

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

Complaint no. : 4411 of 2020  
Date of filing complaint: 16.12.2020  
First date of hearing : 10.02.2021  
Date of decision : 13.01.2022

1.	Santosh Chahal R/O: - A-71 Palam Vihar, Gurugram, Haryana-122017	<b>Complainant</b>
Versus		
1.	M/s Eminence Township Pvt. Ltd. Regd. Office at: - 44 Ground Floor, Sector 32 Gurugram, Haryana-122003	<b>Respondent</b>

**CORAM:**

Dr. K.K. Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>

**APPEARANCE:**

Complainant in person with Shri Dhruv Dutt Sharma (Advocate)	<b>Complainant</b>
Ms. Parul Kapoor proxy counsel for Shri Sumit Mehta (Advocate)	<b>Respondent</b>

**ORDER**

- The present complaint has been filed by the complainant/allottee 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 under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

2. The particulars of unit details, 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	Eminence Kimberly Suites, Sector- 112, Gurugram
2.	Project area	2.875 acres
3.	Nature of the project	Commercial Colony
4.	a) DTCP license no.	35 of 2012 dated 22.04.2012
	b) License valid up to	21.04.2025
	c) Name of the licensee	Eminence Township (India) Pvt. Ltd.
5.	RERA registered/not registered	Registered vide registration no. 74 OF 2017 dated 21.08.2017 valid upto 30.12.2018
6.	Building plan approved on	09.10.2012
7.	Unit no.	COM-FF-09, 1st floor [page no. 39 of complaint]
8.	Unit measuring	391.31 sq. ft. [page no. 39 of complaint]
9.	Allotment letter	05.05.2014 [page no. 19 of complaint]





10.	Date of execution of buyer's agreement	25.07.2014 [page no. 37 of complaint]
11.	Payment plan	Possession Linked Payment Plan [page no. 63 of complaint]
12.	Due date of delivery of possession [as per clause 27 of unit buyer's agreement, within 36 (thirty-six) months (plus 6 months grace period) from the date of start of the ground floor roof slab of the particular tower in which the booking is made] [Page no. 25 of complaint]	01.12.2017 [calculated from the date of start of the ground floor roof slab of the particular tower in which the booking is made] <b>[Note: Grace period is allowed]</b>
13.	Date of start of the ground floor roof slab of the particular tower in which the booking is made	01.06.2014 [As stated by the respondent on page no. 8 of reply]
14.	Total consideration	Rs.35,53,877 /- [as per payment plan on page no. 63 of complaint]
15.	Total amount paid by the complainant	Rs.39,25,566 /- [as alleged by the complainant on page no. 10 of complaint]  Rs. 38,04,982 /- [page no. 72 of the reply]
16.	Offer of Possession	25.07.2019 [page no. 64 of reply]
17.	Occupation Certificate	11.07.2019 [page no. 56 of reply]
18.	Delay in handing over the possession till offer of possession plus 2 months i.e., 25.09.2019	1 year, 9 months, 24 days



**B. Facts of the complaint**

3. That the complainant requested the respondent for registration of provisional allotment of commercial unit/space in their project namely "Eminence Kimberly Suites" (hereinafter referred as the said 'project') situated at village Bajghera, sector-112 Gurugram, Haryana.
4. That the respondent on 05.05.2014, acknowledged the booking amount by issuing a receipt towards the booking of the subject unit. The respondent vide allotment letter dated 05.05.2014 allotted shop no.COM-FF-09 to the complainant having super area 391.31 sq.ft.(hereinafter referred as the said 'unit') at the rate of Rs. 8450 /- in said project.
5. That the complainant went on making payments as and when demanded by the respondent reserving that certain disputed amount be settled at the time of taking possession of the subject unit.
6. That the respondent sent the commercial space buyer's agreement dated 05.07.2014 when a considerable amount had already been made to the respondent by the complainant. An extra ordinary delay of 3 years and six months forced complainant to sign the commercial space buyer's agreement.
7. That it was apparent the respondent was withholding the commercial space buyer's agreement deliberately having malafide intentions in their mind and not disclosing the one-



sided terms and conditions which were unilaterally drafted by the respondent.

8. That the respondent has not completed the said project till date and neither coming up to confirm or promise the date of completion nor the respondent has offered the possession of the subject unit as on date.

**C. Relief sought by the complainant.**

9. The complainant has sought following relief(s):
- (i) Direct the respondent to handover the physical possession of the said unit.
  - (ii) Direct the respondent to pay interest for every month of delay at prevailing rate of interest.

**D. Reply by the respondent.**

10. The respondent has contested the complaint on the following grounds:
- i. That the complaint filed before the present authority was false, vexatious, and based on distorted facts and thus needs to be dismissed at the threshold.
  - ii. That the complainant has not come with clean hands and has suppressed material facts before the authority and the present complaint should be dismissed on the ground of '*supressio veri*'. It was stated that the complainant himself has defaulted on timely payments of installment and has suppressed the said fact from this authority.



- iii. That the complainant has allegedly submitted in the present complaint that he had a paid the due installments in time, but it is stated that the entire project of the respondent company is dependent upon the timely payments by all the investors. The respondent company has diligently invested all the money collected from the investors in the project itself and has never diverted any funds on any account and the construction has got jeopardized, if any, is purely on account of non-timely payments by all the investors.
- iv. That the request of the complainant was untenable as the entire money from all the investors have already been spent towards construction activity of the said project. It was stated that the project is on the verge of completion and even the works related to external plaster, internal roads, internal sewerage system, internal flooring, STP, firefighting system, unit outer façade, overhead tanks, underground water tanks, plumbing connections, internal and external electricity wires, installation of lifts, certificate for operation of lifts, installation of electrical components and even gen-set installation for power supply and back-up, has been completed and project was already due for handover of the possession, to the complainant and was awaiting final approvals.





- v. That furthermore, any delay, if so has been caused in delivering the possession of the property as stated by the complainant, was purely due to the strict orders of National Green Tribunal (NGT) on banning the construction activity on various occasions and thus on every occasion the Green Body ordered the civic bodies to set up teams to ensure there is no burning of waste in Delhi-NCR and asked them to inspect places where construction material were lying in the open uncovered and take appropriate action including levy of environment compensation. That as per the matter titled as "*Ardhaman Kaushik vs Union of India & Ors; Sanjay Kulshrestha vs Union of India & Ors; Supreme Court Women Lawyers' Association vs Union of India & Ors; Diya Kapur & Ors vs Union of India & Ors, and Mahendra Pandey vs Govt of NCT of Delhi & Ors*", the respondent was forced to take the adequate steps and thus, the following period, is covered under the provision of the force majeure i.e. clause 53 of the builder buyer agreement.
- vi. That there have also been several unforeseeable events in the intervening periods which has materially and adversely affected the project and were beyond the control of the respondent, are being set out herein under: -
- a. It was stated that on account of every halt due to the ban on construction activities, following



the order of National Green Tribunal and Pollution Control Board, the entire machinery of the respondent used to suffer adversely, and it took long periods, for the respondent to remobilize the entire construction activity and increased cost of construction.

- b. That the demonetization of currency notes of Rs. 500 & Rs. 100 announced vide executive order dated 08.11.2016, has also affected the pace and the development of the project. Due to this policy change by the central government, the pace of construction of the project greatly and adversely affected the construction work since the withdrawal of the money was restricted by Reserve Bank of India as the availability of new currency was limited and unavailable with the banks. It is well known that the real estate sectors deploy maximum number of construction workers who are paid in cash and hence the said sector requires cash in hand to offer such employment of the work force to carry out the works. All the workers, labourers at the construction sites are paid their wages in cash keeping in view their nature of employment as the daily wages labourers. The effect of such demonetization was that the labourers were not paid and consequently they





had stopped working on the project and had left the project site/NCR which led in huge labour crisis which was widely reported in various newspapers/various media. Capping on withdrawal and non-availability of adequate funds with the banks and further escalated this problem many folds.

- c. That further in the month of 19.03.2018, the respondent applied for renewal of license for the said project and it was only after a period of 06 months i.e. on 03-08-2018, the DTCP reverted back to the respondent company with erroneous demand and further after efforts of the respondent company, the said demand was rectified and was notified back to the respondent on 01-02-2019, only and the said demand has already been paid along with future due demands by the respondent company, acting under its bonafide. It was stated that the occupancy certificate, which is to be obtained before offer of possession could not be obtained due to the delays on the party of government. Thus, the force majeure existed from 19.03.2018 till 01.02.2019 i.e. approx. 11 months.
- d. That even otherwise the period of possession of the said unit, as per the builder buyer's



agreement is to be counted from the date of laying off the ground floor roof slab i.e., 01st June 2014. Thus, in the terms of the builder buyer agreement, it was stated that the due date for possession was 01.12.2017 i.e., 42 months from the date of laying of ground floor slab, subject to force majeure.

- e. That on account of delays due to NGT orders (09 months and 20 days), demonetization (03 months) and correction of erroneous EDC/IDC demand (11 months), overlaps with each other and caused a total period of force majeure as 18 months. And in the light of the above stated force majeure, the works at the project site was to be completed on or before May 2019 and accordingly possession was to be offered.
- f. That the works at the project site were completed on 27.03.2019 and the respondent had applied for occupancy certificate to DGTCP, Haryana at Chandigarh and subsequently the DGTCP, Haryana post its inspection & as per provisions of applicable law, have already granted the occupancy certificate on 11-07-2019. That the period taken by the government office for approval of the application for occupancy certificate was also covered under force majeure and thus the force majeure period



of 104 days is also exempted and thus the period for offer of possession was extended upto 31.08.2019.

g. That the offer of possession has already been issued by the respondent to the complainant and thus the present petition of the complainant is pre-mature and is now liable to be dismissed as the tenure for offer of possession is complied with in accordance with the law and as per the terms of builder buyer agreement.

vii. That the complaint, filed by the complainant was not maintainable as the same is devoid of true facts and thus was liable to be dismissed at the very threshold, as the due date for possession, is 31.08.2019. And the complaint is pre-mature, especially in the light of the fact that the offer of possession has already been issued.

viii. That despite delayed payments from the complainant, the above-named respondent has never charged any interest on delayed payments as per the buyer's agreement.

11. On 06.09.2021, the respondent has submitted an amended reply to the complaint in which the date of laying off the grand floor slab is 31.07.2017. Apart from that no additional fact was mentioned in the reply. Therefore, the authority is considering the date of laying off the grand floor slab is



01.06.2014 which was already mentioned in the reply submitted on 06.08.2021.

12. 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 and submission made by the parties.
13. The following points were observed by the authority during the court proceedings on 13.01.2022:
  - i. The complainant was herself present before the authority and submitted that she lost her husband in the year 2014 but somehow managed to make all the due payments well in time to the respondent promoter in spite of the financial hardships due to the untimely death of her husband.
  - ii. The total sale consideration of the unit as agreed between both the parties was only Rs. 35,53,877/- which is also evident from the annexure- III of the buyer's agreement and an amount to the tune of Rs. 39,25,566/- has already been paid by the complainant allottee. But even after paying all the requisite dues she is not being given physical possession of the subject unit in spite of repeated follow-up with the builder from more than two years.
  - iii. Furthermore, she submitted that from last four dates of hearings, the matter could not be heard and being a widow, she urgently requires possession of the subject unit for financial security and children's



sustenance and hence the case may not be adjourned, and she should be rendered possession of the subject unit without any delay.

iv. The complaint has been filed more than a year back and the reply of the respondent has also been received so there is no justification for adjourning the matter as all the relevant facts and details which are required for the adjudication of the present complaint are on the record and nothing is awaited.

14. In view of the facts mentioned above, the authority has no hitch in deciding the matter in the face of all the evidence and documents which are already placed on record by both the parties.

**E. Jurisdiction of the authority**

15. The respondent has raised an objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

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

Section 11(4)(a) is reproduced as hereunder:

***Section 11(4)(a)***

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

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

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

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

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 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 relief sought by the complainant.**



**i. Direct the respondent to handover the physical possession of the unit no. COM-FF-09.**

16. As per clause 27 of the unit buyer's agreement, the respondent has to handover possession within 36 (thirty-six) months (plus 6 months grace period) from the date of start of the ground floor roof slab of the particular tower in which the booking is made. The respondent has received occupation certificate on 11.07.2019 and had offered the possession on 22.07.2019.

17. In view of the fact that the complainant has already paid more than the total consideration of the subject unit and occupation certificate for unit has already been obtained, therefore there is no reason or justification to further hold the handing over of possession. Accordingly, the respondent is directed to handover possession of unit within one month and submit the compliance report with regard to the same in the registry of the authority. If the respondent fails to handover the possession of the subject unit within the stipulated time of one month, then it will be considered as wilful delay in handing over of possession and may entail initiation of the penal proceedings against the respondent promoter and the complainant allottee shall be at liberty to file a complaint before the adjudicating officer for award of compensation as per the provisions of the Act.

**ii. Direct the respondent to pay interest for every month of delay at prevailing rate of interest.**

18. In the present complaint, the complainant intends 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."*

19. Clause 27 of the space buyer's agreement provides time period for handing over of possession and the same is reproduced below:

**27. Schedule for the possession of the unit**

*"The Company based on its present plans and estimates and subject to all exceptions shall endeavor to complete the construction of the said Project **within 36 (thirty six) months (plus 6 months grace period)** from the date of start of the ground floor roof slab of the particular tower in which the booking is made, subject to timely payment by the Allottee(s) of sale price and other charges due and payable according to the Payment Plan applicable to him/her/them and/or as demanded by the Company and subject to force majeure circumstances including but not limited to clauses 27 and 28. The possession of the Said Units) shall, however, be offered only after grant of completion/occupation certificate from the Competent Authority.."*

20. 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 favor 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 date 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 their rights 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.

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

22. 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.
23. 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., 13.01.2022 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
24. **Rate of interest to be paid by complainant for delay in making payments:** The definition of term 'interest' as defined under section 2(z) 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;"*

25. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
26. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within period of within 36 (thirty-six) months (plus 6 months grace period) from the date of start of the ground floor roof slab of the particular tower in which the booking is made. The authority allows the grace period keeping in view the fact that this grace period of 6 months is unqualified/unconditional and is sought for handing over of possession.
27. On consideration of the documents available on record and submissions made by both the parties, the authority is



satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 27 of the apartment buyer's agreement executed between the parties on 25.07.2014, the possession of the subject unit was to be delivered within 36 months with a grace period of 6 months from the date of start of the ground floor roof slab of the particular tower in which the booking is made. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 01.12.2017. The occupation certificate has been received by the respondent on 11.07.2019 and the possession of the subject unit was offered by the respondent to the complainant on 25.07.2019. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the flat buyer's agreement dated 25.07.2014 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the flat buyer's agreement dated 25.07.2014 to hand over the possession within the stipulated period.

28. Section 19(10) of the Act obligates the allottees to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. 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., 01.12.2017 till the date of offer of possession i.e., 25.07.2019 plus two months i.e., upto 25.09.2019 as per the provision of section 19(10) of the Act.

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 complainant is entitled to delay possession at prescribed rate of interest i.e., 9.30% p.a. w.e.f. 01.12.2017 till the date of offer of possession i.e., 25.07.2019 plus two months i.e., upto 25.09.2019 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19 (10) of the Act.
30. The holding charges of Rs. 1,40,871/- along with SGST and CGST on holding charges of Rs. 12,678/- each being demanded by the respondent promoter as evident from page no. 71 of the amended reply shall also not be charged by the promoter at any point of time even after being part of the agreement as per law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 decided on 14.12.2020. Further, in case, if the same has been charged



by the respondent promoter, then he is directed to refund the same to the complainant allottee.

**H. Directions of the authority**

31. 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 handover possession of unit within one month and submit the compliance report with regard to the same in the registry of the authority.
- ii. The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 01.12.2017 till the date of offer of possession i.e., 25.07.2019 plus two months i.e., upto 25.09.2019 as per the provision of section 19(10) of the Act.
- iii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.
- iv. The respondent shall not charge anything from the complainant which is not the part of the agreement. However, holding charges shall also not be charged by the promoter at any point of time even after being part of agreement as per law settled by the Hon'ble Supreme





**HARERA**  
**GURUGRAM**

Complaint No. 4411 of 2020

Court in civil appeal no. 3864-3889/2020 dated  
14.12.2020.

32. Complaint stands disposed of.

33. File be consigned to registry.

*Vijay Kumar Goyal*

(Vijay Kumar Goyal)  
Member

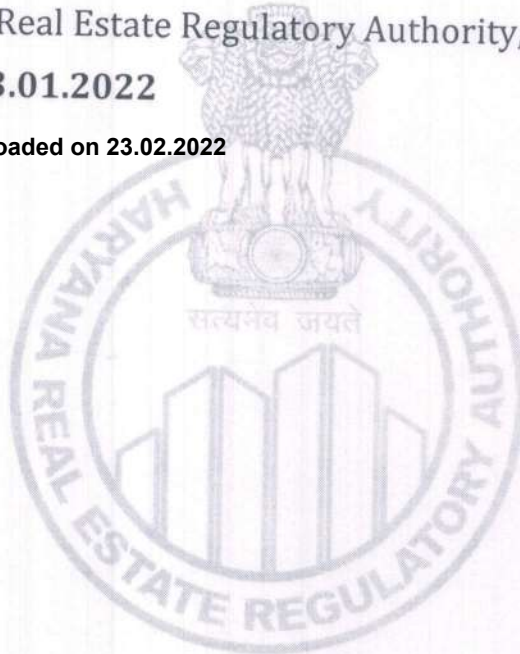
*Dr. K.K. Khandelwal*

(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 13.01.2022**

Judgement uploaded on 23.02.2022



**HARERA**  
**GURUGRAM**