BENCH NO. 1
RESERVED JUDGMENT

THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL AT LUCKNOW

(1) APPEAL NO. 213 OF 2019

Vishnu Kumar Gupta and Pratibha Gupta (his wife). ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent**.

AND

(2) APPEAL NO. 214 OF 2019

Ankur Maheshwari. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(3) APPEAL NO. 215 OF 2019

Vinod Kumar Beniwal and Others ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(4) APPEAL NO. 216 OF 2019

Kailash Chandra Kargeti. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(5) APPEAL NO. 217 OF 2019

Shyamoli Sinha. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(6) APPEAL NO. 218 OF 2019

Utkarsh Rastogi. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(7) APPEAL NO. 219 OF 2019

Malti Bist. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(8) APPEAL NO. 220 OF 2019

Prempal Singh ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(9) APPEAL NO. 221 OF 2019

Vaibhav Kukreti. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(10) APPEAL NO. 222 OF 2019

Richa Gupta. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(11) APPEAL NO. 223 OF 2019

Vivek Khare. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(12) APPEAL NO. 224 OF 2019

Vijaya Kashyap. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(13) APPEAL NO. 225 OF 2019

Amita Saxena. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(14) APPEAL NO. 226 OF 2019

Rajnish Jha. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(15) APPEAL NO. 227 OF 2019

Sahil Gupta. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(16) APPEAL NO. 228 OF 2019

Roopesh Saraswat. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(17) APPEAL NO. 229 OF 2019

Rambir Singh. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(18) APPEAL NO. 230 OF 2019

Daman Preet Singh. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(19) APPEAL NO. 231 OF 2019

Bipin Bihari Pathak. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(20) APPEAL NO. 232 OF 2019

Shipra Maheshwari. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(21) APPEAL NO. 233 OF 2019

Romi Kumar. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(22) APPEAL NO. 235 OF 2019

Dinesh Kumar Shah. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(23) APPEAL NO. 236 OF 2019

Bhuwanaditya Agarwal. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(24) APPEAL NO. 237 OF 2019

Karuna. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(25) APPEAL NO. 238 OF 2019

Mukesh Kumar Goel. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(26) APPEAL NO. 239 OF 2019

Harish Chandra Sharma. **…….** **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. **……** **Respondent.**

(27) APPEAL NO. 241 OF 2019

Harsha Sharma. **…….** **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. **……** **Respondent.**

(28) APPEAL NO. 242 OF 2019

Niraj Shivhare.**…….** **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. **……** **Respondent.**

(29)APPEAL NO. 243 OF 2019

Ashish Kansal. **…….** **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. **……** **Respondent.**

(30)APPEAL NO. 244 OF 2019

Biswajit Kar. **…….** **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. **……** **Respondent.**

(31)APPEAL NO. 246 OF 2019

Vivek Gupta. **…….** **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. **……** **Respondent.**

(32) APPEAL NO. 247 OF 2019

Sudhanshu Singhania. **…….** **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. **……** **Respondent.**

(33) APPEAL NO. 249 OF 2019

Neelam Sharma. **…….** **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. **……** **Respondent.**

(34) APPEAL NO. 250 OF 2019

Jagat Singh Chauhan. **…….** **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. **……** **Respondent.**

(35) APPEAL NO. 251 OF 2019

Satya Malhotra. **…….** **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. **……** **Respondent.**

(36) APPEAL NO. 252 OF 2019

Sanjay Tyagi. **…….** **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. **……** **Respondent.**

(37) APPEAL NO. 253 OF 2019

Kailash Narain. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(38) APPEAL NO. 255 OF 2019

Sunil Kumar Singh. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(39) APPEAL NO. 257 OF 2019

Inderbir Singh Matharu. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(40) APPEAL NO. 258 OF 2019

Amit Sharma. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(41)APPEAL NO. 259 OF 2019

Ranjan Kumar. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(42)APPEAL NO. 260 OF 2019

Manish Upreti. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(43) APPEAL No. 261 OF 2019

Saurabh Priyadarshi …… **Appellants.**

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(44) APPEAL NO.297 OF 2019

Surendra Nath Taneja. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(45) APPEAL NO.298 OF 2019

Subroto Mukher Ji. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(46) APPEAL NO.299 OF 2019

Farhat Imam. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(47) APPEAL NO.300 OF 2019

Gaurav Verdi. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(48) APPEAL NO.301 OF 2019

Anjana Chakrabort **….Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(49) APPEAL NO.302 OF 2019

Ram Ashish Kansal. **…….** **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. **……** **Respondent.**

(50) APPEAL NO.303 OF 2019

Anurag Yadav. **…….** **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. **……** **Respondent.**

(51) APPEAL NO.304 OF 2019

Priyanka Verma. **…….** **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. **……** **Respondent.**

(52) APPEAL NO.305 OF 2019

Manju Shukla. **…….** **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. **……** **Respondent.**

(53) APPEAL NO.306 OF 2019

Abhay Kumar. **…….Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. **……** **Respondent.**

(54) APPEAL NO.307 OF 2019

Saurabh Bhatjiwala. …….**Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(55) APPEAL NO.590 OF 2019

Manish Kumar Singh. ……. **Appellants**.

Vs

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

(56) APPEAL NO.591 OF 2019

Yogesh Prasad Goniyal. ……. **Appellants**.

Versus

M/s AIMS RG Angel Promoters Pvt. Ltd. …… **Respondent.**

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Hon'ble Mr. Justice (Dr.) D. K. Arora, Chairman.
Hon'ble Mr. Tej Bahadur Singh, Judicial Member.
Hon'ble Mr. Kamal Kant Jain, Technical Member.

1. These appeals have been preferred by the appellants-Vishnu Kumar Gupta and Pratibha Gupta (his wife) and 55 others under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (in short, 'the Act') challenging the impugned judgment and order dated 06.08.2019 passed by Sri Balvindar Kumar(Member), U.P. Real Estate Regulatory Authority in complaint Case No.11201823828 (Vishnu Kumar Gupta &Pratibha Gupta (his wife) vs. M/s AIMS RG ANGEL PROMOTERS Pvt. Ltd), and 55 others whereby the learned Authority has observed:-

"The demands made by respondent/promoter (M/s AIMS RG ANGEL PROMOTERS Pvt. Ltd) regarding G.S.T./V.A.T, LabourCess, Farmers' Compensation and IGL/GAS connection are valid and Home Buyers (complainants) are directed to pay all the aforesaid dues within one month from the date of order. The learned Authority further directed that after receiving the aforesaid dues the promoter/respondent is directed to execute the sale deed of the respective Flat, in favour of the complainants (appellants)".

2 These 56 appeals as mentioned above are, against the same impugned judgment and order dated 06.08.2019 and against the same respondent/promoter AIMS RG ANGEL PROMOTERS Pvt. Ltd. The facts of all the above appeals are similar and the respondent/promoter is also the same. All the complaints related to instant bunch of appeals have been disposed of by a common judgment and order dated 06.08.2019.

3 The facts, for the adjudication of all the appeals are almost common with difference in the respective date of Builder–Buyer Agreement (BBA) and amount paid and payable for the respective Unit in the common Project. The terms and conditions of BBA and issues raised are also common. Some of the appellants have purchased the respective Unit after obtaining O/C (Occupancy Certificate/Completion Certificate) by respondent/Builder-Company except few appellants (32 in numbers including 3 cases of re-sale) who have purchased the respective Unit before obtaining Occupancy Certificate by the respondent/Builder Company.

4. Being of similar and common nature of the issues we proceed to decide the instant bunch of appeals by a common order, therefore, all the appeals are consolidated for convenience, and appeal No. 213

of 2019 (Vishnu Kumar Gupta & Pratibha Gupta (his wife) vs. M/s AIMS RG Angel Promoters Pvt. Ltd.) is taken up as **the leading case/appeal**.

FACTS OF COMPLAINTS

5. The brief facts of the complaints leading to the present appeals are as follows:

6. The respondent/promoter launched a residential project by the name and style of 'AIMS GOLF AVENUE-I' situated in Sector 75, NOIDA. Thereafter, the respondent raised construction of several Towers in it. On 22.09.2017, the respondent was issued the Occupancy Certificate in respect of Towers No.3,4 & 5 of the said Project and on 27.10.2016 for other Towers. Some appellants had given the first installment after obtaining Occupancy Certificate by Builder-Company and entered into a "Builder-Buyer Agreement" for purchasing a '**ready to move in Flat'** in the Project of 'AIMS GOLF VENUE-II'. Clauses 1 & 2 of the Agreement provide that the Flats will be sold for the basic sale price plus other additional charges as mentioned in Payment Plan of the Agreement and the Flat Allottees agree to pay the Developer/Respondent the basic sale price plus other development/preferential charges and additional charges as per the payment plan opted by the Flat Allottees and described in **Payment Plan**. The appellants/complainants had cleared all the dues and paid all the amounts demanded by the respondent in the final demand note. After clearing all the dues, the appellants were given possession of the respective Flat in terms of Clause 41(a) of Builder-Buyer Agreement. Thereafter, the appellants/complainants approached the respondent for execution of registered lease deed of the Flats. But the respondent refused to execute the lease deed in favour of the appellants. After that appellant along with his wife and other residents of 'AIMS GOLF AVENUE-II' approached CEO, Noida Industrial Development Authority on 12.09.2018 and District Administration on 10.10.2018 for intervention in the matter. The District Administration directed the respondent to execute lease deed. However, the respondent instead of executing lease deed, sent email communication stating to clear outstanding dues without referring any amount. At later stage, respondent gave a demand notice asking the appellants to first deposit pending amount towards LabourCess, VAT and Farmers' Compensation as pre-condition to execute the registered Lease Agreement. Thereafter, the appellants/complainants filed the complaints against the respondent under Section 31 of the Real Estate (Regulation & Development) Act, 2016 praying the following reliefs:-

This Hon'ble Forum (Regulatory Authority be pleased to:-

(i) Direct the respondent to execute the sale deed in favour of the complainants as soon as possible.

(ii) Direct the respondent to refund excess amount as taken from the appellants along with 18% interest.

(iii) Direct the respondent to refund the amount of GST along with 18% interest or to issue the tax invoice as per the GST Law, wherever it is applicable.

(iv) Direct the respondent to execute the tripartite Agreement.

(v) Direct the respondent to refund the excess amount which has been taken for IGL connection.

(vi) Direct the respondent to pay 18% interest to the complainants upon the amount paid by the complainants for non-execution of the sale deed from date of payment till execution of the sale deed in the favour of the complainants.

(vii) Direct the respondent to refund the amount as claimed for maintenance and other facilities like-Club with a Pool, Gym and Health Club and multi-purpose Hall along with 18 percent per annum interest and also to provide the audited account of receipt and expenses incurred on maintenance of society. Further direct the respondent to share the detail of electrical charges paid to the Paschimanchal Vidyut Vitran Nigam Ltd. and amount collected from the residents on monthly basis.

(viii) Direct the respondent to stop charging illegal and unjustified amount under names of Swimming Pool, Gym, and Club maintenance as these are not in operation.

(ix) Direct the respondent to develop the green area, water sewerage drainage system and other development as mentioned above.

(x) Direct the respondent to issue No-dues Certificate in favour of the complainants.

(xi) To pass order of financial audit of funds of the promoters/respondent along with the inspection and audit of quality and standard of the articles as promised by the respondent at the time of booking with the present articles.

(xii) Direct the respondent to take back his illegal demands as raised by the Builder-Company from the complainants.

(xiii) Direct the respondent to separate the maintenance meter of the Flat from electric meter.

(xiv) Direct the respondent to pay Rs.5,00,000/- for mental and physical harassment of the complainants.

(xv) Direct the respondent to pay Rs.1,00,000/- for litigation charges to the complainants.

(xvi) Pass such other and further order as this Hon'ble Authority may deem fit, in the interest of justice.

7. **The reply** to the complaint on behalf of the opposite party/respondent, whether has been filed or not, the same is not on record.

8. On 22.01.2019 both parties appeared before the learned Authority. On that date the opposite party/promoter was directed to file written statement and the complaint case was listed on 22.02.2019 for hearing. Thereafter Mr. R.D. Paliwal was appointed Conciliator in these cases by the learned Authority to resolve the dispute between complainants and promoter, but proved futile.

9. On 15.04.2019 several Home Buyers/Complainants met Sri Balvinder Kumar, Member of the Authority and submitted a report prepared by C.A. Shri R. Chadha and Associates who was appointed by them (i.e. Home-Buyers). In this report, it was mentioned that at this stage Home buyers are not liable to pay any additional dues regarding GST/VAT, Labour Cess, Farmers' Compensation and IGL./GAS connections, to respondent/promoter. Thereafter the respondent promoter appointed another C.A. (Mr. Bishawanath Ghosh of M/s B.N.G. Tax Consultant India Pvt. Ltd., who gave just contrary report to the above narrating that all the demands made by the respondent/promoter regarding GST/VAT, Labour Cess, Farmers' Compensation and I.G.L/GAS connections are valid and recoverable from complainants. Besides this, another C.A. Mr. Manoj Jain and Associates appointed by respondent, certified the amounts deposited by respondent in concerned heads. The respondent/promoter submitted the said report before the Regulatory Authority. Seeing the aforesaid

contrary reports, the Authority appointed RERA's empanelled C.A. Mr. Praveen Kumar Srivastava to give 3rd party opinion. Empanelled C.A. Mr. Praveen Kumar Srivastava basing his opinion on Clauses 10 & 11 of Builder-Buyer Agreement submitted his report to the Authority mentioning that the demand made by the respondent/promoter as to GST Inputs is time barred, hence, this demand is not genuine, and the rest demands which are relating to GST/VAT, Labour Cess, Farmers' Compensation and IGL/GAS connections, are valid and recoverable from Home-buyers/complainants. This report, confirms almost all the report/opinion given by C.A. Sri Bishwanath Ghosh of the respondent.

10. The Regulatory Authority relying upon the report submitted by the empanelled C.A. Mr. Praveen Kumar Srivastava passed the impugned judgment and order dated 08.06.2019.

<u>CONTENTS OF APPEAL</u>

11. Feeling aggrieved and being dis-satisfied with the aforesaid judgment and order of the learned Authority the appellants preferred these appeals. In brief, all the appellants reiterating the facts of complaints have submitted as under:-

a) The appellants booked the Flat by making first payment on respective date and executed the Builder-Buyer Agreement for purchase of the ready to move Flat on respective date after depositing their earnest money. Occupancy Certificate of the said Units were issued by New Okhla Industrial Development Authority on 22.09.2017 in respect of Towers No. 3, 4 & 5 and for other towers on 27.10.2016. The respondent gave a final demand note dated 24.01.2018 to some of the appellants giving break-up of the final amount, which the appellants were required to deposit with the respondent before handing over physical possession of respective Flat.

b) Respondent gave notice of possession dated 09.03.2018 in favour of certain appellants asking them to clear the outstanding dues before possession of the allotted Unit. On 13.03.2018 some of the appellants paid the final amount to the respondent for respective Flat as against the final demand raised by the respondent through its notice dated 24.01.2018. Having cleared all the dues as per the final demand note issued by the respondent the physical possession of the Flat was handed over to some of the appellants on 17.03.2018.

c) The appellants approached the respondent for execution of registered lease deed. The respondent refused to execute the sale deed, then the appellants approached Noida Authority, District Magistrate, Gautam Buddh Nagar and Registrar Noida for the execution of same.

d) The Authorities directed the respondent to execute the registered sale deed in favour of the appellants. Having received the direction from the authorities, the respondent raised an illegal and unjustified demand from the appellants with regard to payment of Labour Cess, VAT/GST and Farmers' Compensation to the respondent despite the fact that the appellants had already deposited the entire consideration as per the final demand note and had taken over physical possession on 17.03.2018 of respective Flat from the respondent.

<u>GROUNDS OF APPEAL</u>

12. The appellants have challenged the impugned judgment and order dated

06.08.2019 on following grounds:-

A) Because the Regulatory Authority has unjustly fixed the liability upon the appellants in pursuance to Clauses 10 and 11 of the Builder-Buyer Agreement. The RERA has solely relied upon Clauses 10 and 11 while imposing the liability to reimburse the respondent the amount of GST lapse, VAT, LabourCess and Farmers' Compensation which in fact, is not applicable in the instant case as Builder-Buyer Agreement executed after completion certificate issued by New Okhla Industrial Development Authority. Furthermore, GST Lapse is actually considered as business expenses.

B) Because under the provision of Clause 10 of Builder-Buyer Agreement, appellants are required to pay additionally Government rates, taxes, cesses, etc. if there is an increase in the rates or if there is an increase in Farmers' Compensation as demanded by the Noida Authority. However, in the instant case, the respondent has neither pleaded nor proved that there has been any increase in Government rates, taxes, cesses, etc.

C) Because as per Clause 11 of the Builder-Buyer Agreement, the respondent shall only be entitled to recover government charges levies, service tax, any other charges, fees, taxes, etc. from the appellants when the said charges have been imposed on the respondent by the Statutory Authorities after the execution of the Builder-Buyer Agreement. There have been no government charges, levies, service tax, any other charges, fees, taxes etc. imposed by the Statutory Authorities on the respondent after the execution of the Builder-Buyer Agreement.

D) Because the respondent did not plead or prove that the Noida Authority had raised any additional demand towards Farmers' Compensation from the time of execution of the Builder-Buyer Agreement and till the delivery of the physical possession of the Flat and not even thereafter.

E) Because the RERA has passed the impugned order in a cursory and mechanical way solely relying on the report prepared by the Chartered Accountant hired by the respondent and without taking into account the evidences and opinion submitted by the appellants.

F) Because the RERA has curtailed the principle of natural justice by refusing to provide a copy of the documents and reports submitted by the respondent to the appellants before the RERA. The appellants submitted many written requests before the RERA to provide the documents and reports submitted by the respondent so that the appellants could ascertain the veracity of the reports and documents.

G) Because the RERA came to an erroneous conclusion that the appellants are liable to pay the Labour Cess, whereas in the Building and Other Construction Workers´Welfare Cess Act, 1996 and The Building and Other Construction Workers´Welfare Cess Rules, 1998 there exists a specific duty which is expressly imposed upon the respondent to discharge. The respondent cannot shift its liability upon the appellants. The RERA has passed the impugned order in violation of legal provisions of the Building and Other Construction Workers´Welfare Cess Act, 1996' and the Building and Other Construction Workers´Welfare Cess Rules, 1998'.

H) Because the RERA has erred in holding that the appellants are liable to pay the GST charges for the purchase of the respective Flat. The respondent executed the Builder-Buyer Agreement with the appellants after the issuance of Occupancy Certificate. Under Schedule II of the Central Goods and Services Tax Act, 2017 read with Notification No.11/2017 issued by the Ministry of Finance, the appellants are not liable to pay GST where the sale of Flats took place after issuance of Occupancy Certificate. Therefore, the question for reimbursement of GST lapse does not arise as GST is not applicable on ready to move property.

I) Because the respondent in pursuance to the illegal and arbitrary order passed by the RERA had issued a demand letter against the appellants imposing a liability of the amount (whatever it may be) which is unjust and illegal.

J) Because the RERA indiscriminately has imposed the liability to pay VAT upon the appellants. Most of the appellants have purchased the respective Flat when GST was in vogue. The appellants are not liable to pay VAT when they purchased the Flats in GST regime.

K) Because the RERA arrived to the wrong conclusion that the appellants are liable to pay the Farmers' Compensation additionally. Under the terms of Builder-Buyers' Agreement, the appellants are only liable to pay the increase in Farmers' Compensation if the Authorities raise such demand after the execution of the Builder-Buyers Agreement. Information received by the appellants under Right to Information Act, reveals that the respondent has not paid any Farmers' Compensation which the respondent is realizing from the appellants.

L) Because the appellants have already paid off all the dues as required under the Builder-Buyer Agreement as per final demand note received by the appellants.

M) Because the learned Authority below has passed the impugned order in favour of the respondent without considering the grievances raised by the appellants.

N) Because the Authority failed to adjudicate upon the grievances raised by the appellants with respect to handing over maintenance management to the Registered Welfare Association and respondent is illegally charging for maintenance of Swimming Pool, Club and Gym even when these are not operational.

13. At last, the appellants have prayed for the following reliefs:-

(I) This Hon'ble Tribunal be pleased to set aside the impugned judgment and order dated 06.08.2019 passed by the Uttar Pradesh Real Estate Regulatory Authority, Regional office, Gautam Buddh Nagar, Bench 02 in related complaints.

(II) This Hon'ble Tribunal be pleased to set aside the demand letter issued by the respondent against the appellants.

(III) This Hon'ble Tribunal be pleased to restrain the respondent from raising future illegal demands with respect to VAT/GST, Labour Cess and Farmers' Compensation.

(IV) This Hon'ble Tribunal be pleased to direct the respondent to execute a lease deed in favour of the appellants of the respective Flat situated in Project, AIMS Golf Avenue 2, Noida Uttar Pradesh and to get the same registered, in a time bound manner.

(V) To pass any other order which Hon'ble Court may deem just and proper in the circumstances of the case.

(VI) Award the cost of the appeal.

The appellants further declare that the matter regarding which these appeals have been filed is not pending before any other forum elsewhere.

REPLY ON BEHALF OF RESPONDENT TO THE APPEALS.

Preliminary Objections and Submissions.

14. At the outset, it is submitted that the complaints filed by the appellants are not maintainable and are in teeth of Section 31 of the Act in asmuch as the appellants have miserably failed to establish any violation or contravention of any provisions of the Act or any rule or regulation framed thereunder which is *'sine qua non'* for maintaining a complaint under Section 31 of the Act.

In the above context, the following facts are important:-

15. Demand for payment of statutory/government chargesare valid in terms of Section 11(4)(g) & Section 19(6) ofthe Act.

(i) On a plain reading of Section 11(4) (g) of the Act it is clear as day light that the respondent being 'promoter' within the meaning of Section 2(zk) of the Act is statutorily bound to collect the outgoings of all nature including the taxes, cesses and all other kinds of liabilities payable to competent authorities from the allottees and pursuance to the said collection the respondent is liable to pay the said outgoings to the concerned competent authorities.

(ii) Similarly, under Section 19(6) of the Act the allottees i.e. the appellants are under a statutory duty to pay their respective share of government/statutory charges paid in relation to their Units in Project.

(iii) The plain reading of Section 11(4)(g) and Section 19(6) is also in consonance with letter and spirit of the Act which inter-alia attempts to balance the interest of the consumers and promoters by imposing certain responsibilities on both.

(iv) Indisputably, incurred pro-rata Labour Cess charges and incurred pro-rata Value Added Tax (VAT) qualify to be an outgoing of the respondent and also liabilities payable to the competent authorities within the meaning of Section 11(4)(g) of the Act. Moreover, it also qualifies to be 'other charges' within the meaning of Section 19(6) of the Act. Similarly, pro-rata charges paid towards Farmers' Compensation undoubtedly qualifies to be land cost within the meaning of Section 19(6) of the Act.

(v) From the above said, it is apparent that the respondent's demand of payment of (i) incurred pro-rata Labour Cess charges; and (ii) incurred pro-rata Value Added Tax (VAT) and (iii) pro-rata charges paid towards Farmers' Compensation from the appellants is as per the above said provisions and not contrary to any provision of the Act. Thus, the complaints filed by the appellants under Section 31 of the Act before the learned Authority challenging the levy of the said demand was not only ex-facie in teeth of the above said provisions of the Act but was also an abuse of process of law.

(vi) From a plain reading of the above said provisions it is also undisputed position of law that the learned Authority has no jurisdiction to examine a complaint which questions the levy of charges towards land costs, taxes, cesses and other charges payable and/or to the competent authorities. Thus, non-interference by the learned Authority qua the above said respondent's demand is within the contours of the Act which does not warrant any interference by this Hon'ble Tribunal.

16. Even otherwise the Respondent's demands for payment ofstatutory/government charges are in accordance with theterms of Clause-1, Clause-2 and Clause 8(c) of theBuilder- Buyers Agreement.

(i) Without prejudice to the above said, it is submitted that on a bare perusal of Clause 1 of the Agreement read with Annexure-A of the Builder-Buyer Agreement, it is an admitted position that it has been mutually agreed between the appellants and the respondent that in addition to the sum agreed in the Annexure-A of the Builder-Buyer Agreement, the appellants shall pay several other charges including 'other government charges as applicable'. It is also evident that first part of Clause-1 read with Annexure-A clearly envisage an indicative Agreement of price of the Unit and not the entire/final sale consideration as sought to be alleged by the appellants in the present appeals. Furthermore, it is submitted that from plain reading of the said first half of Clause-1 read with

Annexure-A it is obvious that the appellants agreed to pay the indicative price of the Unit as well as the other several charges including ‘government charges’ as applicable.

(ii) Significantly, it has been clearly acknowledged by the appellants in Clause-8 (c) read with Annexure-E of the Agreement that the statutory/government charges shall be the outgoings of the respondent. Acknowledgement of such outgoings in the Agreement is nothing but an Agreement to reimburse the said payment to the respondent. It is further submitted that the outgoings are recoverable from the allotteees on pro-rata basis as per industry standards and common prudence as well as in accordance with the provisions of the Act.

(iii) It is also noteworthy to state that the impugned order clearly records that the respondent had received demand from VAT department as late as 30.03.2018 i.e. after handing over of the possession of the respective Unit to the appellants. There is no challenge to the said fact in the present appeal. Thus, it is also explicitly clear that the issue with regard to liability of the respondent towards VAT payment was not final and the said price could not have been included in the initial price indicated in Annexure-A and Annexure-B of the Agreement.

(iv) Thus, it is wholly incorrect and misleading to state that the amount paid by the appellants was the full and final consideration and the appellants were not liable to pay any of the statutory/government charges as applicable. It is also important to state that there is no embargo under the Builder-Buyer Agreement to claim the ‘government/statutory charges’ after the execution of the Builder-Buyer Agreement and before execution of the conveyance deed/sale deed.

17. **<u>Demand of pro-rata charges paid towards Farmers' Compensation/land acquisition and VAT charges is also within Clause-11 of the Builder-Buyer Agreement.</u>**

(i) On a meaningful reading of Clause-11 of the Agreement it is clear that the appellants as allottees have clearly agreed to pay/reimburse to the respondent on demand all kinds of charges including land costs/cost paid with regard to purchase of land which are either leviable in future or in case the same is increased at any point in time including with retrospective effect.

(ii) Moreover, the learned authority has clearly recorded in the impugned order that the respondent had received demand from VAT department as late as 30.03.2018 i.e. after handing over the possession of the Unit to the appellants. There is no challenge to the said fact in the present appeal. Thus, the demand of payment of VAT charges also qualifies as other charges leviable in future under Clause 11 of the Builder-Buyer Agreement. It is explicitly clear that the issue with regard to liability of the respondent towards VAT payment was not final and the said price could not have been included in initial price indicated in Agreement.

(iii) In view of the facts stated above, it is evident that the payment towards Farmers' Compensation qualifies to be under any 'other charges' which effectively had led to overall increase in land costs, and said situation is clearly contemplated and stipulated in Clause-11 of the Agreement. Thus, Clause-11 is clearly attracted in the facts of the present case.

(iv) From the above said Clauses of the Builder-Buyer Agreement it is an undisputed position that the Agreement for sale of the Units inter-alia included pro-rata payment of statutory/government charges in relation to the Unit in the Project. Since the demand of payment of (incurred pro-rata Labour Cess charges; and (ii) incurred pro-rata Value Added Tax (VAT) and (iii) pro-rata charges paid towards Farmers' Compensation is as per the above said terms of the Agreement and not contrary to any term of the Agreement, therefore, the said demand by no stretch of imagination can said to be an illegal or unjustified demand as alleged by the appellants. Thus, the complaint filed by the appellants under Section 31 of the Act before the learned Authority challenging the levy of the said demand was not only ex-facie in teeth of the above said terms of Agreement but was also an abuse of process of law. Thus, the present appeal deserves to be out rightly dismissed by this Hon'ble Tribunal.

(v) It is pertinent to submit that as on the date of the allotment of the Unit/execution of the Builder-Buyer Agreement the total liability of the respondent towards VAT and Labour Cess was not assessed and as such the pro-rata charges towards the said liabilities could not have been added in the price collected as on date of the allotment. It is further submitted that the said assessment is still not complete and the total liability towards VAT and Labour Cess is yet to be crystallized even as on date.

(vi) With regard to the liability of Farmers' Compensation/land acquisition it is submitted that the same was not collected from the allottees/appellants since as on the date of the allotment/execution of the Builder-Buyer Agreement the respondent was under a bonafide belief that it will be able to collect the amount of compensation paid for purchase of the land (detailed above) from NOIDA Authority, however, the same could not happen. Since the respondent has incurred the cost therefore, the said cost was recoverable from the allottees/appellants.

(vii) It is wrong and denied that the appellants deposited the entire amount with the respondent as alleged or otherwise. As stated above, the price paid before taking possession was an indicative price which included certain sums which were identified as on date but that in no manner meant that the respondent waived off its right under Section 11(4)(g) of the Act and Clause-1 of the Agreement read with the Builder-Buyer Agreement to collect its several outgoings which included the government charges and other charges incurred by it in relation to the Project. Such intention is not borne out from the Builder-Buyer Agreement. It is further submitted that execution of the Agreement and Agreement to sell the Units in the Project after issuance of the Occupation Certificate in no manner can be interpreted to mean that the respondent has no right to collect the government charges and other charges indicated in the Agreement and also prescribed under the Act after the execution of the Agreement and prior to the execution of the sale deed. It is evident from plain reading of Clause-39 of the Agreement that the respondent is liable to execute the sale deed subject to receipt of whole of the consideration money and other charges and dues.

(viii) It is wrong and denied that the respondent ever stated in the notice of possession that the amount claimed therein was the full and final amount and that it shall not claim any further sum. The appellants are misleading this Hon’ble Tribunal. Handing over the possession in no manner can be interpreted that the respondent has no right to claim the incurred charges. Clause-39 and Clause-1 of the Agreement are to be interpreted in correct context. It is wrong and denied that the appellants have paid final amount towards the respective Unit.

(ix) Direction of the authorities to execute the sale deed, if any, was illegal and contrary to provisions of the Transfer of Property Act, 1882, this Act and also that of the Builder-Buyer Agreement. It is wrong and denied that the respondent raised any illegal and unjustified demand as alleged or otherwise.

(x) It is relevant to submit that on a bare perusal of the order passed by the learned Authority, it is evident that a conciliator was appointed by the learned Authority who conciliated between several allottees including the appellants and the respondent in relation to various issues highlighted by them in their respective complaint. After several rounds of discussions, the allottees including the appellants and the respondent resolved all disputes relating to their respective Unit in the Project except the issue of demand of payment towards VAT, Labour Cess and Farmers' Compensation and arrived at an Agreement on 05.03.2019 which was duly recorded in the order dated 08.03.2019 passed by the learned Authority. Thus, except the issue of payment towards VAT, Labour Cess and Farmers' Compensation there was no occasion for the learned Authority to decide any other issue in as much as all other issues were resolved and the issue of demand of payment towards VAT, Labour Cess and Farmers' Compensation was only pressed before the learned Authority which is also evident from tone and tenor of the present appeal. The copy of the order dated 08.03.2019 is annexed with reply (papers No. 33-38) filed in **Appeal No. 213 of 2019 (Vishnu Kumar Gupta and Pratibha Gupta (his wife) vs.**

M/s AIMS RG Angel Promoters Pvt. Ltd.)

(xi) It is wholly incorrect to contend that the learned Authority passed a non-speaking order. It is also incorrect to allege that the learned Authority has solely relied upon the report submitted to it by Chartered Accountant of respondent. It is also wrong and denied that the learned Authority has solely relied upon Clause-10 and Clause 11 of the Builder-Buyer Agreement as alleged or otherwise. The learned Authority has clearly referred the judgment passed by the Hon'ble Supreme Court passed in **Civil Appeal Nos. 6649-50 of 2018** wherein the Hon'ble Supreme Court while upholding the order of the Hon'ble National Consumer Commission has recognized the sanctity of government charges paid by a builder. This clearly reflects that the learned Authority has applied its mind while passing the impugned order. The impugned order is completely speaking which does not warrant any interference. It is wrong and denied that the Chartered Accountant appointed by the learned Authority has solely relied upon the report prepared by the Chartered Accountant of the respondent. It is submitted that the report prepared by the Chartered Accountant of the respondent has been relied to the extent of actual payment made by the respondent. It is wrong and denied that the report prepared by C.A. Sri R.Chaddha & Associates who were appointed by appellants not taken into consideration by the learned Authority. In any event, as detailed above the conclusion arrived at by the learned Authority is completely in accordance with the Act and also the terms of the Agreement in as much as complaints were not maintainable and demands raised by the respondent was valid and justified. Furthermore, the report prepared by C.A. Sri R. Chadha & Associates was ex-facie contrary to the provisions of the Act as well as the terms of the Builder-Buyer Agreement.

(xii) It is wrong and denied that the copies of all documents submitted by the respondent before the learned Authority were not supplied to the appellants as alleged or otherwise. Without prejudice to the foregoing, the appellants have never requested for the required documents during the proceedings before the learned Authority. It is wrong and denied that the respondent has not disclosed the demands by Statutory Authorities for payment of Labour Cess, VAT and Farmers' Compensation. It is also wrong and denied that the respondent's demand is without break-up or proof of deposits. The learned Authority after examination of the reports and balance sheets submitted by the respondent has clearly concluded that the respondent has paid the payment towards Labour Cess, VAT and Farmers' Compensation.

18. PARA-WISE REPLY TO GROUNDS OF APPEAL

a) The appellants are misleading this Hon'ble Tribunal by giving an impression that only compensation directed by NOIDA Authority is considered to be as Farmers' Compensation which is neither borne out from the provisions of the Act nor from the terms of the Agreement. The fact that the respondent has paid/incurred additionally cost towards purchasing of land is clearly recorded in the impugned order against which there is no challenge.

b) The appellants have given their selective interpretation of Clause-11 completely ignoring the other half of Clause-11 of the Agreement. Clause-11 cannot be interpreted in isolation as sought to be done by the appellants. The appellants have completely ignored the preceding Clause-1 of the Builder-Buyer Agreement as well as the provisions of the Act and sought to give an impression that they are not liable to pay any sum which is incorrect and misleading. It is wrong and denied that there is no government charge imposed by statutory authority after execution of the Builder-Buyer Agreement. There is a clear finding of fact in the impugned order that the respondent received the VAT demand as late as on 30.03.2018 i.e. after execution of the Agreement which has been duly paid by the respondent. The appellants are making baseless and reckless allegation to mislead this Hon'ble Tribunal.

c) It is wrong and denied that the learned authority has curtailed the principles of natural justice available to the appellants. It is also submitted that the copies of all documents submitted by the respondent before the learned authority were supplied to the appellants. Without prejudice to the foregoing, the appellants have never requested for the required documents during the proceedings before the learned authority.

d) It is wrong and denied that the learned authority has come to erroneous conclusion with regard to Labour Cess demand. Though, it is correct that under Section 3 of the Building and Other Construction Worker's Welfare Cess Act, 1996 read with Rule 3 of the Building and Other Construction Worker's Welfare Cess Rules, 1998, the liability to pay the Labour Cess is that of the employer i.e. respondent in the present case, however, under Section 11(4)(g) of the Act the respondent is entitled to collect the same from the allottees/appellants. Similarly under Section 19(6) of the Act the allottees/appellants are liable to pay the said cess to the respondent.

e) It is wrong and denied that the learned Authority has imposed the liability of payment of GST on the appellants as alleged or otherwise. A meaningful reading of the impugned order in the context of the preceding paras depicts that the learned Authority has not approved the payment of liability of GST. With regard to the applicability of the GST Act the contention of the appellants is incorrect, misconceived and misleading in as much as the Schedule-II of GST and the circulars relied upon by the appellants' merely provide that the sale transaction of a building/complex will be exempted from the applicability of GST, however, the respondent's demand of GST is not on the sale transaction of respective Unit but on the quantum of GST lapse pursuant to introduction of GST ACT i.e., GST paid by the respondent on goods and services with regard to works undertaken in the Project after receipt of Completion Certificate i.e, post 22.09.2017. Thus, even the respondent's demand of GST was as per the provisions of the Act and as per terms of the Agreement.

f) It is wrong and denied that the learned authority has indiscriminately imposed the liability to pay VAT. It is wrong and denied that the demand of VAT is illegal as alleged or otherwise. It is an admitted position that the appellants have not paid any charge towards GST and claimed that the GST is not applicable in relation to the transaction between the appellants and the respondent. Non-applicability of GST does not mean that the VAT already paid in respect of the Units in the Project is not applicable to the appellants. The contention of the appellants is wholly misconceived and contrary to the letter and spirit of the Act and also the terms of the Agreement.

g) It is wrong and denied that the learned authority has failed to adjudicate upon the alleged grievance raised by the appellants. It is relevant to submit that on a bare perusal of the order passed by the learned authority it is evident that a conciliator was appointed by the learned authority who conciliated between several allotttees including the appellants and the respondent in relation to various issues highlighted by them in their respective complaints. After several rounds of discussions, the allottees including the appellants and the respondent resolved all disputes relating to their respective Unit in the Project except the issue of demand of payment towards VAT, Labour Cess and Farmers' Compensation and arrived at an Agreement on 05.03.2019 which was duly recorded in the order dated 08.03.2019 passed by the leaned authority. Thus, except the issue of payment towards VAT, Labour Cess and Farmers' Compensation there was no occasion for the learned Authority to decide any other issue in as much as all other issues were resolved and the issue of demand of Labour Cess, VAT and Farmers' Compensation was only pressed before the learned authority which is also evident from tone and tenor of the present appeal.

h) In view of foregoing, it is most respectfully prayed before this Hon'ble Tribunal to dismiss the present appeals with exemplary cost.

19. <u>Rejoinder by Appellants against Reply to the Appeal</u>

<u>REPLY TO PRELIMINARY OBJECTIONS ANDSUBMISSIONS</u>

(A) The appellants filed the complaints before the Regulatory Authority under Section 31 on the numerous grounds as is apparent from the complaints. The Appellants also alleged that respondent is not handing over maintenance management to the Apartment Owners Association, respondent is illegally charging for maintenance of Club and Gym when they are not operational. These issues were neither decided by the Regulatory Authority nor the same have been resolved till date.

(B) The respondent's failure and incompetence to raise a preliminary objection against the maintainability of the complaints cannot be cured by raising such objection at the stage of appeal. The respondent not only violated the provisions of Real Estate (Regulation and Development) Act, 2016 but it harassed the buyers by refusing to execute the registered Sale-deed which is in blatant violation of Sections 11 and 17 of the Real Estate (Regulation and Development) Act, 2016 and illegal demands are beyond the scope of Builder-Buyer Agreement.

(C) It is submitted that under the provisions of Section 11(4) of the Real Estate (Regulation and Development) Act, 2016 read with Clauses 10 and 11 of the Builder-Buyer Agreement, the respondent is liable to pay the outgoings before the final demand raised by Builder-Company and if there is any additional demand raised by Noida Authority or increase in tax after the execution of the Builder-Buyer Agreement, respondent can only realize such additional demand or increase in tax and not previous paid/unpaid demand to respondent's default. The respondent is willfully and deliberately misleading the Hon'ble Tribunal. Section 19 of the Real Estate (Regulation and Development) Act, 2016 provides for Rights and duties of allottees, the same reads as follows:-

"**19. Rights and duties of allottees**.

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……………………..

(6) Every allottee, who has entered into an Agreement for sale to take an apartment, plot or building as the case may be, under Section 13, shall be responsible to make necessary payments in the manner and within the time **as specified in the said agreement for sale** and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any".

Thus respondent can only realize and demand the amount which is specified under the Agreement and the same cannot be stretched beyond the scope of Builder-Buyer Agreement (hereinafter referred to as 'Agreement')-particularly Clauses 10 and 11 thereof.

(D) The respondent is reading the provisions of the Real Estate (Regulation and Development) Act, 2016 in isolation, whereas as per the terms and conditions of the Agreement, the liability of the appellants with regard to payment is covered under Clauses 10 and 11 of the Agreement. The illegal demand raised by the respondent with respect to payment of VAT, Labour Cess, Farmers' Compensation is beyond the scope of Clauses 10 and 11 of the Agreement.

(E) Section 19 of the Real Estate (Regulation and Development) Act, 2016 itself provides the manner and stage to collect residuary charges. Similarly, under Clause11 of the Agreement, the appellant is liable to pay government charges which are leviable from the date of allotment. The respondent has failed to produce any document with regard to any additional demand by Statutory Authorities relating to the period after the date of allotment/ execution of the Agreement.

(F) It is pertinent to mention that the respondent's stand that price mentioned under the Agreement was indicative is incorrect and disingenuous. Nowhere in the entire Agreement this fact that the price of the Unit was only indicative ever reflects.

(G) The fact is that the appellants had purchased the respective Unit after the Occupation Certificate was granted by the Authority and hence VAT/GST is not applicable on appellants. The principal liability to pay Labour Cess is on the respondent as prescribed under Section 3 of the Building and Other Construction Workers' Welfare Cess Act, 1996 and Rule 3 of the Building and Other Construction Workers' Welfare Cess Rules, 1998 and the respondent has not received any additional demand with respect to payment of Farmers' Compensation from NOIDA Authority which is evident from reply received under Right to Information Act.

(H) All the demands with respect to government taxes, charges, cesses, levies have to be considered within the purview of Clauses 10 and 11 of the Agreement. The respondent would be well within its right to recover the said 'other government charges' when such was levied or an additional demand or an increase in demand of the said 'other government charges' has arisen after the date of execution of the Agreement and before the final demand letter was issued by the respondent. Right to recover/reimburse for 'other government charges' is not for an indefinite time but within the meaning of Clauses 10 and 11 of the Agreement.

(I) The respondent has failed to disclose any detail with respect to its liability to pay VAT for the period after Agreement was executed.

(J) It may be worthwhile to mention that the appellants purchased the respective Unit when the Goods and Services Tax Act, 2017 was in vogue and VAT rule was not in existence, therefore, appellants are not liable to pay VAT on the Units.

(K) The respondent would be well within its right to recover the said 'statutory/government charges' when such was levied or an additional demand or an increase in demand of the said 'statutory/government charges' had arisen during the execution of the Agreement and before the final demand letter was issued by the respondent. Right to recover/reimburse for 'other government charges' is not for an indefinite time but within the meaning of Clauses 10 and 11 of the Agreement.

(L) From a perusal of the above-mentioned Clause 11 of the Agreement, the respondent shall only be entitled to recover government charges, levies, service tax, any other charges, fees, taxes, etc., from the appellants when the said charges have been imposed and paid by the respondent to the Statutory Authorities after the execution of the Agreement. The respondent has not pleaded and proved that any government charges, levies, service tax, any other charges, fees, taxes, etc. leviable on the Project Land after the date of allotment of the Flats to the appellants and/or said Complex constructed on the said Land or the said Flats as the case may be, as assessable/applicable from the date of allotment of the said Flats to the appellants, has been demanded from it and that it has paid any such government charges, levies, service tax, any other charges, fees, taxes, etc. imposed by any Statutory Authorities on the respondent after the execution of the Agreement.

(M) The respondent undertook that the title was settled and respondent further nowhere in the entire Agreement disclosed the fact that appellants would further be liable to pay the amount to respondent regarding title dispute. Similarly, the respondent has violated the provisions of Sections 4 and 8 of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and

Maintenance) Act, 2010.

Section 4 of the aforesaid Act states as below:-

"4. **General liabilities of promoter** – (1) Any promoter who intends to sell an apartment, shall make a full and true disclosure in writing of the following to an intending purchaser and the Competent Authority:

(a) rights and his title to the land and the building in which the apartments have been or proposed to be constructed.

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(N) The respondent has vehemently violated the provisions of Section 8 of the aforesaid Act, which reads as under:-

"8. **Ownership of apartment shall be subject to conditions**:- Where any allotment, sale or other transfer of any apartment has been made, whether before or after the commencement of this Act, in pursuance of any promise or payment, or part payment, of the consideration thereof, the allottee or transferee, as the case may be, shall not become entitled to the ownership and possession of that apartment or to a percentage of undivided interest in the common areas and facilities appurtenant to such apartment until full payment has been made of the consideration thereof together with interest, if any, due thereon, and where any such allottee or transferee has been inducted into the possession of such apartment or any part thereof in pursuance of such allotment or transfer, he shall, until the full payment of consideration has been made continue to remain in possession thereof on the same terms and conditions on which he was inducted into possession of such apartment or part thereof. **There shall not be any hidden charges. All sale consideration shall be fixed either at the time of Agreement to sale or when the purchases are made final in writing as per provisions of this Act"**.

The respondent has not anywhere in the Agreement disclosed this fact that the appellants have to reimburse the respondent nor has the appellants given any consent regarding this fact. The fact that respondent has come up with an illicit demand of Farmers' Compensation amounts to hidden charges as per provision of Section 8.

(O) Appellants purchased ready to move respective Flat after implementation of GST law and in reference to GST provision, Section 3 of GST was not applicable on purchase of immovable property. Furthermore, VAT was also not liable to pay on the purchase of immovable property in light of Section 2 (m) of U.P. VAT Act, 2008. The respondent has failed to disclose any detail with respect to its liability to pay VAT. The respondent has also not supplied any documentary proof to the appellants when asked before the RERA Authority.

(P) The respondent has not received any additional demand with respect to payment of Farmers' Compensation which is evident from reply received under Right to Information Act, attached as **Annexure 6** with the appeal. Also, the respondent has failed to produce any document with respect to an increase in Farmers' Compensation as contemplated in Clauses 10 and 11 of the Agreement. From the plain reading of Conciliator report and respondent's CA report M/s BNG TAX CONSULTINGS INDIA (OPC) PVT. LTD., it appears that respondent incurred certain amount on each allottee in the month of June, 13 i.e. well before the completion of Project and purchase of Flats by appellants and therefore, respondent was well aware of this fact. It may be noteworthy that Basic Sale Price includes Land Cost, Construction Cost, Taxes and Cesses under Labour Legislations along with profit margin.

(Q) The fact is that the appellants had purchased the respective Unit after the Occupation Certificate was granted by the Authority and hence, VAT/GST is not applicable on appellants. The principal liability to pay Labour Cess is on the respondent as prescribed under Section 3 of the Building and Other Construction Workers' Welfare Cess Act, 1996 and Rule 3 of the Building and Other Construction Workers' Welfare Cess Act, 1998 and the respondent has not received any additional demand with respect to payment of Farmers' Compensation which is evident from reply received under Right to Information Act.

(R) The respondent is only entitled to recover the amount under the provisions of Clauses 10 and 11 of the Agreement. Clause 10 of the Agreement clearly states the appellants are only liable if additional demand is created by Noida due to an **increase in compensation to farmers'.** The respondent has failed to produce any document with respect to an increase in compensation paid to farmers'. Also, the Agreement does not disclose anywhere that the price paid by the appellants does not include Farmers' Compensation since the same is pending collection from Noida Authority.

(S) Nowhere in the entire Agreement it is mentioned that the price charged and deposited by the appellants are indicative. In fact, Clause 10 of the Agreement itself states that the Agreement is escalation free. However, once the Agreement was executed and the respondent issued a Final Demand Note, the respondent cannot raise any demand with respect to pending payment. The respondent, in pursuance to Section 17 of the Real Estate (Regulation and Development) Act, 2016, and Clause 39 of the Agreement is bound to execute registered lease-deed in favour of the appellants. The respondent is entitled to recover government charges, levies, service tax and other charges, fee, taxes etc. from the appellants when the said charges have been imposed and paid by the respondent to the Statutory Authorities after the execution of the Agreement. The respondent has failed to prove the same.

(T) The respondent, having issued a final demand notice has discharged the Agreement. The respondent cannot stretch the right to recover indefinitely. The respondent can only justify its demands under Clauses 10 and 11 of the Agreement which the respondent has failed to establish or prove.

(U) The appellants have deposited the entire consideration as per the provisions of the Agreement and thereafter respondent handed over the possession of respective Flat in terms of Clause 41(a) of Builder-Buyer Agreement, which is also evident from the fact that the appellants have received final demand notice from the respondent and settled the amount raised by the respondent.

(V) In the matter of **M/s. Supertech Ltd. vs. Rajni Goyal Civil Appeal No. 6649-50 of 2019 (AIR 2018 SC 5351),** an appeal was filed under Section 23 of the Consumer Protection Act, 1986 against the order of dismissal of review pending before National Consumer Dispute Redressal Commission, which was filed against the order of interest on account of delayed possession. In the appeal before the Hon'ble Supreme Court the issue was with respect to payment of interest on account of delayed possession only. The respondent is misleading the Hon'ble Tribunal by stating that the Hon'ble Supreme court has recognized the sanctity of government charges. In fact, the National Consumer Dispute Redressal Commission directed the consumer to pay government charges only when the builder furnishes the proof of the same. In the instant case neither the respondent has furnished any proof of payment to the appellants nor has presented any documentary evidence in support of his claim. It appears the respondent has failed to comprehend the difference between *orbiter dicta and ratio decidendi* of the judgment passed by the Hon'ble Supreme Court.

(W) On a simple reading of Clauses 10 and 11 of the Builder-Buyer Agreement, it infers that if there is any increase in taxes, cess, levies or any additional demand with respect to Farmers' Compensation and a demand of such has been raised by the Statutory Authorities after the execution of the Builder-Buyer Agreement, and if the respondent discharges such liability, then the respondent is entitled to recover the same from the appellants. However, in the instant case, there exists no demand by any Statutory Authorities with respect to increase in taxes, cesses, levies or any additional demand with respect to Farmers' Compensation after the execution of the Builder-Buyer Agreement.

(X) Under provisions of Section 11(4)(g), the respondent is liable to pay the outgoings and not the appellants, the authority can recover the outgoings from the respondent only. Under the provisions of Section 19(6), the appellants are required to make all payments to the respondent in the manner and time specified in the Agreement of sale (Builder-Buyer Agreement), there exists no infirmity under the said provisions. The appellants have already made payments in manner and time specified under the Agreement. However, the illegal demand for payment of Labour Cess is neither additional nor increase in demand by any Statutory Authority and hence, cannot be recovered under the provisions of Clauses 10 and 11 of the Agreement.

(Y) The respondent has misconstrued the provisions of GST relating to Schedule II. The Goods and Services Act, read with Schedule II along with notification No. 11/2017 issued by the Ministry of Finance under the Goods and Services Tax Act, 2017 has made it amply clear that the appellants cannot be subjected to payment of GST after completion Certificate is issued. It is also pertinent to mention that there exists no provision under the Real Estate (Regulation and Development) Act, 2016 or under the Agreement which imposes liability on the appellants to pay GST Lapse.

(Z) From the bare perusal of the Conciliator order dated 08.03.2019, it is evident that there were certain observations which the conciliator recorded. However, in order to twist the narrative, the respondent has concluded the conciliator's observation as a finding. It is wrong to say that all the disputes were resolved before the conciliator. All the issues are still pending for resolutions, which were referred to the conciliator. The Regulatory Authority has passed an order holding appellants to be liable to pay VAT, Labour Cess and Farmers' Compensation in pursuance to Clauses 10 and 11 of the Agreement. The fact is that the appellants along with his wife and some others had purchased the Unit after implementation of GST and also after the issuance of Occupation Certificate by the Authority and hence, VAT is not applicable on them.

(AA) The principal liability to pay Labour Cess is on the respondent and the respondent has not received any additional demand with respect to payment of Farmers' Compensation which is evident from reply received under Right to Information Act.

(BB) The respondent is misleading the Hon'ble Tribunal by stating that if the appellants are not liable to pay GST, they are liable to pay VAT. Respondent's contention that appellants are liable to pay VAT is devoid of any logic. The fallacy in its statement is that since the appellants have not paid GST they are, therefore, liable to pay VAT is legally and logically untenable.

(CC) In view of the above, these appeals deserve to be allowed with exemplary cost imposed against the respondent.

20. FINDINGS

Heard rival contentions of the learned counsel for the parties and perused the plethora of documents available on record.

The perusal of the documents available on the record, depicts that the appellants as complainants have prayed for 16 reliefs (mentioned in para no. 6 of this judgment) before the U.P. Regulatory Authority.

But in appeal the appellants/complainants have confined their main reliefs upto three only which are as follows:-

(I) This Hon'ble Tribunal be pleased to set aside the impugned judgment and order dated 06.08.2019 passed by the Uttar Pradesh Real Estate Regulatory Authority, Regional office, Gautam Buddh Nagar, Bench 02 in related complaints.

(II) This Hon'ble Tribunal be pleased to set aside the demand letter issued by the respondent against the appellants.

(III) This Hon'ble Tribunal be pleased to restrain the respondent from raising future illegal demands with respect to VAT/GST, Labour Cess and Farmers' Compensation.

<u>POINTS OF DETERMINATION</u>

From the perusal of the pleadings of the parties following points of determination emerge:-

(i) Whether the complaints presented before U.P. Regulatory Authority were not maintainable as pleaded by respondent/Builder-Company in its reply to the appeals?

(ii) Whether demands made by the respondent/Builder-Company with respect to VAT/GST, Labour Cess and Farmers' Compensation and IGL/GAS connection are illegal as stated by appellants in their appeals?

Determination of Point No. 1.

Maintainability of the complaints before the Regulatory Authority:-

In this regard, the learned counsel for respondent submitted that the complaints presented before Regulatory Authority are not maintainable because the complainants/appellants had challenged before the Regulatory Authority the validity of the Taxes in the form of VAT, GST, Cess (Labour Cess) and Farmers' Compensation, which are related to interpretation of Builder-Buyer Agreement. He further submitted that the learned Authority is not empowered under Section 31 of the Act to assess the validity of VAT, GST, Labour Cess and Farmers' Compensation on account of land acquisition. The learned counsel also submitted that the complaints filed by appellants/complainants before the Regulatory Authority are also not maintainable on another count that the appellants have failed to prove any violation or contravention of any provisions of the Act, Rules or Regulations framed thereunder which is '*sine qua-non*' for maintaining a complaint under Section 31 of the Act,2016.

In support of his arguments, the learned counsel relied upon the following cases:

(i) **Jagmittar Sain Bhagat &Ors. vs. Director Health Services Haryana and Ors. reported in (2013) 10 SCC 136**;

(ii) **Kanwar Singh Saini vs. High Court of Delhi reported in (2012) 4 SCC 307**;

(iii) Nusserwanjee Pestonjee v. Meer Mynoodeen Khan LR. (1855) 6 M.I.A. 134 (PC); and

(iv) Nautam Prakash DGSVC, Vadtal, and Ors/ vs. K.K. Thakkar and Ors. reported in 2006 (5) SCC 330.

Vehemently rebutting the argument of learned counsel of respondent, the learned counsel for appellants stated that, the arguments advanced by learned counsel for respondent has no substance. If he was serious on the point as he has submitted above, then this question ought to be raised before the learned Authority but failed to do so, hence, the argument of learned counsel for respondent is not sustainable before this Hon'ble Tribunal.

In this context we perused Section 31 of the Act, 2016 which is reproduced as below:-

"31. **Filing of complaints with the Authority or the adjudicating officer**.–

(1) *Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter, allottee or real estate agent, as the case may be.*

(2) … …. …."

Here it is worthy to note that between the appellants-and respondent/Builder-Company the main '**bone of contention**' is regarding payment of dues like-VAT/GST, Labour Cess, Farmers' Compensation and IGL/GAS connection to the respondent and **non-**

execution of sale deed of the Unit/Flat in favour of respective appellant/complainant.

In brief, payment of dues to the respondent and non-execution of sale deed in favour of respective appellant in spite of paying sale consideration, whatever may be the truth, if either of the above allegations is true, it is against the spirit of the Real Estate (Regulation and Development) Act, 2016 and the complaint is maintainable before the Regulatory Authority.

In order to arrive at the correct conclusion we have to go through the pleadings of complaint and reliefs prayed for (as mentioned in para 6 of this judgment).

It is obvious from the above mentioned reliefs that most of the reliefs relate to the duties of Promoter as provided under Section 11(4)(a),(d),(f)&(g) of the Real Estate (Regulation and Development) Act, 2016 which are reproduced as below:

"11. Function and duties of promoter.—

(1) The promoter shall, upon receiving his Login Id and password under Clause (a) of sub-section (1) or under sub-section (2) of Section 5, as the case may be, create his web page on the website of the Authority and enter all details of the proposed project as provided under sub-section (2) of Section 4, in the fields as provided for public viewing, including---

(a) details of the registration granted by the Authority;

(b) quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked;

(c) quarterly up-to-date the list of number of garages booked;

(d) quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate;

(e) quarterly up-to-date status of the project; and

(f) such other information and documents as may be specified by the regulations made by the Authority.

(2) The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto.

(3) The promoter at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee, the following information, namely:-

(a) Sanctioned plans, layout plans along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority;

(b) The stage-wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity.

(4) The promoter shall—

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

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

(b) *be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;*

(c) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees;

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

(e) enable the formation of an association or society or cooperative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:

Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;

(f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under Section 17 of this Act;

(g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project).

Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even

after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefore by such authority or person;

(h) *after he executes an Agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be*

(5) The promoter may cancel the allotment in terms of the Agreement for sale:

Provided that the allottee may approach the authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the Agreement for sale, unilateral and without any sufficient cause.

(6) The promoter shall prepare and maintain all such other details as may be specified, from time to time, by regulations made by the Authority".

Thus, it is apparent that whatever reliefs have been sought by the complainants in the complaints, most of them are covered under Section 11(4)(a),(d),(f) & (g) which relate to duties of promoter. In other words, if the promoter deviates from any of his duties the complaint under Section 31may be filed against him under the Real Estate (Regulation & Development) Act, 2016.

Apart this, we have also perused the cases/judgements cited by learned counsel for respondent which are mentioned as under:-

Jagmittar Sain Bhagat &Ors. vs. Director Health Services Haryana and Ors,(2013) 10 SCC 136.

In this case the Hon'ble Apex Court has ruled:

"Indisputably, it is settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of parties nor by a superior court, and if the court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the root of the cause. Such an issue can be raised at any stage of the proceeding".

The same proposition has been laid down in case of ***Kanwar Singh Saini Vs. High Court of Delhi, (2012) 4 SCC 307***.

The Privy Council in **Nusserwanjee Pestonjee v. Meer Mynoodeen Khan LR. (1855) 6 M.I.A. 134 (PC);** has observed:

"***wherever jurisdiction is given to a court by an Act of Parliament and such jurisdiction is only given upon certain specified terms contained in that Act it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction for if they be not complied with the jurisdiction does not arise***".

The same proposition has been reiterated by the Apex Court in **Sreekantan and Ors. vs. P. Sreekuntaran Nair and Ors, reported in 2006(13) SCC 574**]

In Nautam Prakash DGSVC, Vadtal and Ors. vs. K.K. Thakkar and Ors. reported in 2006 (5) SCC 330**;the Supreme Court has ruled:**

"24 A statutory authority, as is well known, must exercise its jurisdiction within the four corners of the statute. It cannot act beyond the same. Any ***order which is passed by an authority which lacked inherent jurisdiction would be ultra vires"***.

In view of the above verdict, it is apparent that the proposition laid down in above cited cases/judgments does not support the argument of learned counsel for the respondent because the learned Regulatory Authority is empowered to hear the related complaints (with these appeals), as the reliefs sought by complainants are covered under the provisions of Real Estate (Regulation & Development) Act, 2016. Thus, it is vivid that the complaints presented before the Regulatory Authority were maintainable.

Accordingly, Point No. 1 is disposed of.

23. <u>Determination of Point No.2</u>

Whether demands made by the respondent/Builder-Company with respect to VAT/GST, Labour Cess, Farmers' Compensation and IGL/GAS connection are illegal as stated by the appellants in their appeals?

Before dealing with this issue, it is desirable in the interest of justice to peruse the reports submitted by Conciliator and Chartered Accountants.

<u>Conciliator's Report</u>

On 01.02.2019, the U.P. Regulatory Authority Bench No.2, Gautam Budh Nagar after hearing the matter appointed Mr. R.D. Paliwal (Retd. I.A.S.) as Conciliator to settle the disputes between Flat Allottees and respondent/Builder-Company. After four rounds of discussions as on 18.02.2019, 28.02.2019, 05.03.2019 and on 06.03.2019 the Conciliator recorded his finding in the form of **judgment and order** as mentioned below:

"**The demand** of payment towards **IGL/GAS** connection, **Farmers' Compensation** by respondent are as per rules and the issue of **Labour Cess, GST and VAT**, in interest of justice, will be decided by the Regulatory Authority (RERA).

Conciliator also directed Engineer Mr. Sai Kumar, who is affiliated with Regulatory Authority to visit the Parking Place and Swimming Pool and after inspecting the quality of the material used therein, to submit the report before the Regulatory Authority."

Regarding other issues Conciliator Mr. R.D. Paliwal directed the Builder-Company to make them operational/functional, properly and to resolve the rest disputes amicably.

This report was submitted by the Conciliator before the Regulatory Authority. The learned Authority vide its judgment and order dated 06.08.2019 has observed about this report as below:-

"*The matter was referred to the Conciliator to settle the disputes between complainants and respondent but even after four rounds of discussions it proved abortive.*"

25. <u>ASSESSMENT OF REPORT OF CONCILIATOR</u>

The report of Conciliator, Mr. R.D. Paliwal has no legal value because the report is in form of judgment and there is nothing on record from which it can be inferred that the parties agreed to the terms and agreement of the settlement and signed the same and thus, the report of the conciliator is neither binding on the parties nor can be relied upon and also deserves to be rejected.

Thereafter the whole related matter of the appeals was examined by Chartered Accountants and the reports were submitted to the Regulatory Authority. The reports submitted by Chartered Accountants are reproduced as below:-

<u>Report of Chartered Accountants</u>

Report submitted by Mr. R. Chaddha & Associates, Chartered Accountants appointed by appellants

On 15.04.2019 several Home Buyers/Complainants met Shri Balvinder Kumar, Member of the Authority and submitted a report prepared by C.A. Shri R. Chadha and Associates who was appointed by them (i.e. Home Buyers). In this report, Mr. Chadha has mentioned that at this stage Home-Buyers are not liable to pay any additional dues like-**GST, VAT, Labour Cess, Farmers' Compensation** and IGL/GAS connections, to respondent/promoter. The relevant portion of the report is as under:-

"The Builder (Aims RG Angel Promoters Private Limited) has demanded an additional amount of reimbursement of **VAT, GST Lapse, Labour Cess and Compensation** paid to the Farmers on account of Land Acquisition from the Flat Owners after possession of Flat."

The Flat Owners enquired about the possibility of non-payment of said demand as raised by the Builder and payment of amount in accordance with law. The details of demand raised are as below:-

A) Reimbursement from buyers of VAT on this Project.

B) Reimbursement from buyers of GST lapsed.

C) Reimbursement of Labour Cess.

D) Reimbursement of Enhanced Compensation paid to the Farmers on account of Land Acquisition.

C.A. Mr. Chaddha has classified, the home buyers into three Categories:-

1) Those buyers who got the allotment of Flat after the Completion Certificate was obtained (Category I)
2) Those buyers who got the allotment of the Flat before the Completion Certificate was obtained but before GST period (Category II)
3) Those buyers who got the allotment of Flat before the Completion Certificate was obtained but after the GST period(Category III).

A. Reimbursement from buyers of VAT on this Project:-

According to Chartered Accountant Mr. Chaddha, regarding VAT payment, the important interpretation based on above classification is :-

That for category I buyers, the VAT is not to be charged as per VAT Law and thus, the VAT portion out of total demand in the demand letter, relating to Category I (proportionate) is to be borne by the Builder himself. It may be noted that as per notification no. 11/2017 of CGST Act, 2017 dated 28.06.2017, GST is not applicable on sale of immovable properties where OC/CC has been received.

According to the above explanation, the Builder cannot recover the amount for reimbursement of VAT from Buyers of Category I.

2) For Category II and Category III buyers, the amount recoverable from home buyers is the amount of VAT paid through cheque by the Builder from his pocket.

Further the Builder has issued Final Demand Note before giving possession of Flat on various dates to buyers and in such demand note there is no demand with respect to reimbursement of VAT/Labour Cess& Compensation and the same was acknowledged by the Authorized Signatory of Builder. It's deemed that the Builder has settled all the dues and there is no such demand of VAT, Labour Cess& Compensation.

Furthermore, after the payment of Final amount or demand note, the Flat owner is not liable to pay any amount with respect to VAT/Labour Cess and Compensation.

B. Regarding reimbursement of GST:

Chartered Accountant, Mr. R. Chaddha has observed that the GST has been made applicable from 01.07.2017 and all the Flats sold after July 2017, the builder has charged the GST to end customer wherever it is applicable (for the period 01.07.2017 to 21.09.2017 i.e. before final OC/CC). Thus, it can't be recovered twice. **Further the lapse of GST is not on account of Buyers and thus to be borne by Builder**.

C. Reimbursement of Labour Cess:-

Chartered Accountant, Mr. R. Chadha is of the view that the Welfare Cess, falls under purview of Building and Other Construction Workers Act, 1996 (in short BOCW Act) read with the Building and other Construction Workers' Welfare Cess Rules, 1998. According to this Builder is liable to pay 1% of the construction cost as cess for the welfare of the construction workers, within thirty days of completion of one year from the date of commencement of work and every year thereafter at the notified rates on the cost of construction.

Thus, this is not a cess which is linked to the sale of houses, rather it is linked to the construction activity. Like ESI/PF, this is also a charge which the builder as employer has to bear against the employment of labour and is calculated as percentage of labour charges paid. This is another expenditure like raw material, construction cost, electricity bill etc., so labour cess forms part of total cost to the builder and not to be borne by the Flat owners.

As per provision of Section 3 of the Building and other Construction Workers' Welfare Cess Rules 1998, cost of construction shall include all expenditure incurred by an employer in connection with the building or other construction work. **Accordingly, the liability of Builder to pay such cess for welfare of his labourer**.

D. Reimbursement of Enhanced Compensation paid to the Farmers on Account of Land Acquisition:-

As per opinion of Chartered Accountant, Mr. R. Chaddha, the Builder has issued Final Demand Note before giving possession of Flat and in such demand note there is no demand with respect to reimbursement of VAT/Labour Cess & Compensation and same was acknowledged by the Authorized Signatory of Builder. It's deemed that the Builder has settled all the dues and there is no such demand of VAT, Labour Cess & Compensation.

Furthermore, after the payment of Final amount or demand note, the Flat owner is not liable to pay any amount with respect to VAT/Labour Cess and Compensation.

Above all, in addition to the arguments made above, the demand raised by Builder is barred by Law of Limitation as three years have elapsed and thus the builder has no right to recover the above said amount.

Report submitted by Mr. B.N. Ghosh, CharteredAccountant appointed by respondent

After the above report the respondent/promoter appointed another C.A. Mr. Bishawanath Ghosh of M/s B.N.G. Tax Consultant India Pvt. Ltd., who gave his just contrary report to the above narrating that all the demands made by the respondent/promoter regarding **GST/VAT, Labour Cess, Farmers' Compensation** and **I.G.L/GAS** connections are valid and recoverable from complainants. **Besides this**, another C.A. Mr. Manoj Jain and Associates who were also appointed by respondent certified the amounts deposited by respondent in concerned heads.

The respondent/promoter submitted the said report before the Regulatory Authority. The Regulatory Authority seeing the above both reports which were contrary to each other, appointed RERA's empanelled C.A. Mr. Praveen Kumar Srivastava to give 3rd party opinion.

27. Report(opinion) submitted by Mr. Praveen Kumar Srivastava empanelled Chartered Accountant of Regulatory Authority.

Empanelled **C.A. Mr. Praveen Kumar Srivastava** basing his opinion on Clauses 10 & 11 of Builder-Buyer Agreement submitted his report to the Authority mentioning that the demand made by the respondent/promoter as to GST Inputs, is time barred, hence, this demand is not genuine, and the rest demands which are relating to GST/VAT, Labour Cess, Farmers' Compensation and IGL/GAS connections, are valid and recoverable from Home-

Buyers/complainants. Thus, it is clear that this report confirms almost all the report/opinion given by C.A. Mr. Bishawanath Ghosh, appointed by respondent.

28. CLASSIFICATION OF APPEALS

Before proceeding further we have to look upon the factual matrix of the case, once more from which it is apparent that the facts and circumstances of all these appeals are similar with difference in the respective date of Builder-Buyer Agreement and amount paid and which is payable for the respective Unit.

In order to make adjudication easy and understandable all 56 appeals pending before this Tribunal may be classified in following categories:

CATEGORY No.(1) The appellants who have entered into Builder-Buyer Agreement after issuance of Occupancy Certificate dated 22.09.2017/27.10.2016 to the respondent-Builder-Company after implementation of G.S.T.

CATEGORY No.(2) The appellants who have purchased their respective Flat/Unit after issuance of Occupancy Certificate dated 27.10.2016 to the Builder-Company during the period of VAT and before GST came into force.

CATEGORY No.(3) The appellants who have purchased their respective Flat/Unit before issuance of Occupancy Certificate on the date mentioned at appropriate place in given chart and paid the amount on various dates during the period of VAT and in few cases some amount was also paid during the period of G.S.T.

29. CATEGORY No.(I)The appellants who have entered into Builder-Buyer Agreement after issuance of Occupancy Certificate dated 22.09.2017/27.10.2016 to the respondent-Builder-Company after

implementation of G.S.T.-----In this category those appellants come who after giving some amount entered into Builder-Buyer Agreement after issuance of occupancy Certificate dated 22.09.2017/ 26.10.2016 to the respondent/Builder-Company. This category consists of **13** appeals which are mentioned as under:

S.No.	Appeal No.	Parties Name	Builder-Buyer Agreement.
1.	213 of 2019	Vishnu Kumar Gupta Vs. AIMS RG Angel Promoters Pvt. Ltd.	20.01.2018
2.	214 of 2019	Ankur Maheshwari Vs. AIMS RG Angel Promoters Pvt. Ltd.	14.06.2018
3.	215 of 2019	Vinod Kumar Beniwal Vs. AIMS RG Angel Promoters Pvt. Ltd.	07.12.2017
4.	217 of 2019	Shyamoli Sinha Vs. AIMS RG Angel Promoters Pvt. Ltd.	07.12.2017
5.	218 of 2019	Utkarsh Rastogi Vs. AIMS RG Angel Promoters Pvt. Ltd.	24.10.2017
6.	220 of 2019	Prempal Singh Vs. AIMS RG Angel Promoters Pvt. Ltd.	28.11.2017
7.	221 of 2019	Vaibhav Kukreti Vs. AIMS RG Angel Promoters Pvt. Ltd.	15.10.2017
8.	222 of 2019	Richa Gupta Vs. AIMS RG Angel Promoters Pvt. Ltd.	31.01.2018

9.	223 of 2019	Vivek Khare Vs. AIMS RG Angel Promoters Pvt. Ltd.	08.11.2017
10.	227 of 2019	Sahil Gupta Vs. AIMS RG Angel Promoters Pvt. Ltd.	13.11.2017
11.	232 of 2019	Shipra Maheshwari Vs. AIMS RG Angel Promoters Pvt. Ltd.	27.04.2018
12.	298 of 2019	Subroto Mukherjee Vs. AIMS RG Angel Promoters Pvt. Ltd.	24.01.2018
13.	300 of 2019	Gaurav Virdi Vs. AIMS RG Angel Promoters Pvt. Ltd.	11.11.2017

The learned counsel for appellants submitted that the appellants had cleared all the dues and paid all the amounts demanded by the respondent in the ***Final Demand Note***. After clearing all the dues, the appellants were given possession of the Flats in terms of Clause 41(a) of Builder-Buyer Agreement. Thereafter, the appellants approached the respondent for execution of registered lease deed of the Flats, but the respondent/Builder-Company refused to execute the sale deed saying that the appellants have not paid all the charges towards **VAT, GST, Labour Cess, Farmers' Compensation, and IGL/GAS** connection.

The counsel for appellants further submitted that the appellants are not liable to make reimbursement of any of the charges for the reasons mentioned below:

(i) **VAT,** as it had already been abolished on 01.07.2017 and the Builder-Buyer Agreements were executed after the said date (i.e. 01.07.2017).

(ii) **GST,** Where Occupancy/Completion Certificate has been issued by the Development Authority, the provisions of GST will not apply.

(iii) **Labour Cess,** in view of **Section 3**, **Section 2(i), (iii)** of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and **Rule 3** of the Building and Other Construction Workers' Welfare Cess Rules, 1998, is part of cost of construction hence cannot be reimbursed.

(iv) **Farmers' Compensation and charges for IGL/GAS** connection**,** in view of Clause 10 and Clause 11 of the Builder-Buyer Agreement, cannot be reimbursed.

At last, the learned counsel for appellants submitted that the Hon'ble Court be pleased to direct the respondent to execute the sale deed of the respective Unit/Flat in favour of appellants.

Countervailing the argument of learned counsel for appellants, the learned counsel of respondent, narrating the facts in detail, submitted that uptill January, 2018, 13 allotments were made to the appellants. Thereafter on 07.02.2018, the respondent gave notice of possession to the appellants with respect to the respective Unit/Flat. On 17.03.2018 appellants paid a certain amount (whatever it may be) to the respondent/Builder-Company, towards **Basic Sale Price** of the Unit. **The learned counsel** further stated that on 30.03.2018 the respondent/Builder received another demand from VAT department i.e. after handing over the possession of the Unit/Flat to the appellants. In 2018, respondent raised claim for pro-rata charges towards total Labour Cess incurred uptill the Financial Year 2017-18, **VAT** uptill the Financial Year 2017-18, additional Farmers' Compensation for acquiring the ownership of certain portion of land in the Project and GST on each buyer in the Project including the appellants. **The learned counsel** further stated that the respondent's demand is within the ken of Section **11(4)(g) and Section 19(6)** of the Act and the understanding of the appellants that the present dispute falls under **Clauses 10 and 11** of the Builder-Buyer Agreement is based on an incorrect understanding of the Builder-Buyer Agreement**. The learned counsel** also submitted that the appellants deliberately overlooked the **payment plan** and the **Annexure A** to the Builder-Buyer Agreement because the said documents clearly note that the ***Service Tax/GST and other Government charges are to be paid separately***. Moreover, the appellants also overlooked the true purport of **Clause-8(c)** of Builder-Buyer Agreement read with **Annexure-E** to the Agreement in light of **Clauses 7 and 9** which again reiterate that the all kinds of government charges are payable separately by the allottees on pro-rata basis.

The learned counsel also submitted that if the parties intended to the basic sale price as full and final price then there was no occasion for expressions such as **'**Service Tax/GST and Other Government charges are to be paid separately' & 'Other Government Charges as applicable (if any) payable separately to be used in the Builder-Buyer Agreement. It is a settled law that each and every word of an agreement has to be assigned a meaning and cannot be brushed aside as superfluous.

In brief, the learned counsel for respondent submitted that the appellants are liable to pay charges towards **VAT, GST, Labour Cess, Farmers' Compensation** and charges for **IGL/GAS** connection to the Builder-Company.

The learned counsel also cited several cases/judgments in support of his arguments. The main cases/judgments, on which he placed his reliance, are noted below:-

(i) *Provash Chandra Dalui&Anr. Vs. Biswanath Banerjee and Anr. Reported in 1989 Supp (1) SCC 487.*

(ii) Sandvik Asia Pvt. Ltd. vs. Vardhman Promoters Pvt. Ltd. reported in 2007(94) DRJ 762, (Delhi High Court).

(iii) Sankar Ram & Co. vs. Kasi Naicker &Ors., reported in (2003) 11 SCC 699.

(iv) Tata Iron and Steel Co.Ltd. vs. The State of Bihar and Ors., Manu/JH/0557/2007, (Jharkhand High Court).

(v) Bharathi Knitting Company vs. DHL Worldwide Express Courier Division of Airfreight Ltd., reported in 1996(4) SCC 704.

In order to determine the legality of reimbursement of amount towards **VAT, GST, Labour Cess, Farmers' Compensation and amount paid for IGL/GAS connection** to the respondent/Builder-Company, we perused the whole documents again, very minutely. From the perusal, it is apparent that in **CATEGORY No.1**, some of the appellants have purchased their respective Unit/Flat after issuance of Occupancy Certificate dated 22.09.2017 and some of the appellants have purchased their respective Unit/Flat after issuance of Occupancy Certificate dated 27.10.2016 to the respondent/Builder-Company, but all the appellants have purchased their respective Unit/Flat when G.S.T. was in Vogue.

Now question arises:-

(a) *Whether appellants are liable to pay any amount towards VAT (Value Added Tax) to the respondent-Builder-Company?*

In this context, it is notable that the **U.P. VAT Act, 2008** came into force on January 01, 2008 and it was abolished on 01.07.2017. All the appellants entered into Builder-Buyer Agreement during the period of G.S.T. and after abolition of the U.P. VAT, Act, 2008 i.e. 01.07.2017. When VAT is not in vogue, the equity and justice demand that appellants cannot be asked to pay any amount towards VAT.

From another perspective, it is also pertinent to mention here that the **U.P. VAT Act, 2008** has already been abolished before the Builder-Buyer Agreement as executed in these Appeals, therefore, there is no justification to realize any amount towards VAT from any buyer relating to **VAT**. Not only this, the builder also cannot demand any amount with respect to **VAT** from any buyer retrospectively, though, there is a provision for reimbursement of any Government dues or charges retrospectively, in the Builder-Buyer Agreement. As per provisions of the **U.P. VAT Act, 2008** only a registered dealer can realize from any buyer any amount by way of tax on sale or purchase of goods or any amount in lieu of tax on sale or purchase of goods by giving a different name or colour in view of **Section 23 of the U.P. VAT Act, 2008** which reads as under:

"23. Realisation of tax on sale or purchase of goods.-

(1) (a) No person who is not a dealer registered under this Act, shall in respect of any sale or purchase made by or through him, realize from any person any amount by way of tax on sale or purchase of goods or any amount in lieu of tax on sale or purchase of goods by giving it different name or colour and no dealer registered under this Act, shall in respect of any sale or purchase made by or through him, realize from any person, other than a person to whom goods are sold by him, any amount by way of tax on sale or purchase of goods, or any amount in lieu of tax on sale or purchase of goods by giving it different name or colour;

(b) *Where tax is payable on sale or purchase of goods on any turnover by a dealer including a commission agent or any person mentioned in clause (h) of section 2 registered under this Act, such dealer may recover an amount, equivalent to the amount of tax on sale or purchase of goods payable, from the person to whom any such goods is sold by him, whether on his own account or on behalf of his principal.*

(2) *Where –*

(i) the amount of tax charged in tax invoice or sale invoice, as the case may be, exceeds the amount of tax payable; or

(ii) the amount of tax payable in respect of a sale exceeds the amount of tax charged in a tax invoice or a sale invoice, as the case may be, or

(iii) a tax invoice or sale invoice has been issued by the selling dealer to the purchasing dealer in respect of any goods but such goods or any part of such goods is returned or rejected by such purchasing dealer.

Debit note and credit note, of the amount of tax involved in each case, shall be issued in accordance with provisions of sub-sections (14), (15) and (16) of section 21.

(3) *Except as provided in section 34, no person shall deduct any amount as tax from the amount payable to the person selling the goods.*

(4) *No dealer shall include the amount of tax already paid on the purchase of goods in the sale price of such goods resold or goods manufactured by using such goods.*

The Builder in the instant appeals is not a registered dealer as on date of agreement to sale in view of the above provisions, hence cannot realized any amount towards VAT.

Thus, it is clear that as allottees, who have purchased Flats/Units after abolition of the **U.P. VAT Act, 2008** the amount of **VAT** cannot be charged from them as per provisions of the **U.P. VAT Act, 2008**.

Apart from this, in pursuance of 'Final Demand Note' dated 24.01.2018 which is marked as **Annexure-2** [annexed in **Appeal No. 213 of 2019: Vishnu Kumar Gupta and Pratibha Gupta (his wife) vs. AIMS RG Angel Promoters Pvt. Ltd**.] the appellants of this Appeal No. 213 of 2019 and other appellants have paid all the charges as demanded by respondent/Builder-Company. After making payments of all dues the appellants have been given possession of respective Unit/Flat in view of **Clause 41(a)** of Builder-Buyer Agreement which reads as under:-

*"**41(a)** That the Flat Allottee(s) will be entitled to possession of the said Flat only after all the amounts payable under this Agreement are paid and the Lease Deed in respect of the said Flat is executed and duly registered with the Registrar/Sub-Registrar concerned."*

It is also relevant to mention here that in these appeals, the appellants have got possession of the respective Unit/Flat, meaning thereby, all the amounts payable in the agreement have been paid by the appellants as it is evident from the above wordings of **Clause 41(a)** of the Builder-Buyer Agreement.

In this context, it is desirable to explain here ---**What is** the real intent behind the term "**Final Demand Note**" as issued by Builder? In **Black's Law Dictionary**, the term "**Final Demand Note**" as such has not been defined, but instead, term "**Demand Clause**" has been mentioned which means---"A provision in a note to compel full payment if the maker fails to meet an installment. [***9th Edn. 1999***].

The word, "**Final Demand Note**" has been used by Builder-Promoter after deep deliberation. It has not been used mechanically. In common parlance, the term "**Final Demand Note**" denotes "**Full Stop**" against any additional demand or further demand. Thereafter no demand is permissible, legally. In the present case, the "**Final Demand Note**" has already been issued to the appellants and the appellants have paid the amounts in pursuance of **'Final Demand Note'**, therefore, no question arises about any additional demand raised by respondent towards payment of **VAT, GST, Labour Cess, and Farmers' Compensation** .

Thus, in the light of above, the appellants of **CATEGORY No.(1)** cannot be made liable to pay any amount towards **Value Added Tax (VAT)**.

Regarding rest charges we will discuss herein after:

(b) Whether appellants are liable to pay any amount towards GST etc. (Goods and Services Tax etc.) to the respondent Builder-Company ?

With respect to these charges, the learned counsel for respondent submitted that whatever amount has been paid by appellants, that is **"Basic Sale Price"** of the Unit/Flat, and is not the final payment. He further submitted that the demand of charges by the respondent/Builder towards **VAT, GST, Labour Cess, Farmers' Compensation** and **IGL/GAS** connection is within the ken of **Section 11(4)(g) and Section 19(6) of the Real Estate (Regulation & Development) Act, 2016 and Clause 8(C) of the Builder-Buyer Agreement read with Annexure-A & E to the Builder-Buyer Agreement** in light of **Clauses 7 and 9 of the Agreement**. Therefore, appellants are liable to make reimbursement of the aforementioned charges to the respondent-Builder Company.

In the **CATEGORY No.(1)** the appellants (**13 in numbers**) have purchased their respective Unit/Flat after issuance of Occupancy Certificate dated 22.09.2017/27.10.2016 by New Okhla Industrial Development Authority, which is apparent from **Annexure-8** [annexed in **Appeal No. 213 of 2019, Vishnu Kumar Gupta and Pratibha Gupta (his wife) vs. M/s AIMS RG Angel**

Promoters Pvt. Ltd]. The Builder-Buyer Agreements relating to cases between parties, falling under Category No.1 were executed after issuance of Occupancy Certificate dated 22.09.2017/27.10.2016.

In this context, we studied **Section 11(4)(g) and Section 19(6)** of the **Real Estate (Regulation & Development) Act, 2016, Sections 4 and 8 of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010** and Clauses 7, 8(c)and Clause 9 **of the Builder-Buyer Agreement which are reproduced as under:**

"Section 11 of Real Estate (Regulation & Development) Act, 2016: Function and duties of Promoter:-

……………

……………...

(4)(g) *pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be,* ***which he has collected from the allottees, for the payment of outgoings(including land cost,*** *ground rent, municipal or* ***other local taxes,*** *charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such* ***other liabilities payable tocompetent authorities,*** *banks and financial institutions, which are related to the project):*

Provided that where any promoter fails to pay all or any of the ***outgoings collected by him from the allottees*** *or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefore by such authority or person;…*

"Section ***19 of Real Estate (Regulation & Development) Act, 2016:*** **Rights and duties of allottees**

……………

……………...

(6) *Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under Section 13, shall be responsible to make necessary payments in the manner and within the time* ***as specified in the said agreement for sale*** *and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges ground rent, and other charges, if any."*

Section 4 of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 *provides*:-

"General liabilities of promoter – *(1) Any promoter who intends to sell an apartment, shall make a full and true disclosure in writing of the following to an intending purchaser and the Competent Authority:*

(a) rights and his title to the land and the building in which the apartments have been or proposed to be constructed".

Section 8 of the Uttar Pradesh Apartment (Promotion of Constructions, Ownership and Maintenance) Act, 2010 reads as under:-

"**8.*Ownership of apartment shall be subject to conditions***:- *Where any allotment, sale or other transfer of any apartment has been made, whether before or after the commencement of this Act, in pursuance of any promise or payment, or part payment, of the consideration thereof, the allottee or transferee, as the case may be, shall not become entitled to the ownership and possession of that apartment or to a percentage of undivided interest in the common areas and facilities appurtenant to such apartment until full payment has been made of the consideration thereof together with interest, if any, due thereon, and where any such allottee or transferee has been inducted into the possession of such apartment or any part thereof in pursuance of such allotment or transfer, he shall, until the full payment of consideration has been made continue to remain in* *possession thereof on the same terms and conditions on which he was inducted into possession of such apartment or part thereof.* ***There shall not be anyhidden charges. All sale consideration shall be fixed either at the time of Agreement to sale or when the purchases are made final in writing as per provisions of this Act”***.

The Clauses 7, 8(c) and Clause 9 of the Builder-buyer Agreement are reproduced below:

“**Clause 7 of Agreement:** *That the Flat Allottee (s) hereby agree/s that he/she shall pay the price of the said Flat and other charges calculated on the basis of super area, which is understood to include pro-rata share of the common areas in the Complex. It is further understood and agreed by the Flat Allottee(s) that the super area given in this Agreement is tentative and subject to change upon approval of final building plan(s) and/or on completion of construction of the Complex. The Flat Allottee(s) hereby agree/s that no claim, monetary or otherwise will be raised in case of any change.”*

*“***Clause 8(c) of Agreement:** *That the outgoings of the developers are detailed in Annexure“E”.*

“**Clause 9 of Agreement:** *That the Flat Allottee (s) hereby agree/s that he shall pay the price of the said Flat and other charges calculated on the basis of super area, which is understood to include pro-rata share of the common areas in the Complex which is as per the layout plan/building plan. It is further understood and agreed by the Flat Allottee (s) that the super area given in this Agreement is tentative and subject to charge uponapproval of final building plan(s) and/or on completion of construction of the complex or change in FAR or* any *rules, regulations and by laws. The Flat Allottee (s) hereby agree/s that no claim, monetary or otherwise will be raised in case of any change.”*

In brief, Section 11(4)(g), imposes a duty on the promoter that he shall pay all outgoings to the Authority, which he has collected from the allottees.

In view of **Section 19(6),** the respondent can realize and demand only that amount which is specified in the Builder-Buyer Agreement. As per provisions of **Section 8** of the U.P. Apartment (promotion of Construction, Ownership and Maintenance) Act, 2010 there shall not be any hidden charges. All sale consideration must be disclosed either at the time of Agreement to sale or when the purchases are made final in writing as per provisions of this Act.

Clauses 7 and 9 of Agreement, relate to payment of the amount by Flat Allottee calculated on the basis of super area…….. But the question of super area is not directly involved in these appeals pending for disposal before this Tribunal.

Clause 8(c) deals with the outgoings as given in **Annexure-E** to the Agreement, such as:-

- Stamp Duty
- Registration Charges
- Electric Meter
- Other Government Charges as applicable (if any) payable separately
- Service Tax/GST as applicable.

Similarly, in **Annexure-A** to **Builder-Buyer Agreement** under the Head of "**Payment Details of the Residential Flat**" **at Point No.**1 "**Total Basic Sale Price**" (BSP) Rs……(whatever may be) has been mentioned.

At Point No.2 "**Total Unit Cost**" Rs….. (whatever may be) has been mentioned.

In the same **Annexure A, in 9th line** the following facts have been noted:

Service Tax/GST and **Other Government** charges as applicable (if any) payable separately.

In **11th line**, "**Service Tax/GST** will be paid by the Flat Allottee as per actual".

To sum up, all the charges paid towards **VAT, GST, Labour Cess, Farmers' Compensation** and **IGL/GAS** connection by respondent/Builder-Company shall be paid to the Authorities if the same have been collected from the Flat/Allottees.

The learned counsel has also drew our attention to **Clause 1 and 2** of the Agreement, which are reproduced as under:

Clause 1*. That Developer hereby agree/s to sell and the Flat Allottee(s) hereby agrees to purchase the Flat as described in ANNEXURE-"A" to this Agreement in the said Complex as per plans and specifications inspected, seen, agreed and accepted by him for a basic sale price plus other applicable additional charges as described in ANNEXURE-"B" annexed to this Agreement in respect of the said Flat.*

Clause 2*. That Developer hereby agree/s to sell and the Flat Allottee(s) hereby agrees to purchase the Flat as described in ANNEXURE-"A" to this Agreement in the said Complex as per plans and specifications inspected, seen, agreed and accepted by him for a basic sale price plus other applicable additional charges as described in ANNEXURE-"B" annexed to this Agreement in respect of the said Flat.*

From the perusal of Annexure-A to Builder-Buyer Agreement, it is obvious that the amount paid by appellants are not the basic sale price because below the Basic Sale Price "**Total Unit Cost**" has also been mentioned which has already been paid by the appellants. Apart from this, the appellants have paid all the amounts demanded by respondent/Builder in pursuance of "**Final Demand Note**".

The learned counsel for respondent placed reliance on several cases/judgments in support of his arguments, which are noted below:-

In ***Provash Chandra Dalui & Anr. Vs. Biswanath Baneerjee and Anr:-. Reported in 1989 Supp (1) SCC 487,*** the Hon'ble Apex Court has ruled that :- "Contract must be interpreted as a whole to ascertain the true intention of the parties. Interpretations must be such which does not do violence to the words/language of the contracts."

The said judgment has been relied on in ***Sandvik Asia Pvt. Ltd. vs. Vardhman Promoters Pvt. Ltd. reported in 2007(94) DRJ 762*** by the Hon'ble Delhi High Court.

The Hon'ble Apex Court in ***Sankar Ram & Co. vs. Kasi Naicker &Ors., reported in (2003) 11 SCC 699,*** has laid down that- **"**No part of the contract shall be construed as unnecessary or superfluous".

In ***Tata Iron and Steel Co. Ltd. vs. The State of Bihar and Ors., Manu/JH/0557/2007,*** the Hon'ble Jharkhand High Court has observed:-"Different words in a contract convey different meaning and each word must be given its respective meaning".

In ***Bharathi Knitting Company vs. DHL Worldwide Express Courier Division of Airfreight Ltd., reported in 1996(4) SCC 704,*** the Hon'ble Supreme Court has held:- "A person who signs the contract is bound by them unless the same is set aside by a competent civil court".

We have always kept in mind the aforestated propositions laid down by Hon'ble Apex Court and Hon'ble High Courts while interpreting the provisions contained in **Section 11(4)(g)** and **Section 19(6)** of the Real Estate (Regulation & Development) Act, 2016 and **Clauses 7 and 9** as well as **Clause 8(c)** of the Builder-Buyer Agreement. But we find that the learned counsel for respondent misunderstood the aforementioned propositions.

Interpretation of any terms/statutes does not depend upon its own ‘**volition’**. It depends on words used in statute and the context in which the said words have been used. It also must be remembered that “interpretation of any statutory words must not be based on “**Pick and Choose**” basis.

Apart from this, it is undisputed that Service Tax, GST and Government charges (if any) shall be paid separately. But respondent/Builder-Promoter has not filed any proof to the effect that he has paid any additional charges towards **VAT, GST, Labour Cess,** and **Farmers' Compensation** after issue of “**Final Demand Note**”.

In this context, it is very pertinent to mention here **Section 7(1) (a)** of the **Central Goods and Services Tax Act, 2017** which deals with the “**Scope of Supply**”. Sub-**section (1)(a) of Section** 7 provides as under:-

(1) For the purposes of this Act, the expression “**supply**” includes --

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

This **Section 7(1)(a)** must not be read in isolation. It must be read with **Paragraph 5 of Schedule-II** which speaks about “**Activities to be treated as Supply of Goods or Supply of Services**”.

The relevant **Paragraph 5** of **Schedule-II** of the Central Goods and Services Tax Act, 2017, reads as below:

“5. **Supply of services”**.

The following shall be treated as 'supply of service', namely:-

(a) *Renting of immovable property;*

(b) *Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly,* ***except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.***

Explanation.—For the purposes of this Clause—

(1) *the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:---*

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972(20 of 1972); or

(ii) a chartered engineer registered with the Institution of Engineers(India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development of planning authority;

(2) *the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;*

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customization, adaptation, up-gradation, enhancement, implementation of information technology software;

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and

(f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration."

On a conjoint reading of **paragraph 5** of **Schedule-II** and **Section 7(1)(a)** of **Central Goods and Services Tax Act, 2017,** it is obvious that the constructed Unit/Flat is not covered under definition of '**Goods**' as being permanently attached to the earth, it would be considered '**immovable property**' as defined in the Real Estate (Regulation and Development) Act, 2016 [Section 2(z)]. On this analogy, it (constructed unit) cannot be stretched within the periphery of **'supply of Service'**. It is also worth noting that in the cases where entire consideration has been paid for Unit/Flat after issuance of the Occupancy Certificate/Completion Certificate by the competent authority (New Okhla Industrial Development Authority, in these appeals), the provisions of G.S.T. shall not be attracted. In the aforementioned 13 appeals, **Occupancy Certificate** has been obtained by respondent/Builder-Company and the entire consideration for Flat/Unit has also been paid by the appellants in pursuance of '**Final Demand Note'**. Hence, in view of the above, GST cannot be charged from the appellants, mentioned in the above 13 appeals of **CATEGORY No. (1).**

GST Lapse-----In this context, it is pertinent to explain the term '**GST Lapse'**. The term '**GST Lapse'**- though not defined in CGST Act but it means time barred input tax credit (ITC) of GST or ineligible input tax credit under GST. In other words, the time prescribed for set-off, of input tax credit against GST has lapsed due to fault, ignorance or any other reason on part of Builder-Company. GST laws also provides that credit of goods held in stock by the developers as on GST transition date is available subject to satisfaction of certain conditions. If it lapses due to non-fulfillment of conditions of transition or set off on part of developer the buyers/allottees cannot be made liable for the same.

(c) Whether appellants are liable to pay 'Labour Cess" ?

In order to determine this point, one must go through **Section 3** of the Building and Other Construction Workers' Welfare Cess Act, 1996 and **Rule 3** of the Building and Other Construction Workers' Welfare Cess Rules, 1998. Section 3 of the Building and Other Construction Workers' Welfare Cess Act, 1996 provides as follows:-

<u>Section 3</u>

3. Levy and collection of Cess:- (1) *There shall be levied and collected a cess for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 at such rate not exceeding two per cent but not less than one per cent of the cost of construction incurred by an employer, as the Central Government, may, by notification in the Official Gazette, from time to time specify.*

(2) *The cess levied under sub-sec. (1) shall becollected from every employer in such manner and at such time, including deduction at source in relation to a building or other construction work of a Government or of a public sector undertaking or advance collection through a local authority where an approval of such building or other construction work by such local authority is required, as may be prescribed.*

(3) *The proceeds of the cess collected under sub-section (2) shall be paid by the local authority or the State Government collecting the cess to the Board after deducting the cost of collection of such cess not exceeding one per cent of the amount collected.*

(4) *Notwithstanding, anything contained in sub-section (1) or sub-section (2), the cess leviable under this Act including payment of such cess in advance may, subject to final assessment to be made, be collected at a uniform rate or rates as may be prescribed on the basis of the quantum of the building or other construction work involved.*

<u>Rule 3 of The Building and Other Construction Workers' Welfare Cess Rules, 1998 reads as below</u>:-

3. ***Levy of Cess***:-*For the purpose of levy of cess under sub-section (1) of Section 3 of the Act, cost of construction shall include all expenditure incurred by an employer in connection with the building or other construction work but shall* *not include-*

--cost of land;

--any compensation paid or payable to a worker or his kin under the Worker's Compensation Act, 1923.

The term "**Labour Cess**" neither has been used in **Section 3** of the Building and Other Construction Workers' Welfare Cess Act, 1996 nor it has been used in **Rule 3** of the Building and Other Construction Workers' Welfare Cess Rules, 1998, but instead of the term "**Labour Cess**" the term "**Levy of Cess**" has been used. On a conjoint reading of **Section 3** of the Building and Other Construction Workers' Welfare Cess Act, 1996 and **Rule 3** of the Building and Other Construction Workers' Welfare Cess Rules, 1998 it appears that the term "Levy of Cess" signifies the expression "**Labour Cess**", which connotes:

(a) Cost incurred on construction, but
it shall not include----

(b) (i) cost of land; and

(ii)----any compensation paid or payable to a worker or his kin under the Worker's Compensation Act, 1923.

Broadly speaking, "**Labour Cess**" is charged at the cost incurred on construction of the Building/Project and as per 'objective' of the Building and other Construction Workers' Welfare Cess Act, 1996, and the Building and Other Construction Workers' Welfare Cess Rules, 1998, the labour cess is to be collected from the employer/contractor because the same is part of the cost incurred on the Project/Building. It is not a '**tax**' which can be realized from the Home-Buyers/Allottees..

Thus, it can easily be inferred that "**Cess**" which is used for the purposes of construction as well as for the welfare of workers, is to be borne by the **Employer/Developer (Builder)** and not by Home-Buyers/Allottees.

In view of the above, we find that no liability can be imposed upon Home Buyers/Allottees of **CATEGORY No. (1)** to pay any amount to Builder/Promoter what he has spent for the afore-stated purposes (in name of Labour Cess).

(d) <u>Whether appellants are liable to pay Farmers'-compensation?</u>

With respect to this issue, the learned counsel for respondent has submitted that the case of appellants neither falls under the purview of **Clause 10** nor under the purview of **Clause 11** of the Builder-Buyer Agreement. He further stated that the appellants have failed to set up any case under **Section 31** of the Act relating to violation or contravention of the provisions of the Act or Rule or Regulation made thereunder. Therefore, prima-facie, the related complaints are not maintainable. Consequently, these appeals are liable to be dismissed out-rightly.

So far as maintainability of the related complaints are concerned, this issue has already been decided under "**Determination of Point No.1**". Hence, there is no need to reiterate the same thought here.

Now the question remains to be decided -**Whether appellants** are liable to pay Farmers' Compensation to the Builder-Company ?

In order to decide this question, at the outset-it is relevant to reproduce here **Clause 10 & Clause 11** of the Builder-Buyer Agreement:

Clause 10 runs as below:

__4.__ That both the parties have agreed that the cost of development and construction of the said Flat is escalation free, save and increase in Govt. rates, taxes, cessesetc, or any other additional demand created by Noida Authority due to any increase in compensation to farmers or any other reasons, and/or any other charges which may be levied or imposed by the Govt/Statutory Authorities from time to time. If any provision of the existing and future Laws, guidelines, etc., of any Government or the Competent Authorities made applicable to the said Flat/said complex requiring the Developer to provide pollution control additional devices, equipments etc, shall also be borne and paid by the Flat Allottee(s) in proportion to the area of his/their Flat to the total area of all the Flats in the said Complex, as and when demanded by the Developer.

__11.__ That the Flat Allottee(s) specifically agree/s to pay directly or if paid by the Developer then reimburse to the Developer on demand, all government charges, levies, service tax, any other charges, fees, taxes etc. leviable in future on the said Land and/or said Complex to be constructed on the said Land or the said Flat as the case may be, as assessable/applicable from the date of allotment of the said Flat to the Flat Allottee(s) and the same shall be borne and paid by the Flat Allottee(s) in proportion to the super area of the said Flat. If such charges are increased (including with retrospective effect) after the sale deed has been executed, then such charges shall be treated as unpaid sale of the said Flat and the Developer shall have the first charge/lien on the said Flat for recovery of such charges from the Flat allottee(s).

A plain reading of Clause 10 and Clause 11 of the Builder-Buyer Agreement makes it clear that the Payment Schedule as per Builder-Buyer Agreement is escalation free and the appellants/Flat Allottees have to deposit the amount as per the Payment Schedule. The appellants are required to pay additional amount with respect to government rates, taxes, cesses, levies etc., if there is any increase in the same after Builder-Buyer Agreement.

Similarly, if any additional compensation has been paid to the farmers as per direction of Statutory Authorities by Builder-Company after the execution of Builder-Buyer Agreement, the Appellants/Flat Allottees are liable to pay the same to the Builder Company.

In the cases at hand, there is no proof filed by Builder-Company showing that additional demand has been made by any Statutory Authority with respect to enhancement in government rates, taxes, cesses, levies etc. after the execution of Agreement. The Builder-Promoter has also failed to prove that New Okhla Industrial Development Authority had raised any additional demand towards Farmers' Compensation from the date of execution of Builder-Buyer Agreement.

On other hand, the appellants have filed papers No. 67 and 68 dated 11.03.2019, Paper No.69 dated 16.05.2019 and Paper No. 70 dated 24.04.2019 marked as Annexure No.6 enclosed in Appeal No. 213 of 2019 (Vishnu Kumar Gupta and Pratibha Gupta(his wife) vs. M/s AIMS RG Angel Promoters Pvt. Ltd.) related with information sought under Right to Information Act, 2005 from New Okhla Industrial Development Authority, Noida. These papers show that 'no liability with respect to payment of Farmers' compensation has been imposed upon respondent/Builder-Promoter by New Okhla Industrial Development Authority after execution of Builder-Buyer Agreement.

It is undisputed that the respondent/Builder-Company has got registered sale deed of the land in its favour on 15.06.2013 for the purposes of the Project and the Builder-Buyer Agreements were mostly executed after a lapse of quite considerable period. This fact has also been established that there is no any demand by any Statutory Authority regarding enhancement in taxes, fee, levy or any additional demand with respect to Farmers' Compensation after execution of Builder-Buyer Agreement, therefore no question arises to direct the Appellants/Home-Buyers of this **CATEGORY (1)** to pay any amount towards Farmers' Compensation.

e) Whether appellants are liable to pay charges for IGL/GAS

connection ?

The Term **IGL/GAS** connection signifies **Indraprasth Gas Ltd./GAS** connection.

Before deciding this issue it is pertinent to mention here **Clause 58 of Builder-Buyers** Agreements which is reproduced as below:-

"**58**. That the Flat Allottee(s) undertakes to pay the following charges:-

a) *Charges for electrification/connection from the electric supply authority/Developer base station to the sub-station in the complex and from the sub-station will be deposited by the Flat Allottee(s) on prorate basis with the Developer before completion of the Project while the charges for electrification/connection from the sub-station to the Apartment of Flat Allotee(s) and for the meter (for the Apartment) will be paid directly by the Flat Allote(s) to the electric supply authority/the Developer when electric connection is sought/obtained by him but prior to taking possession of the Apartment. However, the cost of cabling from the Flat Allottee(s) meter to the Apartment has been included in the basic sale price.*

b) *Costs towards electricity meter security deposit, energizing charges, water connection and sewer connection etc.*

c) *Security Deposit, connection charges and recurring charges for piped gas connection, if available.*

d) *Proportionate charges for provision of any other item/facilities/specification not specifically mentioned herein as may be required by any authorities or considered appropriate by the Developer.*

From perusal of afore-stated **Clauses 58(c) and (d)** of Builder-Buyer Agreement it is obvious that Flat Allottee/Home Buyer is liable to pay security deposit, connection charges and recurring charges for gas connection, if available.

In fact, **IGL/GAS** connection is not appurtenant to any

Unit/Flat. It is an additional facility which has been made available to Flat Allottees by Builder. If Flat Allottee is asking for **IGL/GAS** connection from Developer-Builder, then he is liable to pay for the same to the Builder-Company. If more than one Flat Allottees want to avail the facility of **IGL/GAS** connection from Developer-Builder, then they will pay the charges and expenditure proportionately to the Developer.

Thus, the appellants/Flat Allottees are liable to pay charges and expenditure paid towards IGL/GAS connection if availed by them, proportionately.

30. **CATEGORY No.(2)** The appellants who have purchased their respective Flat/Unit after issuance of Occupancy Certificate dated 27.10.2016 to the Builder-Company during the period of VAT and before GST came into force. This category consists of 11appeals which are as follows:-

S.N.	Appeal No.	Parties Name	Builder-Buyer Agreement.
1.	224 of 2019	Vijaya Kashyap Vs. AIMS RG Angel Promoters Pvt. Ltd.	29.04.2017
2.	225 of 2019	Amita Saxena Vs.AIMS RG Angel Promoters Pvt Ltd.	29.04.2017
3.	226 of 2019	Rajnish Jha vs AIMS RG Angel Promoters Pvt Ltd.	29.04.2017
4.	228 of 2019	Roopesh Saraswat Vs. AIMS RG Angel Promoters Pvt. Ltd.	28.04.2017
5.	229 of 2019	Rambir Singh Vs.	29.04.2017

		AIMS RG Angel Promoters Pvt. Ltd.	
6.	230 of 2019	Daman Preet Singh Vs. AIMS RG Angel Promoters Pvt. Ltd.	29.04.2017
7.	231 of 2019	Bipin Bihari Pathak Vs. AIMS RG Angel Promoter Pvt. Ltd.	29.04.2017
8.	233 of 2019	Romi Kumar Vs. AIMS RG Angel Promoters Pvt. Ltd.	19.04.2017
9.	257 of 2019	Inderbir Singh Matharu Vs. AIMS RG Angel Promoters Pvt. Ltd.	21.04.2017
10	261 of 2019	Saurabh Priyadarshi Vs. AIMS RG Angel Promoters Pvt. Ltd.,	26.03.2017
11	307 of 2019	Saurabh Bhatjiwala Vs. AIMS RG Angel Promoters Pvt. Ltd.	29.04.2017

The learned counsel for the appellants submitted that Builder-Company is not liable to get any charges paid towards VAT, GST, Labour Cess, Farmers' Compensation, and IGL/GAS connection from the Flat Allottees-Buyers.

Rebutting the aforesaid argument, the learned counsel for respondent stated that the argument of learned counsel for the appellants is not sustainable in the eyes of law. He further stated that Builder-Company is entitled to recover from the Allottees the **Government charges/Statutory charges, Farmers' Compensation, Labour Cess and charges for IGL/GAS** connection. Learned counsel also cited the case of **M/s Supertech Ltd. vs. Rajni Goyal 2018 SCC online SC 2114**, in support of his argument.

Now we have to examine- Whether **VAT, GST, Labour Cess, Farmers' Compensation, and charges for IGL/GAS** connection are payable to Builder-Company by the appellants of Category No.2 ?

1. **Reimbursement of VAT:** It is obvious from perusal of record that the appellants/Flat Allottees of this Category have purchased their respective Unit/Flat after issuance of Occupancy Certificate dated 27.10.2016 to the Builder-Company for Towers No. 1, 2, 6 and 7 during period of VAT and before implementation of GST. When Occupancy Certificate is issued to the Builder-Company, it means construction of the Units/Flats is complete in all respects and nothing remains yet to be constructed and if Flat is complete then it cannot be said "goods" as defined, under **Section 2(m)** of the **U.P. Value Added Tax Act, 2008** which is reproduced herein below:

"2(m) *"goods" means every kind or class of movable property and includes all materials, commodities and articles involved in the execution of a works contract, and growing crops, grass, trees and things attached to, or fastened to anything permanently attached to the earth which, under the contract of sale, are agreed to be severed but does not include actionable claims stocks, shares or securities".*

Thus, from the above, it is vivid that the Flat/Unit which is completely constructed, does not fall within the definition of "**goods**" and if the Flat/Unit is not covered under the definition of "**goods**" then no question arises to pay any amount towards VAT.

It is also very pertinent to mention here that the "**Final Demand Note**" has been issued on 24.01.2018, 12.09.2019, 13.5.2017, ………… after Occupancy Certificate obtained by Builder-Company. The expression "**Final Demand Note**" itself embodies demand of all charges which are due.

Therefore, any additional or further demand cannot be raised after issue of "**Final Demand Note**".

In this context, we also perused the case ***of M/s Supertech Ltd. Vs. Rajni Goyal 2018 SCC on line SC 2114*** as cited by learned counsel for respondent. In this case an Appeal was filed regarding the order of interest on account of delayed possession under Section 23 of the Consumer Protection Act, 1986 before the Hon'ble Apex Court against the order of dismissal passed on Review Petition by the National Consumer Dispute Redressal Commission.

The Honble Apex Court after hearing the Civil Appeals filed under Section 23 of the Consumer Protection Act, 1986 on the point of interest observed:

"*The period of interest should close on April 2016 when the Full Occupancy Certificate was obtained."* (para 4)

But the Hon'ble Court has not expressed any view regarding **sanctity of Government charges** regarding which, the National Consumer Dispute Redressal Commission had directed the consumer to pay the same (i.e. Government charges) only when the builder furnishes proof of the same.

But in the case at hand the facts and circumstances are quite different of the facts and circumstances of the aforementioned case, hence, the proposition laid down in the above stated case, does not support the stand of either of the parties.

The appellants of this category have purchased their respective units after issuance of Occupancy Certificate, hence are not liable to pay any amount towards VAT.

2. **Reimbursement of GST:** The appellants of this category who have purchased their respective Unit/Flat after issuance of Occupancy Certificate dated 27.10.2016 during the period of VAT, cannot be made liable to pay any amount towards GST because at that time GST was not in force.

3. **Reimbursement of Labour Cess and Farmers' Compensation :**Under **CATEGORY No.(2),** with respect to Labour Cess and Farmers' Compensation, the appellants cannot be made liable to pay any charges in the name of Labour Cess and Farmers' Compensation for the reasons as mentioned in CATEGORY No.(I).

4. **Reimbursement of IGL/GAS connection** : IGL/GAS connection is not appurtenant to any Unit/Flat. It is an additional facility which has been provided to Flat Allottees by Builder. If Flat Allottee is asking for IGL/GAS connection from the Developer-Builder, then he is liable to pay for the same to the Builder-Company. If more than one Flat Allottees want to avail the facility

of IGL/GAS connection at cost of Developer-Builder, then they will pay the charges and expenditure for the same proportionately to the Developer-Builder.Thus, the appellants/Flat Allottees are liable to pay charges/expenditure for IGL/GAS connection, if availed by them, proportionately.

31. CATEGORY No.(3) The appellants who have purchased their respective Flat/Unit before issuance of Occupancy Certificate on the date mentioned in chart given below and paid the amount on various dates mainly during the period of VAT, and in few cases some amount was also paid during the period of GST.

This Category consists of 32 appeals (including 3 cases of resale) which are mentioned as below:

S. N.	Appeal No.	Parties Name	Date of Purchase (Original	Date of Final Demand Note
1.	235 of 2019	Dinesh Kumar Shah Vs AIMS RG Angel Promoters Pvt. Ltd.	12.05.2011	04.12.2016
2.	236 of 2019	Bhuwanaditya Agarwal Vs. AIMS RG Angel Promoters Pvt. Ltd.	19.02.2012	04.12.2016
3.	237 of 2019	Karuna Vs. AIMS RG Angel Promoters Pvt. Ltd.	10.06.2011	29.04.2017
4.	238 of 2019	Mukesh Kumar Goel Vs. AIMS RG Angel Promoters Pvt. Ltd.	31.03.2014	12.12.2016

5.	239 of 2019	Harish Chandra Sharma Vs. AIMS RG Angel Promoters Pvt. Ltd.	03.05.2014	08.12.2016
6.	241 of 2019	Harsha Sharma vs. AIMS RG Angel Promoters Pvt. Ltd	11.05.2014	12.06.2016
7.	242 of 2019	Niraj Shivhare Vs. AIMS RG Angel Promoters Pvt. Ltd.	21.10.2011	13.12.2016
8.	243 of 2019	Ashish Kansal Vs. AIMS RG Angel Promoters Pvt. Ltd.	06.08.2011	31.03.2017
9.	244 of 2019	Biswajit Kar Vs. AIMS RG Angel Promoters Pvt. Ltd.	19.02.2012	04.12.2016
10.	246 of 2019	Vivek Kumar Vs. AIMS RG Angel Promoters Pvt. Ltd.	31.01.2014	05.12.2016
11.	247 of 2019	Sudhanshu Singhania Vs. AIMS RG Angel Promoters Pvt. Ltd	10.06.2011	16.12.2016
12.	249 of 2019	Neelam Sharma Vs. AIMS RG Angel Promoters Pvt. Ltd	23,07.2011	07.12.2016
13,	250 of 2019	Jagat Singh Vs. AIMS RG Angel Promoters Pvt. Ltd	10.06.2011	20.11.2017
14.	251 of 2019	Satya Malhotra Vs. AIMS RG Angel Promoters Pvt. Ltd	02.01.2016	23.04.2017
15.	252 of 2019	Sanjay Tyagi Vs. AIMS RG Angel Promoters Pvt. Ltd	19.03.2015	10.06.2017

16.	253 of 2019	Kailash Narain Vs. AIMS RG Angel Promoters Pvt. Ltd	08.04.2012	01.05.2017
17.	255 of 2019	Sunil Kumar Singh Vs. AIMS RG Angel Promoters Pvt. Ltd	27.04.2014	24.05.2017
18.	258 of 2019	Amit Sharma Vs. AIMS RG Angel Promoters Pvt. Ltd	04.04.2012	08.05.2017
19.	259 of 2019	Ranjan Kumar Vs. AIMS RG Angel Promoters Pvt. Ltd	22.09.2011	10.09.2016
20.	260 of 2019	Manish Upreti Vs. AIMS RG Angel Promoters Pvt. Ltd	31.05.2011	11.12.2016
21.	297 of 2019	Surendra Nath Taneja Vs. AIMS RG Angel Promoters Pvt. Ltd	25.04.2012	02.05.2017
22.	301of 2019	Anjana Chakroborty Vs. AIMS RG Angel Promoters Pvt. Ltd	03.07.2011	07.05.2017
22.	302 of 2019	Ram Ashish Chaudhary Vs. AIMS RG Angel Promoters Pvt. Ltd	06.08.2011	Not available on record.
24.	303 of 2019	Anurag Yadav Vs. AIMS RG Angel Promoters Pvt. Ltd	12.02.2012	18.12.2016
25.	304 of 2019	Priyanka Verma Vs. AIMS RG Angel Promoters Pvt. Ltd	08.03.2016	19.04.2018

26.	305 of 2019	Manju Shukla Vs. AIMS RG Angel Promoters Pvt. Ltd	09.02.2014	03.04.2017
27.	306 of 2019	Abhay Kumar Vs. AIMS RG Angel Promoters Pvt. Ltd	29.04.2017	13.06.2017
28.	590 of 2019	Manish Kumar Singh Vs. AIMS RG Angel Promoters Pvt. Ltd	11.03.2012	13.04.2017
29.	591 of 2019	Yogesh Prasad Goniyal Taneja Vs. AIMS RG Angel Promoters Pvt. Ltd	10.06.2011	Not available on record.
Cases of Re-sale				
30.	216 of 2019	Kailash Chandra Kargeti Vs. AIMS RG Angel Promoters Pvt. Ltd(Re-sale date 13.06.2017	12.02.2012	22.12.2016
31.	219 of 2019	MaltiBist Vs. AIMS RG Angel Promoters Pvt. Ltd(Re-sale date 30.05.2018)	19.01.2013	04.05.2017
32.	299 of 2019	Farhat Imam Vs. AIMS RG Angel Promoters Pvt. Ltd(Re-sale dated 28.03.2018)	11.02.2012	Not available in record.

Now the question may be posed:-**Whether appellants** of this CATEGORY No. (3) can be made liable to make reimbursement of the charges relating to **VAT, GST, Labour Cess, Farmers' Compensation, and IGL/GAS** connection to the respondent/Builder-Company ?

<u>Reimbursement of VAT:</u> The learned counsel for the appellants submitted that the appellants of CATEGORY No.(3) cannot be made liable to pay any charges towards **VAT** because the '**Basic Sale Price**' of the Flat/Unit, as fixed by the respondent-Builder includes the entire cost adding thereon profit and other charges like- **VAT** and **Cess** as per its discretion which have been paid by appellants, hence, no question arises to make reimbursement of charges towards **VAT**. Learned counsel further submitted that the amount demanded by the respondent in respect of charges relating to VAT is exorbitant and unreal also.

Rebutting the argument of learned counsel for appellants, the learned counsel of respondent submitted that it is an admitted fact that the respondent has paid the **VAT** and **Cess** every year since 2011-2018, therefore, the appellants are liable to make reimbursement of **VAT** and **Cess** to the respondent/Builder.

The factual matrix of this category reveals that the appellants of this category have purchased their respective Flat/Unit on the dates mentioned in the aforesaid chart. In three Appeals i.e. Appeals no. 302/2019, 591/2019 and 299/2019 of which the date of final demand notice is not available in the concerned record of the appeals.

From the above noted "**Date of Purchase**" it is evident that the appellants of this Category have purchased their respective Flat/Unit before obtaining Occupancy Certificate by the Builder and most of the amounts were paid during the period of **VAT** and before **GST** came into force.

Now the question arises - Whether respondent/Builder-Company has paid **VAT** charges in aforesaid 32 appeals ?

We have perused the Final Demand Note issued by the builder. From the perusal of the record it is apparent that the builder has not charged any amount towards GST in the Final Demand Note in cases where appellants have paid the charges during the period of VAT. The amount of Service Tax has been charged separately in the Final Demand Note, but it is mentioned in the Note that Service Tax is applicable as per Government norms. From the perusal of Clauses 10 and 11 along with Annexure, A, B and E of the Builder-Buyer Agreement, it is obvious that buyers and builders had agreed on a basic sale price of the flat and all other Government charges as mentioned in Annexure-E to the Builder-Buyer Agreement like-stamp duty, registration charges, electric meter, Other Government Charges as applicable (if any), payable separately, service Tax/GST as applicable, and as per Clauses 10 and 11 of the Builder-Buyer Agreement additional demand by NOIDA due to any increase in compensation, to the farmers' or any other reasons or any other charges, which may be imposed or levied by the Government/Statutory Authorities from time to time.

If any provision of the existing and future Laws, etc., of any Government or the Competent Authorities applicable to the said Flat complex requires the Developer to provide pollution control additional devices, equipments etc, shall also be borne and paid by the Flat Allottee(s) proportionately when demanded by the Developer. Besides, al*l government charges, levies, service tax, any other charges, fees, taxes etc. leviable in future on the said Land and or said Complex to be constructed on the said Land or the said Flat as the case may be, as assessable/applicable from the date of allotment of the said Flat to the Flat Allottee(s) and the same shall be borne and paid by the Flat Allottee(s) in proportion to the super area of the said Flat. If such charges are increased (including with retrospective effect) after the sale deed has been executed, then such charges shall be treated as unpaid sale of the said Flat and the Developer shall have the first charge/lien on the said Flat for recovery of such charges from the Flat allottee(s).*

However, this reimbursement/charges on account of the amount paid to the Government/Statutory body shall not include any profit element of the builder. It should be reimbursed on the basis of actual payments made by the builder.

Further the buyers also cannot be forced to pay interest paid by the builder to government authorities on account of late payment of any statutory dues.

If summarily, stated ----

All the demands regarding additional Government taxes, charges, Cesses, levied, Farmers' Compensation and Other Government Charges etc. are within the purview of Clauses 10 and 11 of the Builder-Buyer Agreement and the respondent-Builder has right to recover the same when such charges etc. are levied or an additional demand or an increase in demand of the said "Other Government charges" has arisen after the date of execution of the agreement.

In the case at hand, the respondent-Builder has not submitted any proof to the effect that there has been any increase in Government rates, taxes, cesses, levies, fees, taxes or any other charges imposed by statutory Authorities after the execution of the Builder-Buyer Agreement, but with respect to VAT under this Category, respondent-Builder has submitted proof which is discussed hereinafter.

Thus, we are of the considered view that the Builder-Company cannot impose interest on the buyers on account of late payment of any statutory dues.

We again perused the whole record. From perusal of the record it is clear that in **Appeal No. 213 of 2019 (Vishnu Kumar Gupta and his wife vs. M/s AIMS RG Angel Promoters Pvt. Ltd**.) and 55 others, the appellants have filed rejoinder affidavit and with this rejoinder affidavit, **Annexure No. RA-1** (pages 11-12) is enclosed which reveals that the respondent has paid continuously **VAT** for each assessment year from **2011 till 2018**. As per averments of the appellants the total amount of **VAT** paid by respondent/Builder is Rs.10,43,89,534=00 and on this amount Rs.5,05,35,987=00 has been imposed as interest by **Builder which**

is not permissible in the eyes of law. In this **Category No.(3)**, more important thing is, the appellants have already admitted during the course of argument (and in their list of dates and events as submitted by them) that, "**in any case, the appellants cannot be made liable to pay any amount towards VAT exceeding Rs.3,33,52,284=00 being 21.52% of the amount**". In other words, it is admitted fact that the appellants have no objection to make reimbursement of Rs.3,33,52,284=00 towards **VAT**charges. But what is criteria on the basis of which appellants have calculated the **VAT** Rs.3,33,52,284=00 has not been clarified.

In this regard again we perused the whole record. In few appeals including Appeal No. 591 of 2019 (Yogesh Prasad Goniyal Vs. AIMS RG Angel Promoters Pvt. Ltd.), **- Annexure No. RA-3 [**Papers No.20-23] is enclosed which is information sought by appellants under Right to Information Act, 2005. From this information it is obvious that the Builder-Company has deposited Rs.6,57,64,295=00 through ITC (Input Tax Credit, in fact, the effect of ITC is set-off, of the payable amount of taxes because the taxes have already been paid at the time of purchase the material, like-Cement, Steel etc.), during the period of 2011-2018 and has also deposited Rs.4,31,97,304=00 through Challan during the said period (2011-2018). Thus, the Builder-Company has deposited total charges Rs.10,89,61,599=00 towards **VAT** during the period of 2011-2018. On this amount the Builder-Company has claimed interest Rs.5,05,35,987=00, which is not legally acceptable in our view.

On this point the submission of the learned counsel for appellants that in pursuance of **Final Demand Note** the appellants have deposited all the required charges, cannot be admitted because this is an admission of appellants' counsel that maximum Rs.3,33,52,284=00 may be paid towards **VAT** charges. It means appellants' counsel admit that the appellants have not deposited **VAT** charges.

Apart from this, the appellants themselves have filed proof (in form of information received under Right to Information Act, 2005- (**Annexure No. RA-3**) to the effect that the Builder-Company has deposited charges Rs.10,89,61,599=00 towards **VAT**. To contradict it, no proof has been filed on behalf of respondent/Builder-Company. Instead, the appellants have already admitted that maximum Rs.3,33,52,284=00 may be reimbursed towards **VAT** charges.

Therefore, on the basis of above discussion, it is easily inferable that appellants of CATEGORY No. (3) are liable to reimburse charges Rs.10,89,61,599=00 towards **VAT** proportionately to the Builder-Company.

Reimbursement of GST: The appellants who have paid entire consideration before implementation of GST under this Category cannot be asked to pay charges towards **GST** for the simple reason that all the appellants have purchased their respective Flat/Unit before the implementation of **GST**. **"Final Demand Notes"** which have been issued in these appeals, except few, relate to the period when the **GST** was not in Vogue.

In two Appeals i.e. in Appeal No. 250 of 2019 date of purchase is 10.06.2011 and date of **Final Demand Note** is 20.11.2017 and in Appeal No.304 of 2019, date of purchase is 08.03.2016 and date of **Final Demand Note** is 09.04.2018. From this, it is amply clear that when the **Final Demand Note** has been issued after **GST** came into force, required charges would have already been added in **Final Demand Note and the same must have paid accordingly**. It is bounden duty cast upon the Builder to be "**care-worn"** in this respect, at least. Thus, it is obvious from the above that the appellants of this Category No. 3 are not liable to make reimbursement of any amount towards GST.

Reimbursement of Labour Cess & Farmers' Compensation: Regarding this issue, the detailed discussion has been made in **Category No.(1),** on the basis of which and for the reasons mentioned therein, the appellants of this Category can also not be made liable to reimburse charges towards **Labour Cess and Farmers' Compensation**.

Reimbursement of IGL/GAS connection : IGL/GAS connection is not appurtenant to any Unit/Flat. It is an additional facility which has been provided to Flat Allottees by Builder. If Flat Allottee is asking for IGL/GAS connection from the Developer-Builder, then he is liable to pay for the same to the Builder-Company. If more than one Flat Allottees want to get the facility of IGL/GAS connection at cost of Developer-Builder, then they will pay the charges and expenditure for the same, proportionately to the Developer-Builder.

In view of aforestated discussion, we are of the considered view that the judgment and order under impugnment is totally perverse and not sustainable in eyes of law. The learned Regulatory Authority has failed to exercise its jurisdiction in a proper and judicious way and therefore, the judgment and order dated 06.08.2019 is liable to be upturned by allowing the instant appeals.

ORDER

The impugned judgment and order dated 06.08.2019 passed by learned Regulatory Authority in Complaint Case No.11201823828 of 2018 (**Vishnu Kumar Gupta & Pratibha Gupta (his wife) Vs. AIMS RG Angel Promoters Pvt. Ltd**.), and in 55 others is set aside, consequently the instant Appeal No 213 of 2019 [**Vishnu Kumar Gupta & Pratibha Gupta (his wife) Vs. AIMS RG Angel Promoters Pvt. Ltd**.] and 55 other connected appeals are allowed with the following directions:

(i) The Appellants of **CATEGORY No.(1),** who have entered into Builder-Buyer Agreement after issuance of Occupancy Certificate dated 22.09.2017/27.10.2016 to the respondent-Builder-Company after implementation of **G.S.T.,** are not liable to make reimbursement of any amount towards **VAT, GST, Labour Cess and Farmers' Compensation** for the reasons assigned under **CATEGORY No.(1)**.

So far as reimbursement of any charges and expenditure towards **IGL/GAS** connection are concerned, the appellants/Flat allottees are liable to make reimbursement of charges and expenditure for **IGL/GAS** connection, if availed by them, proportionately, within one month from the date of uploading the order on e-portal of the U.P. Real Estate Appellate Tribunal.

(ii) The Appellants/Flat Allottees of **CATEGORY NO.(2),** who have purchased their respective Flat/Unit after issuance of Occupancy Certificate dated 27.10.2016 during the period of **VAT** and before **GST** came into force are not liable to make reimbursement of any amount towards **VAT, GST, Labour Cess and Farmers'**

Compensation for the reasons as discussed above under **CATEGORY No.(2)**.

So far as reimbursement of any charges and expenditure towards **IGL/GAS** connection are concerned, the appellants/Flat allottees are liable to make reimbursement of charges and expenditure for **IGL/GAS** connection, if availed by them, proportionately, within one month from the date of uploading the order on e-portal of the U.P. Real Estate Appellate Tribunal.

(iii) The Appellants/Flat Allottees, who have purchased their respective Flat/Unit on the date mentioned in Chart given at appropriate place under **CATEGORY No.(3)** during the period of VAT and before GST came into force, are not liable to make reimbursement of any amount towards **GST, Labour Cess and Farmers' compensation,** except charges relating to **VAT and IGL/GAS** connection for the reasons as discussed above under **CATEGORY No.(3).**

So far asVAT is concerned, the Appellants/Flat Allottees of **CATEGORY No.(3)** are directed to make reimbursement of Rs.10,89,61,599=00 towards VAT, proportionately to the respondent/Builder-Company for the reasons as discussed above under **CATEGORY NO.(3)**, within one month from the date of uploading the order on e-portal of the U.P. Real Estate Appellate Tribunal.

The appellants/Flat allottees are also liable to make reimbursement of charges and expenditure for **IGL/GAS** connection, if availed by them, proportionately, within one month from the date of uploading the order on e-portal of the U.P. Real Estate Appellate Tribunal.

(iv) The respondent/Builder-Promoter is directed that after receiving the aforesaid dues as mentioned under CATEGORY No.1, 2, and 3 will execute the sale deed of respective Flat/Unit in favour of the appellants, within 15 days from the date of receiving the dues.

(v) The respective allottee will pay the GST charges, if any, on pro-rata basis of the expenditure incurred by the respondent/Builder-Promoter on production of its proof, for providing any additional facilities with the consent of the Allottees, after issuance of the Occupancy Certificate of the Tower/Project in question as per relevant provisions of Central Goods and Service Tax Act, 2017.

Let a copy of this judgment and order be placed on the records of Appeal Nos.**214 of 2019**, 215 of 2019, 217 of 2019, 218 of 2019, 220 of 2019, 221 of 2019, 222 of 2019, 223 of 2019, 227 of 2019, 232 of 2019, 298 of 2019, 300 of 2019;

224 of 2019, 225 of 2019, 226 of 2019, 228 of 2019, 229 of 2019, 230 of 2019, 231 of 2019, 233 of 2019, 257 of 2019, 261 of 2019, 307 of 2019;

235 of 2019, 236 of 2019, 237 of 2019, 238 of 2019, 239 of 2019, 241 of 2019, 242 of 2019, 243 of 2019, 244 of 2019, 246 of 2019, 247 of 2019, 249 of 2019, 250 of 2019, 251 of 2019, 252 of 2019, 253 of 2019, 255 of 2019, 258 of 2019, 259 of 2019, 260 of 2019, 297 of 2019, 301 of 2019, 302 of 2019, 303 of 2019, 304 of 2019, 305 of 2019, 306 of 2019, 590 of 2019, 591 of 2019;

216 of 2019, 219 of 2019, 299 of 2019**.**

(K. K. Jain)	(Tej Bahadur Singh)	(D.K. Arora)
Technical Member	Judicial Member	Chairman

Dated: July 30,2021
Vks.

Judgment signed, dated and pronounced through Video conferencing, today.

(K. K. Jain)	(Tej Bahadur Singh)	(D.K. Arora)
Technical Member	Judicial Member	Chairman

Dated: July 30,2021
Vks.

<u>Hon’ble Mr. Justice (Dr.) D. K. Arora, Chairman.</u>
<u>Hon’ble Mr. Tej Bahadur Singh, Judicial Member.</u>
<u>Hon’ble Mr. Kamal Kant Jain, Technical Member.</u>

Appeal is allowed vide judgment and order dated 30.07.2021 passed in Appeal No. 213 of 2019.

Dated: July 30,2021
Vks.