prestige Estate Projects Pvt, Ltd. (Revision petition no.3135 of 2014 dated 18.11.2014)**, wherein the Hon'ble NCDRC while rejecting the arguments of the promoter that the possession has since been accepted without protest vide letter dated 23.12.2011 and builder stands discharged of its liabilities under

agreement, the allottee cannot be allowed to claim interest at a later date on account of delay in handing over of the possession of the apartment to him, held as under:

"The learned counsel for the opposite parties submits that the complainant accepted possession of the apartment on 23/24.12.2011 without any protest and therefore cannot be permitted to claim interest at a later date on account of the alleged delay in handing over the possession of the apartment to him. We, however, find no merit in the contention. A perusal of the letter dated 23.12.2011, issued by the opposite parties to the complainant would show that the opposite parties unilaterally stated in the said letter that they had discharged all their obligations under the agreement. Even if we assume on the basis of the said printed statement that having accepted possession, the complainant cannot claim that the opposite parties had not discharged all their obligations under the agreement, the said discharge in our opinion would not extend to payment of interest for the delay period, though it would cover handing over of possession of the apartment in terms of the agreement between the parties. In fact, the case of the complainant, as articulated by his counsel is that the complainant had no option but to accept the possession on the terms contained in the letter dated 23.12.2011, since any protest by him or refusal to accept possession would have further delayed the receiving of the possession despite payment having been already made to the opposite parties except to the extent of Rs. 8,86,736/-. Therefore, in our view the aforesaid letter dated 23.12.2011 does not preclude the complainant from exercising his right to claim compensation for the deficiency on the part of the opposite parties in rendering services to him by delaying possession of the apartment, without any justification condonable under the agreement between the parties."

20. The said view was later reaffirmed by the Hon'ble NCDRC in case titled as **Vivek Maheshwari Vs. Emaar MGF Land Ltd. (Consumer case no. 1039 of 2016 dated 26.04.2019)** wherein it was observed as under:

"7. It would thus be seen that the complainants while taking possession in terms of the above referred printed handover letter of the OP, can, at best, be said to have discharged the OP of its liabilities and obligations as enumerated in the agreement. However, this hand over letter, in my opinion, does not come in the way of the complainants seeking compensation from this Commission under section 14(1)(d) of the Consumer Protection Act for the delay in delivery of possession. The said delay amounting to a deficiency in

the services offered by the OP to the complainants. The right to seek compensation for the deficiency in the service was never given up by the complainants. Moreover, the Consumer Complaint was also pending before this Commission at the time the unit was handed over to the complainants. Therefore, the complainants, in my view, cannot be said to have relinquished their legal right to claim compensation from the OP merely because the basis of the unit has been taken by them in terms of printed hand over letter and the Sale Deed has also been got executed by them in their favour."

21. Therefore, the authority is of the view that the aforesaid unit handover letter dated 30.07.2019 does not preclude the complainant from exercising his right to claim delay possession charges as per the provisions of the Act.

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

22. The respondent submitted that the complainant has executed the conveyance deed on 08.08.2019 and therefore, the transaction between the complainant and the respondent has been concluded and no right or liability can be asserted by respondent or the complainant against the other. Therefore, the complainant is estopped from claiming any interest in the facts and circumstances of the case. The present complaint is nothing but a gross misuse of process of law.
23. It is important to look at the definition of the term 'deed' itself in order to understand the extent of the relationship between an allottee and promoter. A deed is a written document or an instrument that is sealed, signed and delivered by all the parties to the contract (buyer and seller). It is a contractual document that includes legally valid terms and is enforceable in a court of law. It is mandatory that a deed should be in



writing, and both the parties involved must sign the document. Thus, a conveyance deed is essentially one wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or movable. In this case, the asset under consideration is immovable property. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration (usually monetary). Therefore, a 'conveyance deed' or 'sale deed' implies that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer.

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

"11. Functions and duties of promoter

(1) XXX

(2) XXX

(3) XXX

(4) The promoter shall—

- (a) *be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments,*

plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

(b) XXX

(c) XXX

(d) *be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;* (emphasis supplied)

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

(1) XXX

(2) XXX

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

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

"7. It would thus be seen that the complainants while taking possession in terms of the above referred printed handover letter of the OP, can, at best, be said to have discharged the OP of its liabilities and obligations as enumerated in the agreement. However, this hand over letter, in my opinion, does not come in the way of the complainants seeking compensation from this Commission under section 14(1)(d) of the Consumer Protection Act for the delay in

delivery of possession. The said delay amounting to a deficiency in the services offered by the OP to the complainants. The right to seek compensation for the deficiency in the service was never given up by the complainants. Moreover, the Consumer Complaint was also pending before this Commission at the time the unit was handed over to the complainants. Therefore, the complainants, in my view, cannot be said to have relinquished their legal right to claim compensation from the OP merely because the basis of the unit has been taken by them in terms of printed hand over letter and the Sale Deed has also been got executed by them in their favour.

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

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

"34 The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into a pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable.

The flat buyers were essentially presented with an unfair choice of either retaining their right to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their title to the flats for which they had paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who seeks to espouse a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position which the NCDRC has espoused. We cannot countenance that view.

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

27. It is observed that all the agreements/ documents signed by the allottee reveals stark incongruities between the remedies available to both the parties. In most of the cases, these documents and contracts are ex-facie one sided, unfair and unreasonable whether the plea has been taken by the allottee while filing its complaint that the documents were signed under duress or not. The right of the allottee to claim delayed possession charges shall not be abrogated simply for the said reason.
28. The allottees have invested their hard-earned money which there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing a conveyance deed which is



the statutory right of the allottee. Also, the obligation of the developer - promoter does not end with the execution of a conveyance deed. The essence and purpose of the Act was to curb the menace created by the developer/promoter and safeguard the interests of the allottees by protecting them from being exploited by the dominant position of the developer which he thrusts on the innocent allottees. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in the **Wg. Cdr. Arifur Rahman (supra)**, this authority holds that even after execution of the conveyance deed, the complainant cannot be precluded from his right to seek delay possession charges from the respondent-promoter.

G. Findings of the authority

G.I Delay possession charges

29. **Relief sought by the complainant:** Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on the amount paid by the complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession.
30. 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."

31. Clause 14(a) of the buyer's agreement provides time period for handing over the possession and the same 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."

32. 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 allottees of their 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.

33. **Due date of handing over possession and 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 19.06.2013 as per statement of account dated 20.10.2021. The period of 36 months expired on 19.06.2016. As a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/ occupation certificate within the time limit (36 months) prescribed by the promoter in the buyer's agreement. The promoter has moved the application for issuance of occupation certificate only on 31.12.2018 when the period of 36 months has already expired. As per the settled law one cannot be allowed to

take advantage of his own wrong. Accordingly, the benefit of grace period of 5 months cannot be allowed to the promoter at this stage.

34. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the 18% rate of interest. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

35. 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.
36. Taking the case from another angle, the complainant-allottee was entitled to the delayed possession charges/interest only at the rate of Rs.7.50/- per sq. ft. per month of the super area 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 from the due date of instalment till date of payment on account for the delayed payments by the allottee. 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 dominant 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.

37. 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., 15.12.2021 is 7.30%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 9.30%.

38. **Rate of interest to be paid by the complainant 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;"*

39. 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 delay possession charges.

40. 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 25.04.2013, the possession of the subject flat was to be delivered within a period of 36 months from the date of start of construction plus 5 months grace period for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project. The construction was started on 19.06.2013. 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 19.06.2016. Occupation certificate was granted by the concerned authority on 30.05.2019 and thereafter, the possession of the subject flat was offered to the complainant on 31.05.2019. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat to the complainant as per the terms and conditions of the buyer's agreement dated 25.04.2013 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 25.04.2013 to hand over the possession within the stipulated period.

41. 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 30.05.2019. The respondent

offered the possession of the unit in question to the complainant only on 31.05.2019, 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 he 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. 19.06.2016 till the expiry of 2 months from the date of offer of possession (31.05.2019) which comes out to be 31.07.2019.

42. 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 delayed possession at prescribed rate of interest i.e. 9.30% p.a. w.e.f. 19.06.2016 till 31.07.2019 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

43. Also, the amount of Rs. 3,75,929/- (as per statement of account dated 20.10.2021) 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 Increase in sale consideration

44. **Relief sought by the complainant:** Direct the respondent to return Rs.1,12,576/- unreasonably charged by the respondent by increasing sale price after execution of buyer's agreement between the respondent and the complainant.
45. The authority observes that as per schedule of payment annexed with the buyer's agreement (annexure P2, page 73 of complaint), the total sale consideration is Rs. 1,28,83,400/- which is inclusive of basic sale price, EDC and IDC, club membership, IFMS, car parking, PLC and additional charges. Whereas as per statement of account dated 30.08.2021 (annexure P6, page 105 of complaint), the sale consideration has been increased to Rs.1,29,13,476/- i.e. an increase of Rs.30,076/-. Further IFMS of Rs.82,500/- has also been again added. Accordingly, Rs.1,12,576/- have been charged extra. Therefore, the respondent is directed to delete the said amount from the total sale consideration.

G.III HVAT

46. **Relief sought by the complainant:** Direct the respondent to issue necessary instructions to the complainant's bank to remove lien

marked over FD of Rs.2,52,929/- in favour of the respondent on the pretext of future payment of HVAT.

47. The authority has decided this in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that the promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, the promoter cannot charge any VAT from the allottees/prospective buyers for the period 01.04.2014 to 30.06.2017 as the same was to be borne by the promoter-developer only. The respondent-promoter is bound to adjust the said amount, if charged from the allottee with the dues payable by him or refund the amount if no dues are payable by him.
48. In the present complaint, the respondent has not charged any amount towards HVAT for the period of 01.04.2014 till 30.06.2017, however, vide letter of offer of possession dated 31.05.2019 has demanded lien marked FD of Rs. 2,52,929/- towards future liability of HVAT for liability post 01.04.2014 till 30.06.2017. In light of judgement stated above, the respondent shall not demand the same and the lien so marked be removed.

H. Directions of the authority

49. 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. 19.06.2016 till 31.07.2019 i.e. expiry of 2 months from the date of offer of possession (31.05.2019). 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.3,75,929/- so paid by the respondent 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 respondent shall delete an amount of Rs.1,12,576/- from the total sale consideration.
- iv. The respondent cannot charge any HVAT from the complainant for the period 01.04.2014 to 30.06.2017 as the same was to be borne by the promoter-developer only. Therefore, the respondent shall not demand the same and the lien so marked be removed.
- v. 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 buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

50. Complaint stands disposed of.

51. File be consigned to registry.

V.I-5
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.12.2021

Judgement uploaded on 25.01.2022.


(Dr. K.K. Khandelwal)
Chairman

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