HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Comp Nos. :

1. **RERA-PKL 22/2019 (2nd Hearing)**

Parmeet Singh ...Complainant

Versus

M/s TDI Infrastructure Ltd. ...Respondent

2. **RERA-PKL 23/2019 (2nd Hearing)**

Manoj Kumar ...Complainant

Versus

M/s TDI Infrastructure Ltd. ...Respondent

3. **RERA-PKL 44/2019 (3rd Hearing)**

Mama Kaur ...Complainant

Versus

M/s TDI Infrastructure Ltd. ...Respondent

4. **RERA-PKL 87/2019 (2nd Hearing)**

Neena Sethi ...Complainant

Versus

M/s TDI Infrastructure Ltd. ...Respondent

5. RERA-PKL 125/2019 (2nd Hearing)

Asha Jindal ...Complainant

Versus

M/s TDI Infrastructure Ltd. ...Respondent

6. RERA-PKL 299/2018 (9th Hearing)

Bimla ...Complainant

Versus

M/s TDI Infrastructure Ltd. ...Respondent

7. RERA-PKL 734/2018 (6th Hearing)

Pavel Garg ...Complainant

Versus

M/s TDI Infrastructure Ltd. ...Respondent

8. RERA-PKL 735/2018 (6th Hearing)

Pavel Garg ...Complainant

Versus

M/s TDI Infrastructure Ltd. ...Respondent

9. RERA-PKL 736/2018 (6th Hearing)

Pavel Garg ...Complainant

Versus

M/s TDI Infrastructure Ltd. ...Respondent

10. RERA-PKL 737/2018 (6th Hearing)

Pavel Garg ...Complainant

Versus

M/s TDI Infrastructure Ltd. ...Respondent

11. RERA-PKL 738/2018 (6th Hearing)

Pavel Garg ...Complainant

Versus

M/s TDI Infrastructure Ltd. ...Respondent

Date of Hearing : 19.03.2019

CORAM :

Sh. Rajan Gupta **Chairman**
Sh. Anil Kumar Panwar **Member**
Sh. Dilbag Singh Sihag **Member**

APPEARANCE :

Sh. Paramjeet Singh in Comp. No. 22/2019 **Complainant in Person**
Sh. Manoj Kumar in Comp. No. 23/2019 **Complainant in Person**
Sh. Sandeep Dhaiya Comp.No.44/2019 **Counsel for Complainant**
Sh.Vikas Deep **Counsel for Complainant**
in Comp. No. 87/2019, 125/2019,
299/2018, 734/2018, 735/2018,
736/2018,737/2018,738/2018.
Sh. Shobit Phutela along with **Counsel for Respondent**
Sh. Naveen Dhamija **Architect (M/s TDI Infrastructure Ltd.)**

Order:

1. All the captioned cases are being dealt with together in this order because the grievances involved therein are similar in nature and are directed against the same respondent M/s TDI Infrastructure Pvt. Ltd. The complaints however relates to more than one project of the respondent. Facts of the lead case in **Complaint No. 22 of 2019 Parmeet Singh vs. M/s. TDI Infrastructure Pvt. Ltd.** are being taken into consideration for disposal of the matters.

2. This matter was earlier listed for hearing on 20.02.2019, when the complainant had stated that the actual measurements of the various components of carpet area and super area is less than the area for which the respondents are charging money from him. The Authority had directed both the parties to carry out actual measurements of the carpet as well as the super area at site the presence of their architects/representatives and to file an affidavit of the outcome of the proceedings. They were further asked to submit the measurement in a tabulated form. Respondent was also directed to present a comparative table of the super area which was agreed to be sold and the super area actually constructed and built at the site.

3. Today learned Counsel for respondent and his architect submitted a table showing total as well as component wise sanctioned and built up super area.

4. The case of the complainant in the lead case is that the original allottees Mrs. Shirley Narula and Mr. Vijay Kumar Narula booked a flat in the project named "Tuscan Heights- TDI City" of the respondent situated in Kundli, Sonipat on 23.03.2011. Flat No. T-03-0704 measuring 1390 sq. ft. was allotted to them on 29.08.2011. Flat Buyer Agreement (hereinafter referred to as FBA) was executed between the parties on 29.08.2011. Delivery of the flat was to be made within 30 months from the date of agreement, thus deemed date of delivery was 29.02.2014. Payments were to be made under Construction linked payment plan. Though the Allotment cum Flat Buyer Agreement has not been annexed with the complaint by the complainant but the respondent has admitted its execution with the original allottees on 29.02.2014. The respondent has also admitted that the period for offer of possession was tentatively 30 months from the date of agreement.

The complainant purchased the flat from the original allottees on 28.05.2017. A transfer certificate in his favour was issued by the respondent on 17.07.2017.The complainant applied for home loan through India Bulls Housing Finance Ltd. on 22.05.2017 for payment of

cost of flat. He has paid about Rs.36,11,938/- against the Basic Sale Price of Rs. 27,45,250/- till date. Total sale consideration inclusive of EDC/IDC was Rs.37,56,299/-. Thus, the complainant has paid more than 95% of the total sale consideration.

Another grouse of the complainant is that the respondent has issued an Offer for Fit Out Possession cum demand letter on 04.01.2018, whereby he has been informed for the first time about unilateral increase of super area by 264.1 sq. fts which amounts an increase by 19 percent of the area as agreed. The complainant objected to the unilateral increase in area, vide email dated 03.05.2018 and 13.05.2018, but the respondent has not sent any reply to the same. He also sent a legal notice dated 20.09.2018 but the respondent has failed to reply till date even to that.

From the pleadings of the complainant it is inferred that he is seeking relief against the unilateral increase in super area; early possession of the apartment; and compensation for delayed delivery of possession.

5. The respondent has denied all the allegations and has raised several objections as follows:

i) That provisions of Real Estate (Regulation and Development) Act, 2016 are not applicable to the present case because the FBA was executed between the parties much prior to

coming into force of the Act, hence the terms of agreement executed between the parties only shall be binding on them.

ii) This Authority does not have jurisdiction to entertain this complaint because this project has not been registered with the Authority. Since it is neither registered nor registerable, the Authority has no jurisdiction to entertain any complaint in this regard. It is for the reason that the respondent had applied for grant of Occupation Certificate on 09.05.2014, therefore, in terms of the provisions of Rule 2(o) of the HRERA Rules, 2017, this project cannot be categorized as an "On-going Project" therefore not registerable with this Authority.

iii) Another ground for denying jurisdiction of this Authority as claimed by the respondent is that nature of the alleged grievance of the complainant is such that the same could be agitated only before the Adjudicating Officer u/s 71 of the Act.

iv) Respondent states that delivery of possession could not be made due to pendency of an application for grant of Occupation certificate with the Director, Town & Country Planning department since 09.05.2014. Now offer for fit out possession has been made on 04.01.2018 (wrongly mentioned by respondent in reply as 14.05.2018). Now, the flat is ready for fitouts and the respondent

company has already applied for Occupation Certificate and once the occupation certificate is granted possession of the flat will be handed over.

v) The respondent has admitted the payments made by the complainant but states that an amount of Rs.12,84,374/- is still outstanding against him.

vi) That the area of the flat measuring 1390 sq. fts. at the time booking was tentative and was subject to change till the construction of the building is completed. Now, final calculation of the super area as per the sanctioned plan is 1665 sq. ft. but he has charged the complainant only for 1654 sq. ft. as mentioned in the Final accounts statement. Respondent states that he is entitled to charge for the increase in area in terms of the FBA.

6. The Authority has considered the written as well as oral pleadings of both the parties. It observes and orders as follows:-

i. **Jurisdiction**:

First of all the respondent has challenged the jurisdiction of this Authority for the reasons that the agreement between the parties was executed prior to coming into force of RERA Act. This

objection is not sustainable in view of the law laid down by this Authority in **Complaint case No.144-Sanju Jain Vs. TDI Infrastructure Ltd**. The logic and reasoning in that complaint are fully applicable on the facts of this case as well.

ii. Jurisdiction of Adjudicating Officer:

The second plea of the respondent regarding lack of the jurisdiction is that such complaint could be preferred only before the Adjudicating Officer. This also is devoid of merit. The institution of Adjudicating Officer is meant to determine the un-liquidated damages arising out of non-performance of full or a part of the contract. The core of the contract falls within the jurisdiction of the Authority only.

iii. Delay in Offer of possession/ Delivery:

Admittedly, the FBA between the parties was executed on 29.08.2011. As per Agreement delivery was to be made within 30 months from the

date of execution of FBA. Therefore, there is no controversy that as per FBA, the deemed date of possession of the unit was in Feb, 2014. The payments made by the complainant to the respondent are also admitted. The respondent further states that he had applied for OC on 09.05.2014. Further since all formalities have already been completed, he is hopeful that the Occupation Certificate will be granted soon. He states that the construction at site is complete and the offer for fit out possession has already been made on 04.01.2018 and the unit will be delivered to the complainant immediately after receipt of Occupation Certificate and payment of balance amount by the complainant.

It is admitted by the respondent that the offer of fit out possession was made in Jan,2018 whereas the deemed date of possession was Feb,2014. Accordingly, even in offering a fit out possession delay of nearly 4 years has been caused. Further, fit out possession cannot be

called a proper offer of possession. It is presumed that the application for issuance of Occupation Certificate vide letter dated 09.05.2014 was seriously defective due to which the Department of Town & Country Planning has not yet granted him the Occupation Certificate. In these circumstances it can be said that a proper offer of possession is yet to be made. Accordingly, the complainant is entitled to be compensated for the delay caused in delivery of possession from the deemed date of possession to actual date of offer of possession.

This Authority has disposed of a bunch of petitions with the lead case **Complaint No.113 of 2018 titled Madhu Sareen V/S BPTP Ltd**. There was consensus on all the issues except on the issue of compensation for delayed delivery of possession. Further logic and arguments in this regard were given by the dissenting member in **Complaint case No.49 of 2018- Parkash Chand Arohi V/s Pivotal Infrastructures Pvt. Ltd**. It is hereby ordered that the ratio of the said

judgements will be fully applicable in this case for determining the quantum of compensation for delayed delivery of possession.

iv. Increase In Area:

The complainant is also aggrieved on account of unilateral increase in area of the apartment by respondent no.1 from initial booked area of 1390 sq. fts to 1654 sq. fts i.e. increase of about 264.1 sq. fts. The Authority by way of a unanimous decision has dealt with this issue in the **Complaint case No. 607 of 2018 titled Vivek Kadyan vs. M/s TDI Infrastructure Pvt. Ltd**. The principle laid down in the said complaint shall be applicable in this case as well. said principles are recaptured as follows:

> **"Increase In Area :** The case of the complainant is that as per clause1 of the agreement dated 28.03.2013 it was agreed that the super area of the flat shall be 1499 Sq.ft. In clause (1) of the agreement definition of the super area is as shown in Annexure-

I of the agreement. The definition of the super area in Annexure-I is reproduced below:-

" Super Area for the purpose of calculating the sale price in respect of the said Apartment shall be the sum of Apartment area of the said Apartment and its pro-rata share of common areas in the entire building.

Whereas the Apartment area of the said Apartment, shall mean the entire area enclosed by its periphery walls including area under walls, columns, balconies cupboards and lofts etc. and half the area of common walls with other premises/independent Floors/Apartment , which from integral part od Said Apartment and Common area shall mean all such parts / areas in the-entire said building which the Allottee shall use by sharing with other occupants of the said building including entrance corridors and passages, staircase, mumties, service areas including but not limited to machine room, Overhead water tank, maintenance office / store etc., architectural feature, if provided and security fire control rooms.

Super Area of the Apartment provided with exclusive open terrace(s) shall also include area of such terrace(s); the purchaser however, shall not be permitted to cover such terrace(s) and shall use the same as open terrace only and in no other manner whatsoever."

It further reads as follows:-

"It is further clarified that the super area mentioned in the Agreement is tentative and for the purpose of computing sale price in respect of said Floor only and that the inclusion of common areas within the said building for the purpose of calculating super area does not give any right, title or interst in common areas to the Buyer except the right to use common areas by sharing with other occupants/allottees in the said building subject to timely payment of maintenance charges."

Clause (2) of the agreement reads as follows:

"The super area stated in this Agreement is tentative and is subject to change till the construction of the said Building is complete. The final super area of the said Floor shall be confirmed by the Company only after the construction of the said building is complete and occupation certificate is granted by the competent authority(ies). As such, the total price payable for the said Floor shall be recalculated upon confirmation by the Company of the final super area of the said Floor. If there will be an increase in super area, the Buyer agrees and undertakes to pay for the increase in super area immediately on demand by the company, without any interest, on the rate as agreed herein, and if there shall be a reduction in the super area, then the refundable amount due to the Buyer shall be adjusted by the Company from the

final installment as set forth in the Schedule of Payments in Annexure-II."

Clause (6) of the agreement provides that in the event of increase or decrease to the extent that 10% to the agreed area of the apartment, the adjustment in the payments shall be made as per the basic rate, however, if the increase or decrease is more than 10% then it shall be the company which shall have the sole discretion to fix the rate for such an increase or decrease.

The flat buyer agreement was executed on 28.3.2013. However, plans of the colony were got approved from the appropriate authority of the State Government on 12.2.2015. As per agreement the super area of the apartment was 1499 sq.ft. whereas the respondents are seeking to charge the complainant for super area measuring 1783.5 sq.ft. which represents an increase of 284.81 sq.ft. amounting to an increase of 19 percent. This is a huge variation from the agreed carpet area which has put an additional financial burden of Rs.6,84,000/- upon the complainant, which the complainants are agitating as being unfair and unjustified.

The Authority in its earlier orders dated 20.11.2018 had assumed that when the agreement was made the plans had already been approved which underwent changes later on resulting in increase in the super area. However, it has now transpired that on the date of the agreement the plans had not been approved. They were for the first time approved in February, 2015. Therefore, a comparison of the super are is obviously not possible. Authority, therefore, shall determine whether the super area for which the payment is being demanded by the respondents is justified or not.

The respondents have placed before the Authority approved plans of the apartment as well as a comparative chart of the super area. In the chart a comparison has been drawn between the areas as per the marketing plan and as per the sanctioned plan. After careful examination of the matter and after hearing both the parties, the Authority orders as follows:-

i) **Covered Area**: In the marketing plan the covered area was proposed to be 1217 sq.ft. whereas as per sanctioned plan it has become 1252 sq.ft. The

explanation for this increase is that the earlier calculation of the carpet area was done by taking external walls of 4.5" width whereas the actual external walls are of 9" width. The carpet area of an apartment is determined after accounting for full width of the external walls provided they are not shared with any other apartment. If an external wall is shared with an adjoining apartment then only 50% of the width of such external wall shall be taken into account. After discussion of this principle the complainant agrees that the carpet area of the apartment may be determined as 1252 sq.ft.

ii) **Balcony plus projection area:-** As per plan and the actual calculation at the site the balcony plus projection area comes to 208 sq.ft. In the marketing plan however, it was proposed to be 165 sq.ft. The width as well as length of the balcony has actually increased in the sanctioned plan compared with the marketing plan. Since the actual balcony is 208 sq.ft., therefore, the complainant is bound to pay for it. Accordingly the complainant shall pay for balconies of 208 sq.ft.

iii) **Shaft Area:** The Authority examined the sanctioned plan of the apartment and found that a

plumbing shaft has been provided which is enclosed on three sides and open on fourth side. Detailed examination of the shaft revealed that each of the three walls are actually external walls of one or the other apartments. Since entire external wall of the apartments has been accounted for in the carpet area of the apartment, now the same wall cannot be allowed to be charged in the form of plumbing shaft. The plumbing shaft in this case shall be considered an external open area. No additional construction, which has not been charged as carpet area, has taken place in the shaft. Also, provision of services is a part of the agreement, therefore, the cost proposed to be charged on account of the shaft is not justified at all. Accordingly, 18 sq.ft. of the shaft area is disallowed and shall be deducted from the super area of the apartment.

iv) **Circulation Area:** In the marketing plan circulation area was proposed to be 130 sq.ft., whereas 163 sq.ft. is being charged on the basis of the actual sanctioned plan. The circulation area is comprised of corridors, lift-lobbies, entrance lobbies etc. It also includes lift areas. It is intended to facilitate horizontal and vertical movement within

the apartment complex. This is a necessary feature of the housing complex. The complainants are duty bound to pay for it.

The complainants, however, shall pay only for the total circulation area divided by the total number of apartments in the complex/tower. Since calculation of the circulation area has not been challenged, the complainants shall pay for the proportionate circulation area measuring 163 sq.ft. However, in case they find that the actual circulation area is less than 163 sq.ft. they may represent accordingly to the respondent or may approach this Authority on a later date, again.

v) **Steel stair case area:** The respondents are charging 56 sq.ft. as proportionate share of the common steel stair case. Since, this is a fire escape facility, for the residents they have to pay for it. However, if the actual proportionate area of the stair case is less than 56 sq. fts., the respondent shall charge accordingly, and the complainants shall retain their rights to approach this Authority once again in case they find any discrepancy in the calculations. This, however, is further subject to the condition that this fire

escape facility has been provided in accordance with sanctioned plan.

vi) **Mumty/machine room/water tanks area:-** Typically, a Mumty is a shed made over the staircase leading to the top terrace. Machine room is a covering over the machines installed for the usage of the building, like the roof cast over the lift area and other similar facilities. Water tanks are usually kept open on the terrace area and sometime a roof is constructed over them for protection from rain etc.

The water tanks, machines, mumties etc. are a part of the basic services provided in an apartment/ complex. When a person purchases an apartment he presupposes provision of all basic services like drinking water, drainage, sewerage system, electricity supply, road and street light system etc. The cost of all such facilities is invariably a part of the overall cost of the apartments. Its cost is presumed to be included in the per square foot cost of the apartment.

Another facet of this issue is that entire super area is being charged at the same rate as the carpet area of the apartment. The carpet area of the apartment includes flooring, RCC roof, painting of the walls, conduiting, windows etc. The cost per sq.ft. of the covered area containing all these facilities is entirely different from the cost per sft. of mumty, machine rooms or the water tanks area. Therefore, the cost per square foot of these facilities is much less than the cost per square foot of the carpet area. The facilities like mumty, machine room & water tanks areas can either be considered as a part of the services in the apartments therefore, not chargeable at all, or if there is a provision in the agreement for charging extra for these facilities then the same can be charged at the rate of the actual cost incurred divided proportionately amongst all the apartments, and not at the rate per sq. ft. of the carpet area.

The agreement made between the parties in regard to these facilities is rather vague. The respondent should have precisely defined the area to be calculated under such facilities and

also the rates chargeable for the same, since costing of these facilities has not been defined properly and unambiguously, they now have to be interpreted in a reasonable manner. This Authority therefore determines that the actual cost incurred on these facilities shall be worked out and that actual cost shall be divided amongst all apartments, and that proportionate actual cost along with 15% margin shall be charged from each of the allottee and the complainants. The areas of such various facilities cannot be allowed to be charged at the same rate as the carpet area of the apartment.

Accordingly, on the basis of the above principle 104.5 Sq. ft. area shall be deducted from the 1783.5 super area charged by the respondent. The respondent accordingly shall charge the complainant for only 1783.5 (-) 104.5 = 1679 sq. ft."

v. In the present complaint two more components of the super area are disputed, which were not dealt with in abovementioned judgment. They are settled as follows:

(a) **Stilt Floor + Basement (BT) Common Area:**

In the marketing plan Stilt Floor + BT Common Area was proposed to be 25 sq.ft., whereas 28 sq.ft. is being charged on the basis of the actual sanctioned plan. This area is at the ground level slightly raised, and supported by thick columns, generally used as non-enclosed parking area. Thus, being a necessary feature of the housing complex, built for convenience of the residents. The complainants shall pay for it.

The complainant, however, shall pay only for the total Stilt Floor + BT Common Area divided by the total number of apartments in the complex/tower, which has been stated to be 28 ft. payable by the complainants. However, in case the complainant finds that the actual Stilt Floor + BT Common Area is less than 28 sq.ft. he may represent accordingly to the respondent or may approach this Authority on a later date, again.

(b) S.T.P, E.S.S, Guard Room, Panel Room, B.W. etc. area:-

Sewerage Treatment Plant (S.T.P), Electric Sub Station (E.S.S), Guard Room, Panel Room and Boundary Wall (B.W) are a part of the basic services provided in an apartment/ complex. When a person purchases an apartment he presupposes provision of all basic services like drinking water, drainage, sewerage system, electricity supply, road and street light system etc. The cost of all such facilities is invariably a part of the overall cost of the apartments. Its cost is presumed to be included in the per square foot cost of the apartment.

Another facet of this issue is that entire super area is proposed to be charged at the same rate as the carpet area of the apartment. The carpet area of the apartment includes flooring, RCC roof, painting of the walls, conduiting, windows etc. The cost per sq.ft. of the covered area containing all these facilities is entirely

different from the cost per sq. ft. of S.T.P, E.S.S, Guard Room, Panel Room, B.W. etc. area. The cost per square foot of these facilities is much less than the cost per square foot of the carpet area. The facilities like S.T.P, E.S.S, Guard Room, Panel Room, B.W. etc. area can either be considered as a part of the services in the apartments therefore, not chargeable at all, or if there is a provision in the agreement for charging extra for these facilities then the same can be charged at the rate of the actual total cost incurred divided proportionately amongst all the apartments, and not at the rate per sq. ft. of the carpet area.

The agreement made between the parties in regard to these facilities is rather vague. The respondent should have precisely defined the area to be calculated for such facilities and also the rates chargeable for the same. Since costing of these facilities has not been defined properly and unambiguously, they now have to be

interpreted in a reasonable manner. This Authority therefore determines that the actual cost incurred on these facilities shall be worked out and that actual cost shall be divided amongst all apartments, and that proportionate actual cost along with 15% margin shall be charged from each of the allottee and the complainants. The areas of such facilities cannot be allowed to be charged at the same rate as the carpet area of the apartment.

Accordingly, on the basis of the above principle 247 Sq. ft. area shall be deducted from the 1665 sq. ft. super area charged by the respondent. The respondent accordingly shall charge the complainant for only 1665 (-) 247 = 1418 sq. ft.

Applying the above principles on the facts of each of the captioned complaint, the respondent shall demand payment for the super area as shown in column (v) of the following table.

Super Area Chart

S.No.	Complaint No.	Title	Area Calculation by the respondent (in sq. fts.)	Area Allowed to be charged (in sq. fts.)
1.	22/2019	Parmeet Singh vs M/s TDI Infrastructure Pvt. Ltd.	1665	1418
2.	23/2019	Manoj Kumar vs M/s TDI Infrastructure Pvt. Ltd.	1665	1418
3.	44/2019	Mama kaur vs. M/s TDI Infrastructure Pvt. Ltd. & Ors.	1654	1488
4.	87/2019	Neena Sethi vs. M/s TDI Infrastructure Pvt. Ltd.	1456.5	1352
5.	125/2019	Asha Jindal vs. M/s TDI Infrastructure Pvt. Ltd.	1654	1488
6.	299/2018	Bimla vs. M/s TDI Infrastructure Pvt. Ltd.	1665	1418
7.	734/2018	Pavel Garg vs. M/s TDI Infrastructure Ltd.	1398	1308
8.	735/2018	Pavel Garg vs. M/s TDI Infrastructure Ltd.	1398	1308
9.	736/2018	Pavel Garg vs. M/s TDI Infrastructure Ltd.	1398	1308
10.	737/2018	Pavel Garg vs. M/s TDI Infrastructure Ltd.	1718	1635
11.	738/2018	Pavel Garg vs. M/s TDI Infrastructure Ltd.	1398	1308

vi. External Development Charges:-

External Development charges are the charges to be paid to the State Government for laying external services of the colony by the State Government agencies. This amount payable to the State Government for whole of the colony is apportioned amongst all the apartments/allottees of the colony. Accordingly, the complainant is liable to pay External Development Charges. The respondent is hereby directed to inform the total EDC payable for whole of the colony and the method of calculating proportionate share of EDC payable by the complainant. The calculation shall clearly demonstrate that EDC charged from him has been correctly worked out and correctly apportioned amongst all the apartments. Discrepancy if any shall be corrected by the respondent.

vii. Club Membership Charges:

With regard to the club membership charges the complainant states that there is no provision in the builder-buyer agreement specifying particular amount payable by the complainant as club membership charges in addition to the total sale consideration.

It is ordered that in case, the club is not in existence, the demand on account of club membership charges is unjustified and stands quashed. However, if the club is functional, the due fee thereof shall be paid by the complainant.

viii. Car parking Charges:

Another grievance of the complainant is that the respondent has charged for car parking space exclusive of basic consideration. After the perusal of the Agreement it is evident that neither there is specific provision regarding car parking charges nor any amount/charges have been quantified for the same. This Authority therefore

determines that if only an open area is allotted by the respondent to the complainant as car parking space then the respondent cannot charge any amount for that, but if he has provided any facility or constructed some shed/ garage etc. then the actual cost incurred on these facilities/shed/garage shall be worked out and that actual cost shall be divided amongst all apartments, and that proportionate actual cost shall be charged from each of the allottee and the complainant.

ix. Miscellaneous Expenses:

The respondent informs that this amount has been charged on account of the fee payable to the advocate for carrying out registration formalities etc. It is ordered that in case complainant does not wish to engage any advocate to carry out registration formalities, the demand made by the

respondents towards "Miscellaneous charges" shall be withdrawn.

x. Value Added Tax:

Value Added Tax is the tax paid to the State Government. Clause 3 of the agreement provides "the parties agree that the basic sale price of the independent floor shall not include the External Development Charges, Infrastructural Charges, Value Added Tax, Works Contract Tax or such other taxes, levies and /or charges present as well as future along with any enhancements thereof so imposed or levied by the state or any competent authority.....". further it reads " The charges towards VAT, WCT or such other taxes that may be demanded by the government have not been quantified as of now, however the purchaser shall pay the same without any demur or protest as and when the same are demanded by the company."

A plain reading of this clause indicates, that the charges on account of VAT were not quantified

at the time of agreement but the same were admitted to be payable by the complainant on demand from the company. Hence, now since the VAT charges have been quantified and demanded by the company through the final account statement, the same are justified and hence allowed.

However, an advice of the tax expert should be obtained by the respondent and communicated to the complainants along with the detailed justification thereof. Whatever amount is worked out by the taxation expert in this regard shall be paid by the complainants.

xi. Interest Free Maintenance Security:

Interest Free Maintenance Security is the money collected from all the allotees of a collective sum of money levied on the allottees of a residential/commercial project by the builder for present or future maintenances of the colony, on heads like lift maintenance, park development,

security enhancement or any other maintenance works. The builder will keeps the money under their custody, till RWA (Residential Welfare Association) is formed and thereafter, the builder has to transfer the money to the association. Thus, IFMS money is payable by the complainant. However, the respondent shall deposit it in a separate interest earning account. Till taking over of the project by RWA, the builder respondent shall render periodic account of income and expenditure to the general body of the residents of the colony.

xii. Preferential Location Charges:

After perusal of the record. it is observed by the Authority that the final account statement reflects the receipt of Rs.78,090/- and a balance of Rs. 14,789/- on account of PLC. As per clause 4 of the agreement, the complainant has to pay a fixed amount to the company on account of PLC which if calculated @ Rs. 50 per sq. ft amounted to Rs. 69,500/- . Now, since the super area of the unit of

the complainant has been increased in terms of the criterion mentioned above. The complainant is liable to pay the amount on the basis of super area allowed by this Authority, as reflected in the above Table, which comes to (1418 x 50) Rs.70,900/-.

xiii. Interest on delay in payment of instalment:

The Authority has observed in several cases that the promoter/ builders are charging interest for delay inmaking payments at the rate greater than 9 %. Interest at a rate greater than 9% has been held wrong and unconscionable. Therefore, in case the respondent has charged rate of interest greater than 9 % on account of delay in making payment of due instalment from any of the captioned complainants, he is directed to recalculate the amount on this account at the rate of 9% inconsonance with this principle.

xiv. Electric and Fire Fighting Charges:

Another grievance of the complainant is that respondent has charged for Electric and Fire Fighting

Charges exclusive of basic consideration. On perusal of the Agreement it is evident that neither there is specific provision regarding Electric and Fire Fighting Charges nor any amount/charges have been quantified for the same. This Authority therefore determines that the respondent shall work out the actual cost incurred on these facilities which shall be divided amongst all apartments, and that proportionate actual cost shall be charged from each of the allottee and the complainant.

7. Now, the respondent is directed to issue a fresh statement of accounts to the complainants after recalculating the amounts payable by the complainants and compensation payable to the complainants by the respondent in in accordance with above principles. The net payable /receivable shall be clearly communicated after accounting for each item. This accounts statement shall be issued by the respondent within a period of 45 days. Respondent shall also periodically apprise the complainant of the stage of construction of the project and the status of the application for obtaining Occupation Certificate.

Disposed of accordingly. The file be consigned to the record room and the orders be uploaded on the website of the Authority.

Dilbag Singh Sihag	Anil Kumar Panwar	Rajan Gupta
Member	Member	Chairman