

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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Date of Decision: 13.05.2022

**APPEAL NO.68 OF 2020**

Vishal Singh Rawat, Flat No.303, T2E, 3<sup>rd</sup> Floor, Block T2-E, JBB Grand, Sector 35-36, Karnal (Haryana)

...Appellant

Versus

JBB Infrastructure Pvt. Ltd., JBB Grand, 509, Ansal Bhawan, KG Marg, Connaught Place, New Delhi

2<sup>nd</sup> Address

JBB Grand, Sector 35-36, Karnal (Haryana)

...Respondent

**APPEAL NO.69 OF 2020**

1. Anju Gupta;
2. Arun Gupta, both residents of Flat No.403, T2C, 4<sup>th</sup> Floor, Block T2-C, JBB Grand, Sector 35-36, Karnal (Haryana)

...Appellants

Versus

JBB Infrastructure Pvt. Ltd., JBB Grand, 509, Ansal Bhawan, KG Marg, Connaught Place, New Delhi

2<sup>nd</sup> Address

JBB Grand, Sector 35-36, Karnal (Haryana)

...Respondent

Appeals No.68, 69 and 70 of 2020

**APPEAL NO.70 OF 2020**

Krishan Lal Dhingra, Flat No.401, T2B, 4<sup>th</sup> Floor, Block T2-B, JBB Grand, Sector 35-36, Karnal (Haryana)

...Appellant

Versus

JBB Infrastructure Pvt. Ltd., JBB Grand, 509, Ansal Bhawan, KG Marg, Connaught Place, New Delhi

2<sup>nd</sup> Address

JBB Grand, Sector 35-36, Karnal (Haryana)

...Respondent

**CORAM:**

**Justice Darshan Singh (Retd.)**  
**Shri Inderjeet Mehta**  
**Shri Anil Kumar Gupta**

**Chairman**  
**Member (Judicial)**  
**Member (Technical)**

**Argued by:** Shri Rajesh Gupta, Advocate,  
Ld. counsel for appellant-allottee.  
  
Shri Indresh Upadhyaya, Advocate,  
Ld. counsel for respondent-promoter.

**ORDER:**

**Anil Kumar Gupta, Member (Technical):**

This judgment of ours shall dispose of three appeals mentioned above having arisen out of the common order dated 06.08.2019 passed by the Ld. Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called 'the Authority').

2. We are referring the facts from Appeal No.68 of 2020 titled as *Vishal Singh Rawat Vs. JBB Infrastructure Pvt. Ltd.* taking it as lead

case whereby complaint No.462 of 2018 titled as *Vishal Singh Vs. M/s JBB Infrastructure Pvt. Ltd.*, Complaint No.465 of 2018 titled as *Anju Gupta and another Vs. M/s JBB Infrastructure Pvt. Ltd.* and Complaint No.468 of 2018 titled as *Krishan Lal Dhingra Vs. M/s JBB Infrastructure Pvt. Ltd.* filed by the appellants-allottees were disposed of by the Learned Authority with the following directions: -

“9. After hearing the submissions made by both the parties, the Authority orders as follows:

“a. Final Super area of the unit-On the basis of principles laid down in above mentioned para no.s 4, 5, 6 & 7, super area of the 3BHK units comes out to 1821.96 sq. ft. Respondent is directed to recalculate the amount payable by complainants for final super area i.e. 1821.96 sq. ft. In case, amount already received by the respondent is in excess then he shall refund the excess amount to the complainants.

“b. Charges for electricity and water supply. Authority vide its order dated 07.03.2019 had directed the respondent to supply electricity and water to the complainant during pendency of these complaints at the same rate as applicable in case of other allottees of the project. Further, in the 7<sup>th</sup> hearing of the matter on 11.04.2019, complainant had objected to the demand

*letter of Rs.79,000/- raised by respondent on account of electricity dues, water charges and maintenance charges on the ground that said charges except electricity dues are levied on the basis of super area and facilities provided within the project, since both these issues are in dispute, the maintenance charges are not recoverable at present.*

*“Relevant part of the order dated 11.04.2019 of the authority is reproduced below:-*

*“Complainants agreed to pay electricity dues but resisted payment of maintenance charges on the ground that the said charges are levied on the basis of super area and facilities provided within the project, and since both these issues are in dispute between the parties, the maintenance charges are not recoverable at present.*

*After hearing both the parties the Authority directs the complainant to pay full amount of electricity dues and 50% other maintenance charges which shall to be presumed towards dues of water supply. The respondent is directed to restore electricity supply at par with other allottees/residents of project after deposition of these dues by the complainants. Remaining*

*charges, whether justified or not, will be taken for consideration at the time of final disposal of the case.”*

*“Accordingly, the respondent is directed to raise the demand of electricity dues and water charges after adjusting the amount, if any, paid by the complainant in compliance of order dated 11.04.2019, at the same rate as applicable to other allottees of the project.*

*“c. Maintenance charges-Clause 14.4 of buyer’s agreement deals with the fixation of total maintenance charges. Same is reproduced below for ready reference:*

*“Fixation of total maintenance charges-the total maintenance charges as more elaborately described in the Tripartite maintenance agreement (draft given in annexure-IV) will be fixed by the maintenance agency on an estimated bases of the maintenance costs to be incurred for the forthcoming financial year. Maintenance charges would be levied from the date of issue of occupation certificate for the said complex/ date of allotment, whichever is later, and the apartment allottee undertakes to pay the same promptly. The estimates of the maintenance agency shall be*

*final and binding on the apartment allottee. The maintenance charges shall be recovered on such estimated basis on monthly/quarterly intervals as may be decided by the maintenance agency and adjusted against the actual audited expenses as determined at the end of the financial year and any surplus/deficit thereof shall be carried forward and adjusted in the maintenance bills of the subsequent financial year. The apartment allottee agrees and undertakes to pay the maintenance bill on or before due date as intimated by the maintenance agency.*

*“Regarding this issue, the respondent is directed to furnish a statement of the amounts collected and spent for maintenance of project in terms of clause 14.4 of agreement to RWA of the said project. The RWA shall consider the statement and decide the amount payable by the complainants as maintenance charges.*

*“d. Refund of paid amount- it is an admitted fact that complainant is residing in his unit since November, 2016 and time period of almost 3 years has already elapsed. In the prevailing circumstances, request of*

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*refund is not acceptable as the complainant has already having possession of the unit the last 3 years. Further, the project in question had received part Occupation Certificate on 20.06.2017.*

*“e. Interest charged on delay payments- It is alleged by the complainant that respondent had charged 24% interest rate on delay payment and the same is unreasonable and arbitrary. As per law laid down by this Authority this charge cannot be more than 9% (Nine Percent) per annum. Respondent shall be recalculated this amount accordingly.”*

3. As per the averments in the complaint filed by the appellant-allottee, he has purchased Dwelling Unit 3BHK, bearing Flat No.302-A, Block No.T-2E, 3<sup>rd</sup> Floor, JBB Grand, Sector 35, Karnal, District Karnal (Haryana) measuring 1670 square feet. The flat was booked on 18.01.2011. The Apartment Buyer's Agreement (hereinafter called, the Agreement) was signed between respondent-promoter and appellant-allottee on 08.01.2013. As per agreement, the appellant-allottee was required to pay Rs.32,71,370/- only in installments within a period of 36 months. The flat was initially purchased by Shri Gaurav Chahal and Shri B.S. Chahal in the year 2010 and was repurchased by the appellant-allottee from

them in 2013. The allotment was substituted in the name of the appellant-allottee by the respondent-promoter.

4. It was further pleaded that the possession was to be delivered within a period of 36 months and, therefore, he was expecting that the possession would be delivered by July-September 2013. It was also pleaded that the respondent-promoter took more than 95% payment from the appellant-allottee within the period of 36 months. However, there is a delay of 42 months from the due date of delivery of possession on the part of the respondent-promoter. It was further pleaded the respondent-promoter is alleging an increase in the super area from 1670 square feet to 1899 square feet (for 3 bedroom flat).

5. It was further pleaded that as per statement of accounts, the appellant-allottee paid Rs.35,40,671/- (including basic price Rs.29,15,820/-, covered car parking Rs.80,000/-, development charges Rs.2,75,550/-) till the date of filing of complaint, whereas the actual price of the dwelling unit as per the Agreement was Rs.32,71,370/-.

6. It was further pleaded that respondent-promoter obtained partial Occupation Certificate (OC) from the Director, Town & Country Planning Department, on dated 10.07.2017.

7. It was further pleaded that the respondent-promoter is only allowing the load of less than 1KW. The appellant-allottee even filed



an application before Superintendent of Police, Karnal which was forwarded to the Community Liaison Group (CLG) on 02.06.2018. The Community Liaison Group (CLG) opened a case No.558 on 06.06.2018 on the complaint of the appellant-allottee and other applicants. The appellant-allottee moved a representation before the Superintendent of Police, Karnal as well as CM Window on 31.05.2018. The said representations were referred to Community Liaison Group (CLG) Committee.

8. It was further pleaded that since the appellant-allottee was not able to procure the basic amenities for living in the dwelling unit approached Hon'ble High Court for seeking uninterrupted supply of water and electricity. The respondent-promoter was directed by the Hon'ble High Court vide order dated 07.08.2018 to immediately provide uninterrupted supply of water and electricity. Also, the respondent-promoter was directed to approach the RERA within one week of the receipt of the certified copy of the order. Also, RERA has been directed to decide the grievances of the complainants within three months thereafter. It was further contended that, till the filing of complaint, there was no relief to the appellant-allottee and others.

9. The appellant-allottee pleaded numerous defects in structure, deficiency in services, over charging and delays in handing over the unit and sought the following reliefs in the complaint filed before the Authority.

*“Relief sought:*

*In view of the facts mentioned in paragraph 4 above, the complainants pray for the following reliefs:*

- i. Director the Respondents to pay compensation and interest to the Complainant at the rate of 24% from Sep 2013 till date i.e. promised date of handing over the possession.*
- ii. Direct the Respondents to immediately restore the electricity load (7 KW) to the complainants.*
- iii. Direct the respondents to supply uninterrupted supply of electricity as well as other utilities to the complainants.*
- iv. Direct the respondent to provide requisite and proper illumination/lighting on the street.*
- v. Direct the respondents to get registered the conveyance deeds in favor of complainants.*
- vi. Direct the Respondent company to withdraw the demand notice for cost escalation and cancellation notices as well as the civil suits filed against the complainants.*
- vii. Direct the respondents to allow the complainants to use club facilities as well as the common facilities of the said project.*

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- viii. *Takeover of the project and get it executed from a suitable Government Agency to avoid any further harassment/torture to the complainants.*
- ix. *The rate of interest in compensation after taking into account the following:*
- (a) *The rate of interest of 24% is charged by the Respondent Company for delayed payment by the allottees.*
- (b) *There is an exorbitant delay of 42 months (3 years 6 months) in handing over the possession.*
- (c) *The entire payments as per payment schedule were made within 36 months of the initiation of the project and there is a diversion of funds by the Respondent Company and its promoters for purposes other than construction and development of the said project.*
- (d) *The cost of the funds paid to the respondent company and unjust enrichment by the respondent company.*
- (e) *The complainant being deprived of use and possession of the apartment for more than 3 and half years in spite of making timely payment of all the installments.*
- x. *Direct the respondent company to give a credit to the Complainant by waiving the last installment.*
- xi. *Direct the respondent company to refund allied charges paid (Rs.3,79,872/-) by the complainants for club and*

*firefighting equipment along with interest @ 24% per annum.*

- xii. Direct the respondent company to pay complainants Rs.10 lacs for mental agony, harassment and sheer helplessness suffered by them at the hands of Respondent company.*
- xiii. Direct the respondent company to pay complainants a sum of Rs.1 lac towards litigation expenses for prosecuting the present complainants.*
- xiv. Direct the respondent company to refund the complainant the entire money of Rs.35,40,671/- along with the interest of 24% per annum from the date of payment till realization.*
- xv. To pass any such order that this Hon'ble Court may deem fit in the interest of justice."*

10. Respondent-promoter contested the complaint inter alia on the grounds that it has right to change the layout plan as per Clause B, C and D of the Agreement. The appellant-allottee had already given an undertaking in this regard which has been concealed by him while filing the complaint.

11. It was further pleaded that the complaint is not maintainable as the appellant-allottee has already filed the consumer

complaint before the State Consumer Forum and the same is pending adjudication.

12. It was further pleaded that the appellant-allottee is himself a defaulter and has not paid a huge sum of Rs.16,82,153/- which he was under obligation to pay as per the Agreement.

13. It was further pleaded that the flat in question was initially allotted to Mr. Gaurav Chahal and Mr. B.S. Chahal. As per Clause No.8 of the application form signed by the above said allottees, it was undertaken by the intending allottee that he would "before taking the possession of the unit apartment must clear all the dues towards the apartment and then only the conveyance deed for the said apartment would be executed in favour of intending allottee." The present complainant being the assignee of the first allottee has stepped into the shoes of the original allottee, and, therefore, is bound by the terms and conditions of the allotment form as well as the Agreement.

14. It was further pleaded that the appellant-allottee is a defaulter in the making legitimate payments on time, and, therefore, does not fall into the category of eligible buyer to get the compensation for delay in handing over the possession of the unit by the respondent-promoter. The respondent-promoter has already compensated the eligible buyers as per the Agreement and PUC executed by the buyers for handing over the possession of their respective flats. The appellant-allottee is himself a defaulter and has not paid huge sum of

Rs.16,82,153/-, which he was under obligation to pay as per the Agreement. The project is complete since long and the respondent-promoter had been requesting the complainant to clear the dues and take possession of the flat in question. The respondent-promoter possess all statutory permissions to handover the possession. However, the appellant-allottee chose to take law in his hands and broke open locks of the flat and illegally and unlawfully trespassed into the flat and as of date he is in unauthorized and illegal possession of the flat in question for which the respondent-promoter has initiated legal proceedings under the applicable and prevailing laws.

15. All other pleas raised by the complainant in his complaint were controverted. Certain legal issues were also raised and it was pleaded that the appellant-allottee is not entitled for any relief and thus, prayed for dismissal of the complaint.

16. After hearing Ld. counsel for both the parties and appreciating the material on record, the Ld. Authority disposed of the complaint filed by the appellant-allottee vide impugned order dated 06.08.2019 issuing directions already reproduced in the upper part of this order.

17. We have heard Ld. counsel for the parties and have meticulously examined the record of the case.

18. Both the parties have filed their written arguments/submissions.

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19. Initiating the arguments, Shri Rajesh Gupta, Advocate, counsel for the appellant-allottee contended that the schedule of payment attached as Annexure-I clearly shows that the payment plan was construction linked and only Rs.1,45,791/- was to be given at the time of possession out of total sale consideration of Rs.32,71,370/-. It was further contended that as per Clause 8 of the Agreement "Time is Essence" and allottee was forced to make payment within stipulated time as per schedule, failing which the amount was payable with 21% interest and if the penal clause of 3% extra interest is added than the total interest payable by the appellant-allottee becomes 24% per annum on delayed payment.

20. In the present case the payments were made on due dates from 7.01.2011 onwards totaling Rs.35,40,671/-. The respondents have demanded an additional illegal amount to the tune of Rs.15,22,900/- and with this additional amount the total cost of the flat would become is Rs.47,94,277/-.

21. It was further contended that as per Clause 10.1 of the Agreement the possession was to be handed over to the appellant-allottee within 3 years of the Agreement dated 08.01.2013 i.e. on or before 08.01.2016, whereas it should have been 03 years from 02.12.2010 and with this date, the date of possession comes out to be on or before 02.12.2013 as per the date fixed for possession of similarly situated co-allottees. He contended that the appellant

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purchased the flat from the original allottee who purchased the flat in 2010, therefore, terms and conditions for handing over the possession of the original allottee should be applicable on him.

22. It was further contended that the possession of the apartment-allottee in question was handed over to the appellant-allottee in November 2016 and the Occupation Certificate (OC) was issued to the respondent-promoter on 20.06.2017, and, therefore, there is an admitted delay in handing over of the possession from due date of 02.12.2013 to 20.06.2017 i.e. for 03 years 06 months. If the occupation is considered to be in November, 2016 (actually possession) then there is a delay of 03 years. It was further contended that the appellant-allottee has lost interest on paid-up amount, and, therefore, is also required to be compensated by Rs.25,000/- per month monthly rent paid by the appellant-allottee for the above period and in addition to the above interest @ Highest SBI MCLR + 2% for delayed period possession from 02.12.2013 to 20.6.2017 be also allowed.

23. He contended that the 'PUC' now being supplied by the respondent was not part of the proceedings in the complaint and also this document is undated and unstamped and, therefore, cannot be relied upon.

24. It was further contended that the super area calculated by the Expert Agency "K Y Consultant Pvt. Ltd." under heading "C. Stilt



Floor Common Area” by adding stilt area of 5579 Square feet and per flat area of 62.58 sq ft as basement circular area and area of Entry & Exit Ramp in its report for Particular Tower of T2-E and ordered by Ld. RERA, Panchkula to be included in super area of apartment is based upon surmises and conjectures, whereas there is no area left unallocated under stilt floor area.

25. He contended that the list of common area which are to be included in computing the super area is given in Part A of Annexure II of the agreement. However, in this list the stilts area, circulation area and area of ramps is not mentioned to be included in computing the super area. Therefore, the said area of 5579 square feet and 62.58 Square feet by the Expert of K.Y. Consultant and allowed by the Ld. Authority is not correct. He contended that the whole of the basement stood allotted/kept reserved as covered parking and covered parking area is specifically excluded from computing the super area as per Part C of Annexure II of the agreement. He further contended that the basement area is also not mentioned, in Part A of Annexure II, to be included in computing the super area. He contended that no other areas of the building/tower can be included in computing the super area other than those mentioned in Part A of Annexure II of the Agreement. Therefore, it was contended that the stilt area of 5579 Square feet and per flat area of 62.58 sq ft as basement circular area and area of Entry & Exit Ramp as ordered by the Ld. Authority to be

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included in the super area is liable to be set aside and to be excluded in the super area as follows:

5579 Sq. Feet divided by 32 flats	=174.34	(Shown as non-
		parking area under
		stilt)
	= 62.58	
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	=236.92 Sq Ft	
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He contended that, therefore, the total super area of flat to be charged from the appellant-allottee comes to 1584 sq ft (1821.96 – 236.92)

26. It was further contented that as the appellant-allottee is perusing the remedies of his grievance in court of law against the respondent-promoter, so the respondent is not providing the adequate power supply and is supplying 1KW against 7 KW requirement and sought direction to the respondent-promoter for not disturbing the power supply.

27. With the above said contentions, the appellant-allottee sought following relief:

- 1) Exclusion of stilt area of 5579 Square feet and per flat area of 62.58 sq ft as basement circular area and area of Entry & Exit Ramp in computing super area;
- 2) delayed possession charges;
- 3) Direction to respondent for supplying 7KW of Electric Power.

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28. Per contra, Ld. counsel for the respondent-promoter contended that the appellant-allottee has grossly defaulted in making payments originally raised at the relevant time in 2016, which they were under an obligation to pay as per the Agreement. As per the revised document made as per the direction of the Ld. Authority, the appellant-allottee is liable to pay a sum of Rs.13,48,636.73 as on 29.12.2019.

29. It was further contended that the appellant-allottee has failed to mention that he has given an undertaking and willingly consented to right the change of layout plan and the change in the layout plan would be accepted by the appellant-allottee as per Clause B, C and D of the Agreement.

30. It was further contended that the Ld. Authority in order to re-check the measurement of the super area, appointed KY Consultant Pvt. Ltd. as an independent expert to visit the site and file the expert report showing the calculation of the super area. The Agency was led by Mr. K.K. Bhugra, Director (retired as Engineer-in-Chief, after heading the engineering wing of the State Level Urban Development Authority of Haryana for 11 years) visited the site several time and in presence of both the parties took measurements and filed the expert report before the Ld. Authority. The Ld. Authority passed the impugned final order dated 06.08.2019 based on the calculations in the report submitted by the expert appointed for this purpose. The

expert was appointed by the Ld. Authority vide its order dated 31.01.2019 and it was directed in the same order that the expert shall carry out measurement of the super area in the presence of both the parties. Ld. Authority after taking into consideration the report of the expert as well as objections of both the parties to the report concluded that the calculations in respect of the common area is correct.

31. It was further contended that all the 206 number car parking have been allotted/kept reserved in the basement of tower and no parking is allotted in the stilt floor. He has also contended that no car parking will be allotted in the stilt floor of the Tower and in future also no car parking would be allotted in the stilts. The stilts are being used as the car parking space to be commonly used by all the allottees or by their guests as a common area facility and thus, this has been correctly considered by the expert so appointed by the Learned Authority.

32. It was further contended that the appellant-allottee has not taken the possession of the unit lawfully. The litigation in this respect is pending adjudication before the appropriate court. The flat was offered to the appellant-allottee to carry out the fit out alone, however, the appellant-allottee under the garb of carrying out fit out work, illegally occupied the flat in question and the lis between the parties in respect of the same is pending before the Civil Court, Karnal. The

project was completed in July 2016, the occupation certificate was received on 02.06.2017.

33. It was further contended that FIR lodged against the respondent-promoter was intended to create pressure on the respondent-promoter so that the appellant-allottee and other client who supported the appellant-allottee could evade their liability to make the payment as per Agreement.

34. It was further contended that the final super area of the towers was measured by the consultant in the presence of the appellant-allottee and every measurement sheet was signed by the parties. The appellant-allottee has falsely stated that no consent for the appointment was given by the parties however, all of the orders passed by the Ld. Authority expressly record consent of the parties.

35. It was contended that a 'PUC' between the appellant-allottee and the respondent was executed and as per this document, the possession was to be handed over within a period of 45 months i.e. (36 months + 9 months grace period) from the date of the agreement within the extend period of periods as decided by the company. There is no delay in handing over the possession and, thus, the appellant-allottee is not entitled for any relief.

36. It was further contended by the respondent that the appellant has not taken any plea in the grounds of appeal regarding delayed possession charges and regarding electric power load to them.

Thus, he contended that the only plea survives is regarding super area of the unit as arrived at by the Ld. Authority in the impugned order, which is also without any merit and thus, he prayed for dismissal of the appeal.

37. We have duly considered the aforesaid contentions.

38. **Super Area:**

(a) Ld. counsel for the appellant is contesting that the Stilt floor non-parking area depicted as stilt area of 5579 Square feet and per flat area of 62.58 sq ft as basement circular area and area of Entry & Exit Ramp in the report of the K.Y. Consultants should not form part of the super area. The common area to be included in the super area is given in Part A of Annexure II of the Agreement and the area of the stilts, circulation area and area ramps of basement are not covered in the Part A of Annexure II to be included in computing the super area. It is also the contention of the appellant-allottee that no other areas of the Tower can be included in the computation of the super area other than those mentioned in 'Part A of Annexure II, 'common areas & facilities.' The Part A of Annexure II is reproduced as below:-

*“Annexure – II*

*JBB Grand*

*Common Areas & Facilities*

*“PART A:*

*List of common Areas & Facilities for use of Apartment within JBB Grand Proportionate area of which is included in the computation of Super Area of the said Apartment.*

1. *Entrance Lobby and driver's/common toilet at Ground Floor.*
2. *Staircases and munties.*
3. *Lifts.*
4. *Lift Lobbies including lighting and fire fighting equipments thereof.*
5. *Common passages/Corridors including lighting and fire fighting equipments thereof.*
6. *Lifts Machine Room.*
7. *Overhead Water Tanks.*
8. *Electrical/Plumbing/Fire/Lift Shafts and service ledges.*
9. *Club including Gymnasium, swimming pool, toilets/change room, multipurpose rooms, pantry, office & related services/equipment points.*
10. *Security/Fire Control Room.*
11. *Services/Maintenance areas/offices of building."*

**(b)** It is also the contention of the appellant-allottee that as per Part C of Annexure II of the Agreement, covered car parking space on stilt floor level is excluded from the computation of the super area of the apartment and also no area in the basement is left after allocation of all the car parkings in the basement. Part C of Annexure II along with clause 1.9 of the Agreement is reproduced as under:-

*"Part C:*

*Reserved Covered/open parking space within JBB Grand individually allotted for his/her exclusive use and excluded from the computation of Super Area of the said Apartment:*

- 1. Covered car parking spaces on stilt floor level.*
- 2. Covered car parking spaces in basements of towers.*
- 3. Car parking spaces around building(s) for visitors shall be for common use of Apartment in JBB Grand.”*

*“Clause 1.9*

*The apartment allottee agrees that the reserved covered/ open parking space(s) as requested and allotted to him/her for exclusive use shall be understood to be together with the apartment and the same shall not have independent legal entity detached from said apartment. The Apartment Allottees undertakes not to sell/transfer/deal with the reserved parking space independent of the said apartment. The Apartment allottees undertakes to park his/her vehicle in the parking space allotted to him/her and not anywhere else in the said complex. It is specifically made clear and the apartment allottees agrees that the service areas in the basement provide anywhere in the said complex shall be kept reserved for service, use by maintenance staff. Etc and shall not be used by the apartment allottees for parking his/her vehicles. The apartment allottees agrees that all such reserved car parking spaces allotted to the occupants of the building(s)/ said complex shall not form part of common areas and facilities of the said apartment/ any building constructed on the said site for the purpose of declaration to be filed by the company under Haryana Apartment Ownership Act, 1983. The apartment allottees agrees and confirms that the*



*reserved parking space allotted to him/her shall automatically be cancelled in the event of cancellation, surrender, relinquishment; re-possession etc. of the said apartment under any of the provisions of this agreement. All clauses of this agreement pertaining to use, possession, cancellation etc. shall apply mutatis mutandis to the said parking spaces wherever application.”*

**(c)** The Ld. Counsel of respondent-promoter has contended that all the 206 number of car parkings have been allotted/kept reserved in the basement of the tower. He has also stated that no car parking has been allotted at the stilt floor of the tower and in future also, no car parking would be allotted in the stilts. The stilts are being used as the car parking space to be commonly used by all the allottees or by their guests as a common area facility and thus, this has been correctly considered by the expert to be included in the super area and rightly allowed by the Ld. Authority.

**(d)** He also contended that as per Clause 1.5(i), (iv), (v) and 1.6(iii) of the agreement, it is clear that except the car parking area specifically allotted to the allottee, all areas of the stilts as well as the basement are the common areas and are to be included in the super area. Clause Nos.1.5 (i), (iv), (v) and 1.6(ii) of the agreement are reproduced as under:-

*“Clause 1.5*

- i) The Apartment Allottee shall also have undivided proportionate share in the common areas and facilities*

*within the said Building and other common facilities, if any which may be located within or outside the Apartment Buildings (as listed in Part A of Annexure II). As the share of Apartment in the common areas and facilities is undivided and cannot be separated this would require him / her to use the common areas and facilities within the said Building only (as listed in Part A of Annexure II) harmoniously along with other occupants, maintenance staff etc., without causing any inconvenience or hindrance to them. Further it is clearly understood and agreed by the Apartment Allottee that even if the common areas and facilities within the said Building only (as listed in Part A of Annexure II) is included in the computation of super area, the right of Apartment Allottees to use the common areas and facilities shall be within the said Building only (as listed in Part A of Annexure II) and shall always be subject to the timely payment of maintenance charges. It is further made abundantly clear and the Apartment Allottee has understood that he / she shall be entitled to undivided proportionate share in no other common areas and facilities except the common areas and facilities within the said Building only as listed in Part A of Annexure II.*

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- iv) *In addition to the above, though not forming a part of the computation of super area, the Apartment Allottee shall be entitled, without any ownership rights, to exclusively use the reserved covered/ open parking space specifically allotted to him for parking his / her vehicle in terms of Clause (1.10) below and as listed in Part-C of Annexure II.*
- v) *In addition to above though not forming a part of the computation of super area for which price is charged, the Apartment Allottee shall also be entitled for use only, the general common areas and facilities within the said Complex limited to and precisely listed in Annexure II, Part-B, which may be within or outside the land underneath the said Building earmarked as common areas by all the occupants of all the buildings to be constructed on the said Portion of Land. However, such general common areas and facilities earmarked for common use of all occupants shall not include the exclusive reserved parking space in stilts and in basements, individually allotted to the respective occupants for their use.*

*Clause 1.6*

- iii. *The Apartment Allottee confirms and represents that he/ she has not made any payment to the Company in any*

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*manner whatsoever and the Apartment Allottee hereby agrees that the Company has not indicated/ promised/ represented/ given any impression of any kind in an explicit or implicit manner whatsoever, that the Apartment Allottee shall have any right, title or interest of any kind whatsoever in any land, buildings, common areas, facilities and amenities falling outside the land underneath the said Building save and except the use of general common areas (for the purpose of direct exit to a nearest public street, nearest road only) to be identified by the Company in its sole discretion and such identification by the Company in its plans now or in future shall be final, conclusive and binding on the Apartment Allottee. Further the Company has made clear to the Apartment Allottee that it shall be carrying out extensive developmental/ construction activities now and for many decades in future in the entire area falling outside land underneath the said Building in which his/ her Apartment is located and that the Apartment Allottee has confirmed that he/ she shall not raise any objection or make any claims or fail to pay installments in time as stipulated in Schedule of Payments in Annexure I on account of inconvenience, if any, which may allege to be suffered by him/her due to such development/ construction or its incidental/ related*

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*activities. It is made clear by the Company and agreed by the Apartment Allottee that all rights including the rights of ownership of land(s), facilities and amenities (other than those within the said Building and the land underneath the said Building only) shall vest solely with the Company, its Associate companies, its subsidiary companies who shall alone have the sole and absolute authority to deal in any manner with such land(s), facilities and amenities including but not limited to creation of further rights in favour of any other party by way of sale, transfer, lease, collaboration, joint venture, operation and management or any other mode including transfer to government, semi-government, any other authority, body, any person, institution, trust and/or any local body(ies) which the Company may deem fit in its sole discretion. The Company relying in good faith on this specific undertaking of Apartment Allottee in this Agreement has agreed to accept the application and allot the said Apartment and this undertaking shall survive throughout the occupancy of the Apartment by the APARTMENT ALLOTTEE, his /her legal representative, successors, administrators, executors, assigns etc. It is made clear by the Company and the Apartment Allottee agrees that the said Apartment along with car parking space(s) as allotted to the Apartment*

*Allottee will be treated as a single indivisible unit for all purposes including but not limited to Haryana Apartment Ownership Act, 1983. The Apartment Allottee further agrees that the Common areas and facilities within / outside apartment buildings (as listed in Part A of Annexure II) are for common use of all the occupants of the said Building and that the general common areas and facilities within the said Complex which are outside the land underneath the said Building (excluding reserved parking areas) as listed in Part B of Annexure II are for common use of occupants of all the buildings to be constructed on the said Portion of Land. However, it is specifically made clear to the Apartment Allottee that his / her right to use such common areas and facilities within the said Building (as listed in Part A of Annexure II) and general common areas and facilities (as listed in Part B of Annexure II) falling outside the land underneath the said Building (excluding reserved parking areas for exclusive use) but within the said Complex shall be limited to the areas within the said Complex as may be included in the Declaration which may be filed by the Company at its sole discretion in terms of the Haryana Apartment Ownership Act, 1983 or any other amendment(s) or statutory modification(s) or re-enactments thereof or under the*

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*provisions of any other applicable law(s) and the Apartment Allottee hereby agrees that such Declaration shall be binding upon the Apartment Allottee. The Apartment Allottee has assured the Company to faithfully abide by such declaration. The common areas and facilities within the said Building (as listed in Part A of Annexure II) and the general common areas and facilities within the said Complex (as listed in Part B of Annexure II) shall be available for use by the Apartment Allottee subject to the timely payment of maintenance charges on or before due date, he / she shall not have the right to use such common areas and facilities and such general common areas and facilities.”*

**(e)** During the pendency of the complaint, the parties had not agreed with non-parking area depicted as 5579 square feet in the report of the expert. The appellant-complainant had pleaded that the said non-parking area should not form part of super area in terms of Part C of Annexure II of agreement. Shri Bhugra ‘Expert’ appointed by the Ld. Authority clarified and part of impugned order in this regard is reproduced as under:

*“While clarifying the issue of non-parking area, Sh. Bhugra stated that there is only one basement in the project with entry and exit ramps. Area of basement, though free from*

*FAR, is considered common built up area, therefore a part of the super area for the purpose of chargeable super built-up area.*

*“As per the calculation submitted by the respondent, parking area of 206 units have been deleted from the chargeable area in the light of the fact that the respondent has sold total parking lots and rest of the area was distributed over total 206 remaining flats in proportion to FAR area. Respondent argue that this seems to be unjustified as the area covered under parking will also be used as circulation area and as such 32 sq m per parking shall be deducted as per national building code. National building code chapter III clause 10.3 (C) which reads as under:-*

*“Area for each equivalent car space inclusive off circulation area is 23 Sq m for open parking 28 sq m for ground floor covered parking and 32 sq m for basement*

*“The rest of the area shall be chargeable in terms of given formula – (FAR area of typical tower X Total common circular area outside tower (A+ B) / (Total FAR area of all towers X No. of units in a typical Tower.”*

The Ld. Authority by taking into account the clarification provided by Sh. K K Bhugra decided that the calculation submitted in the report



of the expert for other non-parking area is correct and appellant-complaints are liable to pay for the unallotted stilt/basement car parking area as a part of super area.

**(f)** There is no dispute as far as the quantity of area depicted as non – parking stilt floor area of 5579 Square feet and per flat area of 62.58 sq ft as basement circular area and area of Entry & Exit Ramp as calculated by Sh. K.K. Bhugra of the K.Y. Consultant and allowed by the Learned authority. The dispute is regarding the issue that the said area of 5579 sq. ft. and 62.58 sq. ft. are to be included in the calculation of super area or not.

**(g)** As per Clause No.1.5 (i), the allottee is entitled to undivided proportionate share in no other common areas and facilities except the common areas and facilities within the building only as listed in Part A of Annexure II. As per Clause 1.5(iv), the allottee is entitled, without any ownership rights, to exclusively use the reserved covered/open parking space specifically allotted to him for parking his vehicle. As per Clause 1.5(v), the allottee is entitled for use only, the general common areas and facilities within the said complex limited and precisely listed in Annexure II Part B. However, such general common areas and facilities earmarked for common use of all occupants shall not include the exclusive reserved parking space in stilts and basements, individually allotted to the respective occupants for their use. As per Clause 1.6(iii), the apartment allottee

shall not have any right, title or interest of any kind whatsoever in any land, buildings, common areas, facilities and amenities falling outside the land underneath the said building. We find no merit in the argument of the respondent that as per Clause 1.5(i), (iv), (v) and 1.6(iii) as well as Annexure II Part 'A' 'B' and 'C' of the agreement, except the car parking area specifically allotted to the allottee, all areas of the stilts as well as the basement are the common areas and are to be included in the super area. There is no specific or implied provision in the above said clauses of the agreement that circulation area, ramps in the basement are to be included in computation of super area.

**(h)** The stilts are being used as a common facility for all the allottees for car parking for their guests. The stilt floor area and circulation area and area of ramps for entry and exit at the basement is not mentioned in list of common areas to be included in computation of super area as given in Part 'A' of annexure II of the agreement. However, as per the provisions of Part 'C' of Annexure II, the reserved Covered / open parking space individually allotted for exclusive use on stilt floor and basement are excluded for computation of Super area. This means apart from the exclusively allotted space at the stilt and at the basement for car parking to the allottees, rest of the area at the stilt floor and basement is to be included in super area. Thus, the opinion of the expert that stilts are built up non-parking area and circulation area and area of ramps for

entry and exit at the basement are built areas and are to be included in computation of super area gets strength from the implication of part 'C' of annexure II of the agreement. In view of our aforesaid observation, the order of the authority with respect to inclusion of stilt area, circulation area and area of ramps for entry and exit of vehicles at the basement is allowed to be added in computing the super area of the unit of the appellant is in order and no interference is required.

39. **Delay possession interest:**

In the complaint before the Ld. Authority, the appellants have sought relief of interest @ 24% for delay in handing over the possession from Sep 2013 till the filing of the complaint. The Ld. authority had not granted any relief to the appellants in the impugned order. The rights of the appellants for the relief on account of delay in handing over the possession of the flat to them have accrued as per due date of possession given in the agreement. The appellants have not taken any plea in the grounds of appeals and have raked up the issue only in their written submissions and during arguments. We are of the opinion that substantial rights of the parties should be decided on merits rather than the technicalities and therefore, the delay possessions charges as per their entitlement are as follows: -

**In Appeal No.68 of 2020:**

The appellant-allottee has contended that as per Clause 10.1 of the agreement, possession was to be handed over to the

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appellant-allottee within 3 years of the Agreement dated 08.01.2013 i.e. on or before 08.01.2016, whereas it should have been three years from 02.12.2010 and possession should have been given on or before 02.12.2013 as per the date fixed for possession of similarly situated co-allottees. The appellant has purchased the flat from the original allottees who purchased the flat from the respondent in the year 2010. The Agreement between the appellant-allottee and respondent-promoter was executed on 08.01.2013. The appellant-allottee admittedly occupied the flat in November, 2016. The part occupation certificate was issued on 20.06.2017. The respondent has contended that a PUC between the appellant-allottee and the respondent was executed and as per this document, the possession was to be handed over within a period of 45 months i.e. (36 months + 9 months grace period) for the date of agreement. The appellant is contesting this document as it was not the part of the complaint and is also undated and unstamped. So, this document is not being relied upon. The appellant has become entitled for interest at the prescribed rate i.e. @ 9.3% per annum (Highest SBI MCLR +2% as per rule 15 of the Rules) for the period w.e.f. 08.01.2016 to November, 2016, when he actually occupied the said flat ( i.e. for a period of 9 months) on the amount deposited by the appellants with the promoter. If any amount has been deposited by the appellant with the respondent after the due date of possession, then the interest would be payable from the date

of the deposit of that amount till the date of actual possession i.e November, 2016.

**In Appeal No.69 of 2020:**

The complaint before the Ld authority and appeal before us has been filed by the present appellants "Anju Gupta and Arun Gupta". However, the agreement dated 08.12.2010 attached with this appeal is between Om Parkash and Dharmander kumar on the one side and the respondent on the other side. This agreement has not been agitated by the respondent at any point of time during the pendency of the complaint or before this forum rather the respondent is treating the appellant to be assignee of the original allottee. So, this agreement dated 08.12.2010 is subsisting between the parties and the terms and conditions of this agreement are applicable to determine the rights of the parties. The appellants have contended that as per Clause 10.1 of the agreement, possession was to be handed over to the appellant within 3 years of the Agreement dated 08.12.2010 i.e. on or before 08.12.2013. The appellants admittedly occupied the flat in November, 2016. The part occupation certificate was issued on 20.06.2017. The appellants have become entitled for interest at the prescribed rate i.e. @ 9.3% per annum (Highest SBI MCLR +2% as per rule 15 of the Rules) for the period w.e.f. 08.012.2013 to November, 2016, when they actually occupied the said flat (i.e. for a period of 2 years and 11 months) on the amount

deposited by the appellants with the promoter. If any amount has been deposited by the appellants with the respondent after the due date of possession, then the interest would be payable from the date of the deposit of that amount till the date of actual possession i.e. November, 2016.

**In Appeal No.70 of 2020:**

The complaint before the Ld authority and appeal before us has been filed by the present appellant "Krishan Lal Dhingra". However, the agreement dated 02.12.2010 attached with this appeal is between Dhanraj and the respondent. The transfer of rights of this agreement to Sh. Krishan Lal Dhingra the appellant in this appeal have been confirmed through an endorsement by the respondent on 03.02.2016 is placed along with agreement at Page 74 in this file. So, this agreement dated 02.12.2010 is subsisting between the parties and the terms and conditions of this agreement are applicable to determine the rights of the parties. The appellant-allottee has contended that as per Clause 10.1 of the agreement, possession was to be handed over to the appellant-allottee within 3 years of the Agreement dated 02.12.2010 i.e. on or before 02.12.2013. The appellant-allottee admittedly occupied the flat in November, 2016. The part occupation certificate was issued on 20.06.2017. The appellant has become entitled for interest at the prescribed rate i.e. @ 9.3% per annum (Highest SBI MCLR +2% as per rule 15 of the Rules)

for the period w.e.f. 02.012.2013 to November, 2016, when he actually occupied the said flat (i.e. for a period of 2 years and 11 months) on the amount deposited by the appellants with the promoter. If any amount has been deposited by the appellant with the respondent after the due date of possession, then the interest would be payable from the date of the deposit of that amount till the date of actual possession i.e November, 2016.

40. **Direction to the respondent for supplying 7KW of electric power;**

The appellant-allottee is also contesting that as they are perusing the matter relating to this apartment in competent court of law against the respondent-promoter and, therefore, the respondent-promoter in an illegal manner is allowing electricity of 1KW against 7KW of requirement. The appellants have sought relief against the above issue in their complaint before the Ld. authority. In the impugned order dated 06.08.2019, there is no order of the authority relating to the said issue of supply of electric power to the appellant. The appellants have not taken any plea in the grounds of appeal in this regard. However, in the interest of justice, the respondents are directed to comply with the provisions of the agreement and supply electricity power as is being supplied to other allottees in the project without any discrimination to the appellants.

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41. No other point was argued before us by counsel for the parties.

42. The present appeals are partly allowed with respect to the delay possession charges as per the above observations and the impugned order of the dated 06.08.2019 of the Ld. authority stands modified accordingly.

43. No order to costs.

44. The original order be kept in Appeal No.68 of 2020 and copies thereof be placed in the connected appeals i.e. Appeal No.69 of 2020 and Appeal No.70 of 2020.

45. Copy of this order be sent to the parties/Ld. counsel for the parties and Ld. Haryana Real Estate Regulatory Authority, Panchkula.

46. Files be consigned to the record.

Announced:  
May 13, 2022

Justice Darshan Singh (Retd.)  
Chairman,  
Haryana Real Estate Appellate Tribunal,  
Chandigarh

Inderjeet Mehta  
Member (Judicial)

Anil Kumar Gupta  
Member (Technical)



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Vishal Singh Rawat Vs. JBB Infrastructure Pvt. Ltd.  
APPEAL NO.68 OF 2020

Anju Gupta and another Vs. JBB Infrastructure Pvt. Ltd.  
APPEAL NO.69 OF 2020

Krishan Lal Dhingra Vs. JBB Infrastructure Pvt. Ltd.  
APPEAL NO.70 OF 2020

Present: None.

Vide our separate detailed order of the even date, the above said appeals are partly allowed with respect to the delay possession charges as per the observations made in the detailed order/judgment and the impugned order dated 06.08.2019 of the Ld. authority stands modified accordingly.

Original order be kept in Appeal No.68 of 2020 and copies thereof be placed in the connected appeals i.e. Appeal No.69 of 2020 and Appeal No.70 of 2020.

Copy of the detailed order be communicated to the parties/learned counsel for the parties and the learned Haryana Real Estate Regulatory Authority, Gurugram.

File be consigned to the records.

Justice Darshan Singh (Retd.)  
Chairman,  
Haryana Real Estate Appellate Tribunal,  
Chandigarh

Inderjeet Mehta  
Member (Judicial)

Anil Kumar Gupta  
Member (Technical)

13.05.2022  
Manoj Rana