

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

Complaint no. : 4548 of 2020
First date of hearing: 12.01.2021
Date of decision : 20.07.2021

*APCO
31.4.22* **MMB Sales (India) Pvt. Ltd.,**
MMB India Pvt. Ltd. (Through its
authorized representative)
R/o: - Bijwasan Road, Khasra No. 2/27 & 6/26,
Min Village Kapashera, Tehsil, Mehrauli, New
Delhi - 110037

Complainant

Versus

M/s Athena infrastructure ltd,
Regd. office: - M-62 & 63, 1st floor, Connaught
place, New Delhi-110001.

Respondent

CORAM:

Shri Samir Kumar
Shri Vijay Kumar Goyal

Member
Member

APPEARANCE:

Sh. Pawan Kumar Ray
Sh. Rahul Yadav

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 23.12.2020 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.	Name and location of the project	"Indiabulls Enigma" Sector 110, Gurugram
2.	Nature of the project	Residential complex
3.	Project area	15.6 acres
4.	DTCP License	213 of 2007 dated 05.09.2007 valid till 04.09.2024 10 of 2011 dated 29.01.2011 valid till 28.01.2023
	Name of the licensee	M/s Athena Infrastructure Pvt. Ltd.
		64 of 2012 dated 20.06.2012 valid till 19.06.2023
	Name of the licensee	Varali properties
5.	HRERA registered/ not registered	Registered vide no. i. 351 of 2017 dated 20.11.2017 valid till 31.08.2018

		ii. 354 of 2017 dated 17.11.2017 valid till 30.09.2018 iii. 353 of 2017 dated 20.11.2017 valid till 31.03.2018 iv. 346 of 2017 dated 08.11.2017 valid till 31.08.2018
6.	Date of execution of flat buyer's agreement	02.02.2012 (As per page 22 of the complaint)
7.	Unit no.	B162, 16th floor, Block no. B B-202, 20 th floor [Page 26 of complaint]
8.	Super Area	6780 sq. Ft. [Page 26 of complaint]
9.	Payment plan	Construction linked payment plan (As per page 40 of the complaint)
10.	Total consideration	Rs.3,98,47,700/- [As per customer ledger dated 02.12.2016 on page 52 of complaint]
11.	Total amount paid by the complainant as per statement of account dated 02.12.2016	Rs.3,83,83,041/- [As per customer ledger dated 02.12.2016 on page 53 of complaint]
12.	Due date of delivery of possession (As per clause 21 of the agreement: The Developer shall endeavour to complete the construction of the said building /Unit within a period of three years, with a six months grace period thereon from the date of execution of the Flat Buyers Agreement subject to timely payment by the Buyer(s) of	02.08.2015 (Grace period of 6 months is allowed)

 B-202
 30.06.2022

 Corrected vide order dated 19.04.2022
 20.04.2022

	<i>Total Sale Price payable according to the Payment Plan applicable to him or as demanded by the Developer. The Developer on completion of the construction /development shall issue final call notice to the Buyer, who shall within 60 days thereof, remit all dues and take possession of the Unit)</i>	
13.	Offer of possession	Not offered
14.	Occupation Certificate	Not received for Tower B
15.	Delay in delivery of possession till the date of decision i.e. 20.07.2021	5 years 11 months 18 days

B. Facts of the complaint

- The complainant submitted that unit respondent company made innumerable representations of the grandiosity of the project and left no stone unturned in propagating its project. It was when the complainant came to know about the project of the respondent company and the amenities and services being offered by them. It came across the various amenities being provided by the respondent company such as CCTV cameras, sensor boards, automated barriers, themed landscaped gardens, vast green spaces, shade giving trees, water bodies, soothing meeting points, gym, spa, lap pool, relaxation pool, aerobics and yoga room, indoor sports section and much more.
- That the complainant was impressed by the security features, greenery and the various other services being provided by the

respondent company and proceeded to make an application for the said project. It was assured of timely and satisfactory delivery of the possession of the unit within a span of 3 years which only prodded the complainant to make the said booking as the possession was promised to be granted by the year, 2015. In accordance to which, an amount of Rs. 5,00,000/- was deposited by it at the time of the booking in the said project.

5. That a flat buyer's agreement was executed between the parties on 02.02.2012 and as per the said agreement, unit no. B162 on 16th floor in Block B having super area of 6,780 sq. Ft. and basic sale price of Rs. 3,48,00,000 was allotted to the complainant.
6. That it is pertinent to note that a construction linked payment plan was adopted by the complainant for making the payments towards the said allotment. However, in contravention to the said plan, the complainant has been arbitrarily charged by the respondent irrespective of the development for the subsequent stage was completed or not. That the same is evident, as the respondent has till date not been able to grant the possession even after the complainant has deposited considerable money with them.
7. That as per clause 21 of the agreement, the possession of the unit was to be granted to it within a period of 3 years from the date of execution of the agreement. Thus, the possession of the flat was to be given to the Complainant by 02.08.2015. Further, the unit of the

complainant was shifted from B-162 to B-202 on 20th floor of tower B having super area of 6,780 sq. Ft.

8. That in contravention of the possession clause in the agreement, the respondent company has failed to deliver the possession of the said unit till date, even after diligent payments being made by the complainant. A total amount of Rs. 3,83,83,041/- was paid, out of the total sale price of the unit, which is Rs. 3,98,47,700/-. The complainant has paid around 96.32% of the total consideration of the unit but till date has not even been intimated of any due date of possession far from being given the actual possession of the unit way back in 2015.
9. That it tried contacting the respondent several times through phone and personal visits but to no avail, as no satisfactory answer from the respondent was forthcoming regarding the indefinite delay being caused by them. Exhausted by the said delay the complainant has thus, approached the Hon'ble Authority for grant of immediate possession along with compensation for the delay that has been caused by the respondent company.
10. That the respondent company drew an unfair and arbitrary agreement which was totally one-sided, illegal, unfair and unjust. All the clauses regarding possession, compensation etc were drawn in their own favour and the complainant had no say in anything whatsoever. In the agreement, the complainant was denied fair

scope of compensation, in case of delay of possession and was supposed to pay heavy penalty in case of delay in payment of instalments. The arbitrary and unfairness of the apartment buyer agreement can be derived from the perusal of clauses 11 and 22.

11. That as per the terms and conditions the respondent company had imposed an exorbitant rate of interest on the complainant to the tune of 18% on delayed payments and whereas, the respondent company was only liable to pay a meagre amount in case of delayed possession to the tune of Rs. 5/- per sq. Ft. per month for the period of delay.
12. That such unilateral agreements have already been held to be illegal and arbitrary and inapplicable while deciding the compensation for the allottee by several courts. It is submitted that the complainant's mother is a laywoman and had no idea that the opposite party would indulge in such practices or illegal malpractices.
13. That Hon'ble Supreme Court has already held such one-sided agreements to be unfair and invalid in the case of ***Pioneer Urban Land and Infrastructure Limited v/s Govindan Raghavan.***
14. That Hon'ble Supreme Court in ***Fortune Infrastructure and Ors v/s Trevor D'Lima and Ors*** had held that a time period of 3 years is reasonable time to complete a contract. Similar view was taken

by the Hon'ble Supreme Court in *Kolkata West International City Pvt. Ltd. versus Devasis Rudra.*

15. That since booking till date, the respondent never informed the complainant about any force majeure or any other circumstances which is beyond their reasonable control, which has led to the delay in the completion of the project within the time prescribed in the agreement. It is clear that the delay in the construction of the is intentional and solely due to the deliberate negligence and deficiency on the part of the respondent. The delay of 5 years is not reasonable and no reason can be attributed to such delay except the wilful and deliberate negligence and ignorance of the respondent. The respondent started the project with malafide intention and with the intention of cheating the allottee/homebuyer and extracting money from them.
16. That in addition to the unilateral and exorbitant rate of interest imposed on the complainant, the respondent company also had the absolute discretion to make unilateral changes in the allotment of the complainant without any prior consent of the complainant. That the respondent had wielded power to the extent of being the sole authority for making any changes to the allotment of the complainant. That as per the agreement, the building plans, lay out plan and other crucial details were to be managed by the respondent solely without obtaining any consent of the

complainant. This does not leave any scope of negotiation or consent from the complainant and they were constrained to accept such changes and alterations and make the payments accordingly. Such a clause is liable to put the allottee in a difficult situation, as they are forced to accept the changes or to get their allotment cancelled. That the relevant clause has been produced below:

"18.The Buyer understand and agrees that the floor plans and other terms and conditions as stated in this proposal are tentative and are liable to change, alteration, modification, revision, addition, deletion, substitution or recast instance of the sanctioning authorities/ Architects or the Developer during the course of construction or otherwise and the Buyer hereby gives his consent to such change, modification etc...."

Thus, in the interest of justice the hon'ble authority is requested to intervene in the matter and direct the respondent to grant immediate possession of the unit to the complainant along with delay compensation at a prescribed rate of interest.

17. That there is no provision in the agreement which mandates or even mentions the consent of the complainant and imposes unilateral changes made by the respondent. That these clauses have established the unilaterality of the agreement where the respondent have very cleverly tried to close all the gates for the complainant to seek protection under any terms of the agreement. That the Act of 2016 has clearly pressed on terms like interest and consent which have been blithely contravened by the respondent. That the hon'ble authority is requested to take a note of all these

factors so that the present case can be a deterrent for the arbitrary and illegal behaviour of the big companies, which is inclined to exploit the buyer.

18. That respondent has failed to abide by their promise and failed to deliver the possession of the unit within the promised time. In such circumstances, it is only fair that the respondent be directed to deliver the immediate peaceful possession of the unit complete in all aspects along with all the promised amenities and in a habitable condition to the satisfaction of complainant along with delay compensation @18% p.a. and other compensation. Thus, in the present circumstances, the complainant was left with no other option but to file the present complaint seeking peaceful possession and delay compensation.

C. Relief sought by the complainant:

19. The complainant has sought following relief(s):
- (i) Direct the respondent to pay interest at the rate of 18% p.a. for every month of delay from the due date of possession.
20. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

21. The respondent has contested the complaint on the following grounds.
- i. That the instant complaint of the complainant is not maintainable, on facts or in law, and is as such liable to be dismissed/ rejected at the thresh hold, being filed in the wrong provisions of the law.
 - ii. That the present complaint is devoid of any merits and has been preferred with the sole motive to harass the answering respondent. In fact, the present complaint is liable to be dismissed on the ground that the said claim of the complainant is unjustified, misconceived and without any basis as against the respondent. That the present complaint is baseless and flagrant abuse of process of law to harass the respondent.
 - iii. That it is submitted that the allegations made in the instant complaint are wrong, incorrect and baseless in the fact and law. The respondent denies them in toto. The instant complaint is devoid of any merits and has been preferred with the sole motive to extract monies from the answering respondent, hence the same is liable to be dismissed in limini.
 - iv. That the instant compliant filed by the complainant is outside the purview of this hon'ble authority as the complainant

looking into the financial viability of the project and its future monetary benefits willingly approached the respondent and got the said unit booked after making requisite due diligence on their own. That the complainant post understanding the terms & conditions of the agreement(s) had voluntarily executed flat buyer agreement (hereinafter referred as "FBA") with the respondent on 02.02.2012. It is submitted that as per the FBA /agreement duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the provisional unit booked by the complainant, the same shall be adjudicated through arbitration mechanism as detailed in the agreement. The respondent craves leave of this Hon'ble Authority to refer and rely upon the clause no. 49 of the duly executed FBA, which is being reproduced as under:

"Clause 49: All or any dispute arising out or touching upon or in relation to the terms of this Application and/or Flat Buyers agreement including the interpretation and validity of the terms thereof and the rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through Arbitration The arbitration shall be governed by Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereof for the time being in force. The venue of the arbitration shall be New Delhi and it shall be held by a sole arbitrator who shall be appointed by the Company and whose decision shall be final and binding upon the parties. The Applicant(s) hereby confirms that he/she shall have no objection to this appointment even if the person so appointed as the Arbitrator, is an employee or advocate of the company or is otherwise connected to the Company and the Applicant(s) confirms that notwithstanding such relationship / connection,

the Applicant(s) shall have no doubts as to the independence or impartiality of the said Arbitrator. The courts in New Delhi alone shall have the jurisdiction over the disputes arising out of the Application/Apartment Buyers Agreement"

Thus in view of above clause 49 of flat buyer's agreement, it is humbly submitted that, the dispute, if any, between the parties are firstly arising out of the said duly executed flat buyer's agreement and it was specifically agreed to refer the dispute, if any, qua the agreement to arbitration. Thus, the complainant is contractually and statutorily barred from invoking the jurisdiction of this hon'ble authority. Moreover, no cause of action ever arose in favour of the complainant and against the respondent. Further the hon'ble authority has no jurisdiction to entertain the present complaint and decide the same hence the present complaint filed by the complainant is liable to be dismissed on the very same ground.

- v. That the instant complaint is further falsifying his claim from the very fact that, the complainant has filed the instant claim on the alleged delay in delivery of possession of the provisionally booked unit. However, the complainant with malafide intention have not disclosed, in fact concealed the material fact from this hon'ble authority that the complainant has been a wilful defaulter since the beginning, not paying its due instalments on time as per the payment plan opted at the time of execution of flat buyer 's agreement.

- vi. That the complainant has not come before this hon'ble authority with clean hands and wishes to take advantage of his own misdoings with the help of the provisions of the Act of 2016, which have been propagated for the benefit of innocent customers who are end-users and not defaulters, like the complainant in the present complaint.
- vii. That a bare perusal of clause 22 of the agreement would make it evident that in the event of the respondent failing to offer possession within the proposed timelines, then in such a scenario, it would pay a penalty of Rs.5/- per sq. ft. per month as compensation for the period of such delay. The prayer of the complainant is completely contrary to the terms of the inter-se agreement between the parties. The said agreement fully envisages delay and provides for consequences thereof in the form of compensation to the complainant. Under clause 22 of the agreement, the respondent is liable to pay compensation at the rate of Rs.5/- per sq. Ft. per month for delay beyond the proposed timeline. The respondent craves leave of this hon'ble authority to refer & rely upon the clause 22 of flat buyer's agreement, which is being reproduced as:

"Clause 22 in the eventuality of developer failing to offer the possession of the unit to the buyers within the time as stipulated herein, except for the delay attributable to the buyer/force majeure / vis- majeure conditions, the developer shall pay to the buyer penalty of Rs. 5/- (rupees five only) per square feet (of

super area) per month for the period of delay. The date of submitting application to the concerned authorities for issue of completion / part completion/ occupancy/ part occupancy certificate of the complex shall be treated as the date of completion of the unit for the purpose of his Clause / Agreement.

- viii. That the complainant being fully aware, having knowledge and having given consent of the above-mentioned clause/terms of flat buyer's agreement, is now evading from contractual obligations inter-alia from the truth of its existence and has now filed the present complaint for adjudication based on false and misrepresented facts.
- ix. That the present complaint is not maintainable, and the period of delivery as defined in clause 21 of flat buyer's agreement is not sacrosanct as in the said clause it is clearly stated that the developer shall endeavour to complete the construction of the said building/unit" within the stipulated time. Clause 21 of the said agreement has been given a selective reading by the complainant even though he conveniently relies on same. The clause reads:

"The developer shall endeavor to complete the construction of the said building/unit within a period of three years, with a six months grace period thereon from the date of execution of these Flat Buyer' Agreement subject to timely payment by the Buyer(s) of Total Sale Price payable according to the Payment Plan applicable to his or as demanded by the Developer..."

The reading of the said clause clearly shows that the delivery of the unit / apartment in question was subject to timely

payment of the instalments towards the basic sale price. As shown in the preceding paras the complainant who have failed in observing his part of liability of the said clause.

- x. That the basis of the present complaint is that there is a delay in delivery of possession of the unit in question, and therefore, interest on the deposited amount has been claimed by virtue of the present complaint. It is further submitted that the flat buyer's agreement itself envisages the scenario of delay and the compensation thereof. Therefore, the contention that the possession was to be delivered within 3 years and 6 months of execution of the flat buyer's agreement is based on a complete misreading of the agreement.
- xi. That due to adverse market conditions viz. delay due to reinitiating of the existing work orders under GST regime, by virtue of which all the bills of contractors were held between, delay due to the directions by the Hon'ble Supreme Court and National Green Tribunal whereby the construction activities were stopped, non-availability of the water required for the construction of the project work & non-availability of drinking water for labour due to process change from issuance of HUDA slips for the water to totally online process with the formation of GMDA, shortage of labour, raw materials etc., which continued for around 22 months,

starting from February'2015. Due to the above mentioned reasons, the project of the respondent was severely affected and it is in these above elaborated circumstances, which were beyond the control of the respondent, that the progress and construction activities, sale of various flats and spaces has not taken place as envisaged.

- xii. Further, as per the license to develop the project, external development charges were paid to the state government and the state government in lieu of the EDCs was supposed to lay the whole infrastructure in the licensed area for providing the basic amenities such as drinking water, sewerage, drainage including storm water line, roads etc. That the state government terribly failed to provide the basic amenities due to which the construction progress of the project was badly hit.
- xiii. That furthermore, the Ministry of Environment and Forest (hereinafter referred to as the "MoEF") and the Ministry of Mines (hereinafter referred to as the "MoM") had imposed certain restrictions which resulted in a drastic reduction in the availability of bricks and availability of kiln which is the most basic ingredient in the construction activity. The MoEF restricted the excavation of topsoil for the manufacture of bricks and further directed that no manufacturing of clay

bricks or tiles or blocks can be done within a radius of 50 Kilometres from coal and lignite based thermal power plants without mixing at least 25% of ash with soil. The shortage of bricks in the region and the resultant non-availability of raw materials required in the construction of the project and affected the timely schedule of construction of the project.

- xiv. That in view of the ruling by the Hon'ble Apex Court directing for suspension of all the mining operations in the Aravalli Hill range in State of Haryana within the area of approx. 448 sq. kms in the district of Faridabad and Gurgaon including Mewat which led to a situation of scarcity of the sand and other materials which derived from the stone crushing activities, which directly affected the construction schedules and activities of the project.
- xv. That Commonwealth Games were organized in Delhi in October 2010. Due to this mega event, construction of several big projects including the construction of Commonwealth Games village took place in 2009 and onwards in Delhi and NCR region. This led to an extreme shortage of labour in the NCR region as most of the labour force got employed in said projects required for the Commonwealth Games. Moreover, during the Commonwealth Games the labour/workers were forced to leave the NCR region for security reasons. This also

led to immense shortage of labour force in the NCR region. This drastically affected the availability of labour in the NCR region which had a ripple effect and hampered the development of this project. As a result, it became difficult to cope up with the timelines set for the completion of the project. Such a situation was undoubtedly not foreseen which resulted in delay in the construction scheduled of the project.

- xvi. That due to active implementation of social schemes like National Rural Employment Guarantee Act ("NREGA") and Jawaharlal Nehru National Urban Renewal Mission ("JNNURM"), there was a sudden shortage of labour/workforce in the real estate market as the available labour preferred to return to their respective states due to guaranteed employment by the Central /State Government under NREGA and JNNURM Schemes. This created a further shortage of labour force in the NCR region. Large numbers of real estate projects, including our project were struggling hard to timely cope up with their construction schedules. Also, even after successful completion of the Commonwealth Games, this shortage continued for a long period of time. The said fact can be substantiated by newspaper article elaborating on the above-mentioned issue of shortage of labour which was hampering the construction projects in the

NCR region. This certainly was never foreseen or even imagined while scheduling their construction activities. Due to paucity of labour and difference in between demand and supply there were many labour disputes resulting into delay of the project.

- xvii. That further, due to slow pace of construction, a tremendous pressure was put on the contractors engaged to carry out various activities in the project due to which there was a dispute with the contractors resulting into foreclosure and termination of their contracts and we had to suffer huge losses which resulted in delayed timelines. That despite the best efforts, the ground realities hindered the progress of the project.
- xviii. That the respondent had awarded the construction of the project to one of the leading construction companies of India. The said contractor/ company could not implement the entire project for approx. 7-8 months w.e.f from 9-10 November 2016 the day when the Central Government issued notification about demonetization. During this period, the contractor could not make payment in cash to the labour. During demonetization, the cash withdrawal limit for companies was capped at Rs. 24,000 per week initially whereas cash payments to labour on the site of magnitude of

the project in question is Rs. 3-4 lakhs approx. per day and the work at site got almost halted for 7-8 months as bulk of the labour being unpaid went to their hometowns, which resulted into shortage of labour. Hence the implementation of the project in question got delayed on account of the issues faced by contractor due to the said notification of Central Government. That the said event of demonetization was beyond the control of the respondent company, hence the time period for offer of possession should be deemed to be extended for 6 months on account of the above.

- xix. That in last four successive years i.e. 2015-2016-2017-2018, Hon'ble National Green Tribunal has been passing orders to protect the environment of the country and especially the NCR region. The Hon'ble NGT had passed orders governing the entry and exit of vehicles in NCR region. Also, the Hon'ble NGT has passed orders with regard to phasing out the 10-year-old diesel vehicles from NCR. The pollution levels of NCR region have been quite high for couple of years at the time of change in weather in November every year. The contractor of respondent could not undertake construction for 3-4 months in compliance of the orders of Hon'ble National Green Tribunal. Due to this, there was a delay of 3-4 months as labour went back to their hometowns, which

- resulted in shortage of labour in April -May 2015, November-December 2016 and November- December 2017. The district administration issued the requisite directions in this regard.
- xx. In view of the above, construction work remained very badly affected for 6-12 months due to the above stated major events and conditions which were beyond the control of the respondent and the said period would also require to be added for calculating the delivery date of possession if any.
- xxi. That several other allottee were in default of the agreed payment plan, and the payment of construction linked instalments was delayed or not made resulting in badly impacting and delaying the implementation of the entire project.
- xxii. That due to heavy rainfall in Gurugram in the year 2016 and unfavourable weather conditions, all the construction activities were badly affected as the whole town was waterlogged and gridlocked as a result of which the implementation of the project in question was delayed for many weeks. Even various institutions were ordered to be shut down/closed for many days during that year due to adverse/severe weather conditions.
- xxiii. That furthermore, in view of the outbreak of COVID-19, the Government of India took various precautionary and

preventive steps and issued various advisories, time to time, to curtail the spread of COVID 19 and declared a complete lockdown in India, commencing from 24th March, 2020 midnight thereby imposing several restrictions mainly non-supply of non-essential services during the lockdown period, due to which all the construction work got badly effected across the country in compliance to the lockdown notification. Additionally, the spread of COVID 19 was even declared a 'Pandemic' by World Health Organization on March 11, 2020, and COVID-19 got classified as a "Force Majeure" event, considering it a case of natural calamity i.e. circumstances to be beyond the human control, and being a force majeure period.

- xxiv. That the Haryana Real Estate Regulatory Authority Gurugram also vide its circular / notification bearing no. No.9/3 -2020 HARERA/GGM (Admn), dated 25.05.2020 extended the completion date / revised completion date or extended completion date automatically by 6 months, due to outbreak of COVID-19 (Corona Virus).
- xxv. That the project of the respondent i.e., Indiabulls Enigma, which is being developed in an area of around 19.856 acres of land, in which the applicant has invested its money is an on-going project and is registered under The Real Estate

(Regulation and Development) Act, 2016. It is pertinent to note that the respondent has already completed 95% construction of the alleged tower wherein the unit was booked by the complainant. It is further pertinent to mention that the respondent is in process of obtaining occupational certificate for the same and shall handover the possession of units to its respective buyers post grant of occupational certificate from the concerned authority.

xxvi. That based upon the past experiences the respondent has specifically mentioned all the above contingencies in the flat buyer's agreement executed between the parties and incorporated them in "clause 39" annexed with the complaint by the complainant. The said "clause 39" is being reproduced hereunder for ready reference:

Clause 39: "The Buyer agrees that in case the Developer delays in delivery of the unit to the Buyer due to:-

a) Earthquake, Floods, fire, tidal waves, and/or any act of God, or any other calamity beyond the control of developer,

b) War, riots, civil commotion, acts of terrorism.

c) Inability to procure or general shortage of energy, labour, equipment facilities, materials or supplies, failure of transportation, strikes, lock outs, action of labour unions or other causes beyond the control of or unforeseen by the developer.

d) Any legislation, order or rule or regulation made or issued by the Govt or any other Authority or,

e) If any competent authority(ies) refuses, delays, withholds, denies the grant of necessary approvals for the Unit/Building or,

f) If any matters, issues relating to such approvals, permissions, notices, notifications by the competent

*authority(ies) become subject matter of any litigation before competent court or,
g) Due to any other force majeure or vis majeure conditions,*

Then the Developer shall be entitled to proportionate extension of time for completion of the said complex.....”

- xxvii. That in addition to the reasons detailed above, there was a delay in sanctioning of the permissions and sanctions from the departments. It will also not be out of place to mention that the respondent has been diligently pursuing the matter with various authorities and hence no delay can be attributed on the part of the respondent.
- xxviii. That the respondent also draws attention of this hon'ble authority to Section 4(2)(1)(C) of The Act of 2016 which enables the developer / promoter to revise the date of completion of project and hand over possession. The provisions of Act of 2016, however, do not rewrite the clause of completion or handing over possession in agreement for sale. Section 4(2)(1)(C) enables the promoter to give fresh timeline independent of the time period stipulated in the agreements for sale entered into between him and the allottee so that he is not visited with penal consequences laid down under Act of 2016.
- xxix. That it is submitted that Section 4(2)(1)(C) provides for, only the extension of time period stipulated in the flat buyer

agreement and does not affect other provisions of the agreements for sale so that the promoter is not visited with penal consequences laid down under Act of 2016. It is also submitted that the respondent at the time of registration of the project gave revised date for completion of same and also completed the same before expiry of that period, therefore, under such circumstances the respondent is not liable to be visited with penal consequences as laid down under Act of 2016. It is also most humbly submitted that the only liability of respondent had was under the flat buyer agreement according to which the company is liable to pay a delay penalty at the rate of Rs. 5 per sq. mtr. per month for the period of delay to the complainant.

- xxx. That the flat buyer's agreement that has been referred to, for the purpose of getting the adjudication of the instant complaint i.e. the flat buyer agreement dated 02.02.2012 executed much prior to coming into force of the Act of 2016 and the rules. Further the adjudication of the instant complaint for the purpose of granting interest and compensation, as provided under Act of 2016 has to be in reference to the flat buyer's agreement for sale executed in terms of said Act of 2016 and said rules and no other agreement, whereas, the flat buyer's agreement being

referred to or looked into in this proceedings is an agreement executed much before the commencement of Act of 2016 and such agreement as referred herein above. Hence, cannot be relied upon till such time the new agreement to sell is executed between the parties. Thus, in view of the submissions made above, no relief can be granted to the complainant based on the new agreement to sell as per Act of 2016.

- xxxi. That the respondent has made huge investments in obtaining requisite approvals and carrying on the construction and development of 'INDIABULLS ENIGMA' project not limiting to the expenses made on the advertising and marketing of the said project. Such development is being carried on by developer by investing all the monies that it has received from the buyers / customers and through loans that it has raised from financial institutions. In spite of the fact that the real estate market has gone down badly the respondent has managed to carry on the work with certain delays caused due to various above mentioned reasons and the fact that on an average more than 50% of the buyers of the project have defaulted in making timely payments towards their outstanding dues, resulting into inordinate delay in the construction activities, still the construction of the project

"INDIABULLS ENIGMA" has never been stopped or abandoned and has now reached its pinnacle in comparison to other real estate developers/ promoters who have started the project around similar time period and have abandoned the project due to such reasons.

22. 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.

E. Jurisdiction of the authority

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

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

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per the provisions of section 11(4) (a) of the Act of 2016 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 complaint is in breach of agreement for non- invocation of arbitration.

23. The respondent has raised an objection that the complainant has not invoked arbitration proceedings as per the provisions of flat buyer's agreement which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated w.r.t arbitration in the buyer's agreement:

"Clause 49: All or any dispute arising out or touching upon or in relation to the terms of this Application and/or Flat Buyers agreement including the interpretation and validity of the terms thereof and the rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through Arbitration. The arbitration shall be governed by Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereof for the time being in force. The venue of the arbitration shall be New Delhi and it shall be held by a sole arbitrator who shall be appointed by the Company and whose decision shall be final and binding upon the parties. The Applicant(s) hereby confirms that he/she shall have no objection to this appointment even if the person so appointed as the Arbitrator, is an employee or advocate of the company or is otherwise connected to the Company and the Applicant(s) confirms that notwithstanding such relationship / connection, the Applicant(s) shall have no doubts as to the independence or impartiality of the said Arbitrator. The courts in New Delhi alone

shall have the jurisdiction over the disputes arising out of the Application/Apartment Buyers Agreement"

24. The respondent contended that as per the terms & conditions of the application form duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the provisional booked unit by the complainant, the same shall be adjudicated through arbitration mechanism. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017*, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the

arbitration clause in agreements between the complainant and builders could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows: -

"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellate Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.

56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainant and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."

25. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court - in case titled as *M/s Emaar MGF Land Ltd. V. Aftab Singh in*

revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018 has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

26. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainant is well within their rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and Act of 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to

entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

F.II. Objection regarding delay due to force majeure

27. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as commonwealth games held in Delhi, shortage of labour due to implementation of various social schemes by Government of India, slow pace of construction due to a dispute with the contractor, demonetisation, lockdown due to covid-19 various orders passed by NGT and weather conditions in Gurugram and non-payment of instalment by different allottee of the project but all the pleas advanced in this regard are devoid of merit. First of all the unit in question was booked in the year 2011 and its possession was to be offered by 02.08.2015 so the events taking place such as holding of common wealth games, dispute with the contractor, implementation of various schemes by central govt. etc. do not have any impact on the project being developed by the respondent. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of some of the allottees. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

F.III Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

28. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the

parties inter-se in accordance with the flat buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The 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."

29. 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." सत्यमेव जयते

30. 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 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 any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F.IV Objection regarding handing over possession as per declaration given under section 4(2)(I)(C) of Act of 2016

31. The counsel for the respondent has stated that the respondent at the time of registration of the project gave revised date for completion of same and also completed the same before expiry of that period, therefore, under such circumstances the respondent is not liable to be visited with penal consequences as laid down under Act of 2016. Therefore, next question of determination is whether the respondent is entitled to avail the time given to him by the authority at the time of registering the project under section 3 & 4 of the Act.
32. It is now settled law that the provisions of the Act and the rules are also applicable to ongoing project and the term ongoing project has been defined in rule 2(1)(o) of the rules. The new as well as the ongoing project are required to be registered under section 3 and section 4 of the Act.
33. Section 4(2)(I)(C) of the Act requires that while applying for registration of the real estate project, the promoter has to file a declaration under section 4(2)(I)(C) of the Act and the same is reproduced as under: -

Section 4: - Application for registration of real estate projects

(2)The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely:

—.....

(1): -a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating: —

(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be...."

34. The time period for handing over the possession is committed by the builder as per the relevant clause of flat buyer's agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the apartment buyer agreement. The new timeline as indicated by the promoter in the declaration under section 4(2)(1)(C) is now the new timeline as indicated by him for the completion of the project. Although, penal proceedings shall not be initiated against the builder for not meeting the committed due date of possession but now, if the promoter fails to complete the project in declared timeline, then he is liable for penal proceedings. The due date of possession as per the agreement remains unchanged and promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the apartment buyer agreement and he is liable for the delayed possession charges as

provided in proviso to section 18(1) of the Act. The same issue has been dealt by hon'ble Bombay High Court in case titled as **Neelkamal Realtors Suburban Pvt. Ltd. and anr. vs Union of India and ors.** and has observed as under:

23. "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.."

G. Findings on the relief sought by the complainant

Relief sought by the complainant: The respondent be directed to pay interest at the rate of 18% p.a. for every month of delay from the due date of possession.

35. In the present complaint, the complainant intend 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."

36. Clause 21 of the flat buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"CLAUSE 21

"The Developer shall endeavour to complete the construction of the said building/Unit within a period of three years, with a six months grace period thereon from the date of execution of the Flat Buyers Agreement subject to timely payment by the Buyer(s) of Total Sale Price payable according to the Payment Plan applicable to him or as demanded by the Developer. The Developer completion of the construction/development shall issue final call notice to the Buyer, who shall within 60 days thereof, remit all dues and take possession of the Unit. In the event of his/her failure to take possession of the Unit within the stipulated time for any reason whatsoever, he/she shall be liable to bear all taxes, levies, outflows and maintenance charges/ cost and any other levies on account of the allotted Unit along with interest and penalties on the delayed payment, from the dates these are levied/made applicable irrespective of the fact that the Buyer has not taken possession of the Unit or has not been enjoying benefit of the same. The Buyer in such an eventuality shall also be liable to pay the holding charges @ Rs. five per sq ft (of the super area) per month to the Developer, from the date of expiry of said thirty days till the time possession is actually taken over by the Buyer."

37. The authority has gone through the possession clause of the agreement and observed that the possession has been subjected to all kinds of terms and conditions of this agreement. If the said possession clause is read in entirety, the time period of handing over possession is only a tentative period for completion of the construction of the unit in question. It is settled proposition of law that one cannot get the advantage of his own fault. The incorporation of such clause in the buyer's agreement by the

promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

38. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the flat by 02.08.2015 and further provided in agreement that promoter shall be entitled to a grace period of 6 months. Also, there is no specific reason for what purpose such grace period of 6 months is asked for and there were exigencies which were beyond the control of the promoter. Therefore, the said period of 6 months is allowed to the promoter for the exigencies beyond the control of the promoter. Therefore, the due date of possession comes out to be 02.08.2015.
39. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate of 18% p.a. 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.

40. The legislature in its wisdom in the subordinate legislation under the provision of 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.
41. 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., 20.07.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
42. 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;"*
43. 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.
44. On consideration of the documents available on record and submissions made by both the parties regarding contravention of 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 21 of the agreement executed between the parties on 02.02.2012, the possession of the subject apartment was to be delivered within stipulated time i.e., by 02.08.2015. 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 02.08.2015. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and

responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 02.08.2015 till the handing over of the possession, at prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the authority

45. 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 the possession of the unit after obtaining Occupation Certificate.
- 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., 02.08.2015 till the date of handing over possession till handing over of possession as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

- iii. The arrears of such interest accrued from 02.08.2015 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The respondent shall not charge anything from the complainant which is not the part of the agreement.

46. Complaint stands disposed of.

47. File be consigned to registry.


(Samir Kumar)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.07.2021