BENCH NO. 1

THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL AT LUCKNOW.

Appeal No. 182 of 2019

Arun Kumar Dwivedi ………**Appellant**

Versus

Uttar Pradesh Real Estate Regulatory Authority & another. …**Respondents**

Hon'ble Mr. Justice (Dr.) D.K. Arora, Chairman.
Hon'ble Mr. Rajiv Misra, Administrative Member.

1. Shri Arun Kumar Dwivedi (hereinafter referred to as 'the appellant') has preferred this appeal under Section 44 (1) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act 2016') against the order dated 26.06.2019 passed by the U.P. Real Estate Regulatory Authority, Lucknow (hereinafter referred to as the 'Regulatory Authority') in Complaint No. 10201821435 whereby the complaint of the appellant has been dismissed.

2. The facts of the case, in brief, as culled out from the memo of appeal, are that the appellant booked a flat in Mandakini and Bhagirthi Enclave, a project of U.P. Avas Evam Vikas Parishad (respondent no.2), on 18.03.2013 by depositing Rs.2,20,000/-. On 01.03.2014 the appellant was allotted Flat No. 3/T3-1106 in Alaknanda Enclave. In the allotment/demand letter dated 01.03.2014 the total cost of the flat was mentioned as Rs.43.15 lacs which was to be deposited in 8 quarterly installments between 01.04.2014 to 01.01.2016. The appellant deposited the said amount within time.

2.1 On 04.05.2018 a letter was sent to the appellant by respondent no. 2 (Uttar Pradesh Avas Evam Vikas Parishad) demanding Rs.8,16,607/- which is 18.9 percent of the cost of the flat. The appellant sent a representation to respondent no. 2 on 25.06.2018 praying to suspend the order for payment of excess amount of Rs.8,16,607/-.

2.2 Thereafter the appellant filed a Writ Petition No. 21449(M/B) of 2018 before the Hon'ble High Court. The Hon'ble High Court directed the respondents therein to treat the petition as a representation and take a decision in accordance with law.

2.3 On 07.08.2018 a letter was received by the appellant from respondent no. 2 informing that final cost will be enforced after receiving first installment. Thereafter respondent no. 2 issued another letter dated 06.09.2018 to the appellant that the final cost will be enforced on the date of payment of first installment. The appellant had deposited his first installment on 20.03.2014.

2.4 As per clause 2.1 of the booklet of the project the appellant should have been given possession of the flat within 30 months i.e. by September 2016 but respondent no. 2 completed its project in May, 2018. In this way the respondent no. 2 has delayed the project by more than one and a half year. GST has also been charged from July, 2017. The appellant made an online complaint before the Regulatory Authority on 13.10.2018.

3. The appellant has challenged the impugned order dated 26.06.2019 passed by the Regulatory Authority on the ground that the impugned order has been passed without considering the facts and circumstances and the impugned order has been passed in an illegal and arbitrary manner.

4. The appellant has prayed for the following reliefs:--

(a) To quash the order dated 26.06.2019 passed by the Regulatory Authority in Complaint No. 10201821435.

(b) To direct the respondent to provide possession of the flat in question without paying the excess amount, in the interest of justice.

(c) To award cost of the application in favour of the appellant against the respondents jointly and severally.

5. Respondent no. 2 (U.P. Awas Evam Vikas Parishad) filed its objection and submitted that the order dated 26.06.2019 passed by the Regulatory Authority is just, legal and sustainable in the eye of law.

5.1 In Mandakini, Bhagirathi and Alaknanda Enclave Project of respondent no. 2, the registration for allotment of flat under Self Financing Multi Storey Building Scheme had been opened and Registration Booklet mentioning the terms and conditions of allotment had been issued in 2014.

5.2 Clause 2.1 of the Registration Booklet provides that the cost of the flat mentioned in the brochure is an estimated cost. On completion of the project, after final costing of the flat, the final cost would be payable. Clauses 2.1 and 9.1 provide the expected priod of 30 months for completion of construction of the flat. These clauses do not provide the period of 30 months for delivery of possession.

5.3 Clause 2.3 of the Registration Booklet provides that besides the cost of the flat the location charges would be payable by the allottees of first, second and third floors. Clause 2.4 of the Registration Booklet provides that Car Parking charges would be payable by the allottee. Clause 2.5 of the Registration Booklet provides that free hold charges would be payable by the allottee. As per clause 2.6 of the Registration Booklet the maintenance charges and other miscellaneous charges would be payable by the allottee. Clause 2.11 of the Registration Booklet provides that besides the cost of the flat the service tax, G.S.T and VAT etc. imposed by the State Government or Central Government would be payable by the allottee.

5.4 The terms and conditions of clauses 4.6 and 4.7 of the Registration Booklet provide that due to delay, if the respondent could not allot the flat after six months of the payment of last installment, on demand of the allottee the amount deposited by the allottee would be refunded along with interest at the rate payable on Saving Bank Account; by the Nationalized Bank. Clause 9.2 of the Registration Booklet provides that delivery of possession would be made after full payment of the cost of the flat payable after final costing and execution of sale deed.

5.5 The terms and conditions of clause 4.6 of the Registration Booklet are applicable where the allottee chooses to terminate the contract by claiming refund due to delay of the project but there is no provision for payment of interest where the allottee claimed possession of the flat and agreed to pay the final cost of the flat.

5.6 After accepting the terms and conditions of the Registration Booklet the appellant had applied for allotment of 3 BHK plus servant type flat under self financing scheme by depositing the Registration Amount of Rs.2,20,000/- and in the eligibility draw held on 12.02.2014 the appellant was declared successful for allotment of Flat No. 3/T3-1106 and on the basis of estimated cost of Rs.43,15,000/- of the flat the demand letter dated 01.03.2014 had been issued to the appellant subject to final determination of price after completion of flat. The said estimated cost was assessed on the basis of 150 sq. meter super area and constructed area 135.92 sq.meter of the flat. In accordance with demand letter dated 01.03.2014 the amount of Rs.4,15,000/- was to be deposited within 30 days from the date of issue of demand letter and remaining amount of Rs.36,80,000/- was to be deposited in eight quarterly installments of Rs.4,60,000/- each. In the demand letter dated 01.03.2014 it was mentioned that on the delayed payment of installments 13.5% additional interest would be payable. Further the information regarding final cost of the flat and other misc. charges would be given through allotment letter.

5.7 After final costing of the flat the allotment letter dated 04.05.2018 had been issued to the appellant. On the basis of increased super area 151.16 sq. meter and constructed area 138.80 sq. meter the construction cost of the flat had been fixed at Rs.51,31,607/- and by adding 12% free hold charge of Rs.1,03,470/- the total cost of the flat had been fixed at Rs.52,35,077/-. By the said letter dated 04.05.2018 the appellant was directed to deposit the balance cost of the flat and complete the formalities for execution of sale deed and take possession of the flat. The appellant neither deposited the amount nor completed the formalities for execution of sale deed nor took possession of the flat.

5.8 In compliance of the order dated 27.07.2018 passed by Hon'ble High Court in Writ Petition No. 21449(MB)/2018 the respondent issued amended allotment letter dated 07.08.2019 for depositing the balance cost of the flat, completing the formalities for execution of sale deed and taking possession of the flat.

5.9 Thereafter the appellant submitted a letter dated 16.08.2018 for taking decision in compliance of the order dated 27.07.2018 passed by Hon'ble High Court. The Estate Management Officer sent reply dated 06.09.2018 to the appellant informing that in accordance with the terms and conditions of the Registration Booklet, final costing of the flat had been made and on that basis the allotment letter dated 04.05.2018 had been issued. In the said allotment letter the cost of the flat had been fixed on the basis of increased super area and constructed area. Further in accordance with the terms and conditions of the Registration Booklet the car parking charges, free hold charges and maintenance charges had been correctly charged from the appellant.

5.10 The Regulatory Authority correctly considered all the material facts and evidences produced before it and found that in accordance with the terms and conditions of the Registration Booklet the construction cost of the flat, car parking charges, free hold charges and maintenance charges had been correctly charged from the appellant and rejected the complaint of the appellant which is perfectly legal, just and proper and is sustainable in the eye of law.

5.11 The appellant has not mentioned any legal ground on the basis of which the appellant has challenged the order of the Regulatory Authority and as such the appeal of the appellant is not maintainable and is liable to be dismissed.

6. The appellant filed his reply/rejoinder to the objection of the respondent denying the averments made in the objection and reiterating the averments made in the memo of appeal. The appellant further submitted that clause 2.1 of the brochure stated that the cost of the flat is estimated and final cost of the flat shall be decided at the time of completion of the project while clause 11.7 clearly stated that the final amount of the flat shall be decided at the time of payment of first installment and that the cost of the flat is likely to escalate due to the increase in the market price of the flat and in case the increase is more than 20% then the allottee can

take back his entire money without any deduction and without any interest. The above mentioned clauses are not only contrary to each other but are also arbitrary in nature and that the appellant is not liable to pay the escalation in the cost of the flat as the delivery of possession was delayed by respondent no. 2. The possession was promised after 30 months i.e. September, 2016 but the said project was completed in May, 2018 and the appellant has to pay increase of 18.9% which is Rs.8,16,607/-.

6.1 The appellant was initially allotted a flat in 'Mandakini and Bhagirathi Enclave' by depositing Rs.2,20,000/- and after a year on 01.03.2014 the appellant was allotted another flat in 'Alaknanda Enclave' bearing Flat No. 3/T3-1106 which was not requested by the appellant but it was due to merger/amalgamation of the projects.

6.2 The demand for the excessive amount of the flat after delay in providing the possession of the flat to the appellant is not only illegal but is also arbitrary.

6.3 In compliance of the order of Hon'ble High Court dated 27.07.2019 respondent no. 2 decided the representation of the appellant vide letter dated 06.09.2018 but no reasons were stated therein regarding escalation of the cost of the flat. The excessive amount demanded by respondent no. 2 was paid by the appellant to respondent no. 2 on 16.07.2019, under protest.

6.4 The fact regarding the increased super area and the constructed area is merely a concoction of excuses and is not substantiated by any kind of evidence. This fact was also not mentioned in the demand letter dated 07.08.2018. Increase in the super area and the constructed area was neither in the knowledge of the appellant nor the appellant ever consented for it. Therefore, the appellant cannot be harassed for paying any charges on such alleged increase after delay in delivery of possession.

6.5 The appellant disputed the price escalation of the said flat after a delay in delivery of possession and the price escalation of the flat was due to delay caused by respondent no. 2 and, therefore, the appellant is not liable to pay escalation price in May 2018 whereas possession was promised in September 2016.

7. Heard Sri Tanay Hazari, learned counsel for the appellant and Sri N. N. Pandey, learned counsel for respondent no.2.

7.1 On examination of the submission of learned counsel for the parties, perusal of pleadings and record, the factual position of the case is as follows:

7.2 The respondent no. 2 launched Awadh Vihar Yojna-2014 under self financed multi storied buildings i.e. Mandakini, Bhagirathi and Alaknanda Enclave. The appellant registered a flat for Mandakini and Bhagirathi Enclave on 18.03.2013 by depositing Rs. 2,20,000/-. After about one year on 01.03.2014, in order to accommodate the applicants of Bhagirathi Enclave on account of excess applications, a lottery draw was held on 12.02.2014 and the appellant was declared successful and was allotted a Flat No. 3/T3-1106 in Alaknanda Enclave at the estimated cost of Rs. 43,15,000/- consisting of 150 sq. meter super area and constructed area 135.92 sq. meter and a demand letter dated 01.03.2014 was issued by Respondent no.2, whereby the appellant was required to deposit Rs. 4,15,000/- within 30 days and the remaining amount of Rs. 36,80,000/- was to be deposited in eight quarterly installments of Rs. 4,60,000/- each. It was clarified in the demand letter that on the delayed payment of installments 13.5% additional interest would be payable and information regarding final cost of the flat and other misc. charges would be given through allotment letter.

7.3 The appellant deposited the amount as per the payment schedule after agreeing for flat in Alaknanda Enclave. After final costing of the flat, the allotment letter dated 04.05.2018 was issued to the appellant on the basis of increased super area 151.16 sq. meter and constructed area 138.80 sq. meter. The construction cost of the flat had been fixed Rs. 51,31,607/- and after adding 12% free hold charge of Rs. 1,03,470/-, the total cost of the flat was fixed of Rs. 52,35,077/- and the appellant was requested to deposit balance cost of the flat and complete formalities for execution of the sale-deed and taking over the possession of the flat.

7.4 The appellant sent a representation to the respondent no. 2 on 25.06.2018 to suspend the order for payment of excess amount of flat which was 18.9% and thereafter filed a Writ Petition bearing No. 21449 (MB) of 2018 before the Hon'ble Allahabad High Court and the same was disposed of with a direction to the respondent to treat the petitioner's petition as a representation and take a decision in accordance with law. The respondent no.2 in compliance of the direction of Hon'ble High Court dated 27.07.2018 issued amended allotment letter dated 07.08.2019 for depositing balance amount of the flat as well as for completing the formalities for execution of the sale-deed and for taking possession of the flat. The appellant submitted a letter dated 16.08.2018 for taking decision in compliance of the order of Hon'ble High Court dated 27.07.2018. The Estate Management Officer of respondent no. 2 sent reply dated 06.09.2018 informing the appellant that in accordance with the terms and conditions of the Registration Booklet, final costing of the flat had been made vide office order dated 16.11.2017 and on that basis the allotment letter dated 04.05.2018 had been issued. In the said allotment letter the cost of the flat had been fixed on the basis of increased super area and constructed area as well as in accordance with the terms of the Registration Booklet, it was held that the car parking charges, free hold charges and maintenance charges had been correctly charged from the appellant/complainant.

7.5 The appellant approached the Regulatory Authority by means of complaint disputing the cost of the flat and other misc. charges. The same was dismissed by the Regulatory Authority by means of impugned order dated 26.06.2019.

7.6 Feeling aggrieved against the said order dated 26.06.2019, the appellant approached this Tribunal by means of instant appeal seeking direction for quashing of the order dated 26.06.2019 passed by the Regulatory Authority in Complaint No. 10201821435 and also for directing the respondent No. 2 to provide the possession of the flat in question without paying enhanced amount. The learned counsel for the appellant during the course of argument submitted that appellant has deposited first installment on 20.03.2014 of Rs. 4,15,000/- within 19 days from the date of issuance of demand letter by the respondent no. 2. Only in 19 days the building material rate not became as much higher as respondent no. 2 demanded and this itself shows that the demand by respondent no. 2 is illegal and arbitrary.

7.7 Further as per the Registration Booklet of the flat, the appellant should have got the possession upto September, 2016, but the respondent no. 2 has completed it project by May 2018 and caused delay for more than one and half year and GST has also been charged from July 2017. The learned counsel for the appellant further submitted that as per Clause 2.1 of the Brochure/Booklet, wherein the cost of the flat is estimated and final cost of the flat is to be decided at the time of completion of the project. In Clause 11.7, it is clearly stated that final cost of the flat shall be decided at the time of first installment and the cost of the flat is likely to escalate due to increase in the market price of the construction material. The said Clauses are not only contrary to each other but also arbitrary in nature and the appellant is not liable to pay the escalation in the cost of the flat as the delivery of the possession was delayed by respondent no. 2.

8. On the basis of pleadings, records and submissions of learned counsel for the parties, we deem it proper to frame following issues:-

(i) Whether as per the terms and conditions of the Registration booklet/brochure of the project, the cost indicated in the allotment/demand letter dated 01.03.2014 was estimated and the final cost of the flat was to be calculated on completion of the Project?

(ii) Whether the allottee was at liberty to seek refund in case of enhancement of cost due to escalation more than 20%?

(iii) Whether in case of change in the cost due to change in the super area, the same was to be adjusted in the final estimation of the cost of the flat?

8.1 In order to appreciate the controversy involved in the instant appeal, we deem it proper to extract the relevant provisions of the demand letter, Registration Booklet/Brochure of the Project as follows:-

मांग–पत्र दिनाँक 01/03/2014

(1) फ्लैट का अनुमानित विक्रय मूल्य–रुपया–43.15 लाख

(2) फ्लैट का सुपर एरिया 150.00 वर्गमी०
निर्मित क्षेत्रफल 139.92 वर्गमी०

नियम एवं शर्तें

(6) फ्लैट के मूल्य में कमी–वृद्धि होने पर प्रदेशन पत्र द्वारा सूचित किया जायेगा।
(12) भवन के सुपर एरिया में परिवर्तन होने के फलस्वरूप लागत में जो परिवर्तन आयेगा उसे अन्तिम मूल्यांकन में समायोजित किया जायेगा।

2. अन्य शर्तें **(बुकलेट के अनुसार)**

2.1 उक्त उल्लिखित मूल्य अनुमानित है। निर्माण 30 माह में किया जाना प्रस्तावित है। परियोजना के पूर्ण होने पर वास्तविक मूल्यांकन के अनुसार ही अन्तिम मूल्य देय होगा। अतः नियत किष्तों की धनराशि घट–बढ़ सकती है। सम्पत्ति के वर्तमान में निर्धारित अनुमानित मूल्य में, अपरिहार्य कारणों जैसे भवन निर्माण सामग्री की बाजार दरों में वृद्धि होने पर परिवर्तन सम्भव है। सुपर एरिया की गणना में पार्किंग क्षेत्रफल को सम्मिलित नहीं किया गया है।

2.4 उक्त अनुमानित/आगणित मूल्य के अतिरिक्त प्रत्येक फ्लैट में आवेदकों को अलग–अलग एक कार पार्किंग के लिए स्पेस बेसमेन्ट/स्टिल्ट में आरक्षित कराना अनिवार्य होगा, जिसके लिए एक कार पार्किंग हेतु रुपया–200000.00 एवं अतिरिक्त ओपन कार पार्किंग के लिए रुपया–75000.00 अतिरिक्त देय होगा। कार पार्किंग का आवंटन लाटरी ड्रा के आधार पर किया जायेगा।

2.5 प्रत्येक आवंटी को एन्क्लेव के कुल सुपर एरिया में आवंटित सुपर एरिया के अनुपात में ही एन्क्लेव की भूमि में फ्री–होल्ड चार्ज तत्समय ग्रुप–हाउसिंग में प्रचलित दर पर अतिरिक्त देय होगा।

2.6 फ्लैट्स का भौतिक कब्जा आवंटी को प्रदान करने की तिथि से 02 वर्ष तक अनुरक्षण व्यय हेतु आवंटी को "कॉर्पस फण्ड" में फ्लैट के स्वीकृत विक्रय मूल्य का 05 प्रतिशत धनराशि भौतिक कब्जा से पूर्व देय होगी। एन्क्लेव में सर्वप्रथम व्यक्ति द्वारा दिये गये कब्जा की तिथि से 02 वर्ष के बाद अनुरक्षण कार्य आवंटियों की उपरोक्त कॉर्पस फण्ड की अवशेष बची धनराशि सहित आवंटियों की वेलफेयर सोसायटी का हत्तगत कर दिया जायेगा। तत्पष्चात् समिति को अनुरक्षण अपने स्रोतों से करना होगा। निर्धारित रख–रखाव व्यय भौतिक कब्जा प्राप्त करने की तिथि से प्रतिमाह आवंटी द्वारा देय होगा।

2.7 परिसर का रख–रखाव अलग से प्रथम कब्जे की तिथि से 02 वर्ष तक परिषद द्वारा किया जाना प्रस्तावित है। इसके उपरान्त उक्त फ्लैट्स की 'रेजीडेन्ट वेलफेयर सोसायटी द्वारा किया जायेगा। प्रत्येक आवंटी को वेलफेयर सोसायटी का सदस्य बनना अनिवार्य होगा।

2.8 सुपर एरिया पर रुपया–1.10 प्रति वर्गफिट की दर से सामान्य सेवाओं जैसे लिफ्ट, जनरेटर, कैम्पस लाइट सिक्योरिटी गार्ड, ट्यूबवेल आपरेशन, कम्यूनिटी सेन्टर, विद्युत बिल, सफाई आदि के रख–रखाव हेतु प्रत्येक फ्लैट आवंटी को प्रतिमाह अतिरिक्त देय होगा, जो समय–समय पर रख–रखाव एजेन्सी यथा परिषद/रेजीडेन्ट सोसायटी द्वारा आवष्यकता के अनुरूप घटाया बढ़ाया जा सकेगा।

11. अन्य महत्वपूर्ण सूचना/शर्तें

11.7 सम्पत्ति का अन्तिम मूल्य प्रथम किष्त की तिथि पर लागू होगा, सम्पत्ति के अनुमानित मूल्य में बाजार दर में वृद्धि होने पर वृद्धि सम्भावित है। 20 प्रतिशत से अधिक वृद्धि होने पर आवेदक यदि चाहे तो अपनी पूरी धनराशि बिना किसी कटौती के बिना ब्याज के प्राप्त कर सकता है।

11.8 आवंटन तक इस योजना की किसी शर्त में संशोधन का अन्तिम आवास आयुक्त में निहित होगा तथा ऐसे संशोधन प्रभावी होगें। भविष्य में परिषद द्वारा समय–समय पर यदि कोई नियम/शर्तें लागू होगी तो वह आवेदक को मान्य होगी।

9. In order to examine **Issue no. (i)**, we perused the allotment/demand letter dated 01.03.2014. The cost of the flat was mentioned as Rs. 43,15,000/- having super area 150 sq. meter and constructed area 135.92 sq. meter area. In clause-6 of the terms and conditions enclosed with the allotment/demand letter it has been mentioned that decrease and increase in the cost of the flat will be informed in the allotment letter and in case of change in super area, the change in cost will be adjusted in the final cost. Clause-2.1 of the 'Other Conditions' of the Registration Booklet/Brochure provides that the cost mentioned is the estimated cost and on completion of the Project final costing of the flat will be determined and it will be payable by the allottee. The cost of the property has been estimated on the basis of present estimated price and there is a possibility of increase in the cost of construction material etc. The parking area is not included in the super area.

9.1 As per Clause 2.4, apart from estimated cost, the every allottee will have to reserve space in basement/stilt for car parking. An amount of Rs. 2,00,000/- for a car parking and for extra open car parking, an additional amount of Rs. 75,000/- would be payable. Further Clause 2.5 provides that besides the cost of the flat, the free hold charges would be payable by the allottee. Clauses 2.6 and 2.8 provide that maintenance charges will be payable in various heads. Clause 2.11 provides that if in future either by the State Government or by the Government of India any tax like VAT, Service Tax and GST etc. are imposed or any change in the rate occurs, the same will be payable by the allottee.

9.2 On analysis of the various Clauses of the allotment/demand letter dated 01.03.2014 read with terms and conditions as mentioned in the

Registration Booklet/Brochure, it is crystal clear that the cost intimated by the respondent no. 2 was estimated cost on the basis of the price at the relevant time and was subject to change in case of increase in the cost of building material etc. The appellant was also required to pay charges for parking, free hold charges and maintenance charges etc. applicable at the time of finally delivering the possession of the unit. **The Issue no. (i) is decided** accordingly.

10. Vide Issue No. (ii) we are required to examine as to whether the allottee was at liberty to seek refund in case of enhancement of cost due to escalation more than 20%?

10.1 Clause 11.7 of the 'Other Important Information/Conditions' of the Rgitration Booklet/Brochure provides that the final price of the property is likely to escalate due to increase in the market price and will be in proportion to the first installment of the estimated cost. In case of escalation of cost more than 20%, the allottee if so whishes can seek refund without any deduction and without any interest. On examination of Clause 11.7, it is evident that the escalation of the cost due to increase in the market price, the price of the property will be determined on the basis of first installment of the estimated cost and in case of enhancement of more than 20%, the allottee is at liberty to seek refund without deduction and interest, meaning thereby, the escalation upto 20% of the estimated cost on account of the increase in the market price of the building material etc. was admissible at the end of the respondent no. 2 and as per the pleadings of the appellant, he is required to pay increased cost of 18.9%, which is Rs. 8,16,607/- and this escalation is less than 20%. If the cost of the flat would have been increased by more than 20%, the appellant could have sought refund from the respondent as per Clause-11.7. The **Issue no. (ii) is decided** accordingly.

11. Vide Issue no. (iii) we have to examine- whether in case of change in the cost due to change in the super area, the same was to be adjusted in the final estimation of the cost of the flat?

11.1 The Clause 12 of the Rules and Conditions enclosed with the allotment/demand letter dated 01.03.2014 read with Clause 2.2 f the Registration Booklet/Brochure provides that there can be minor deviation in the super area and layout design and on account of change in the cost due to change in the super area will be adjusted in the final determination of the price, makes it clear that the terms and conditions of the Registration Booklet/demand letter dated 01.03.2014 specifically provide that in case of change in the super area or constructed area, the price of the same will be adjusted in the final determination of the cost of the flat.

11.2 In the present case as per the allotment/demand letter dated 01.03.2014, the super area of the flat is 150 sq. meter and the constructed area is 135.92 sq. meter and as per the final demand/offer of possession dated 07.08.2018, the constructed area is 136.80 and the super area is 151.6 sq. meter. In pursuance to the terms and conditions of the allotment letter/demand letter dated 01.03.2014 read with the provisions of Registration Booklet/Brochure, the appellant is required to pay the cost of enhanced area of the flat. The **Issue no. (iii) is decided** accordingly.

12. On examination, we found that the appellant while seeking quashing of the order dated 26.06.2019 of the Regulatory Authority passed in Compliant No. 10201821435, sought direction against respondent no. 2 to provide the possession of the flat in question without paying escalation amount. The appellant has not brought on record the complaint filed before the Regulatory Authority. However, we checked the same on the website of the RERA and found that in the grounds of complaint, the complainant/appellant took a ground for waiver of the increased cost of the flat. As the relief was sought before the Regulatory Authority was not with regard to delay in possession, therefore, we reject the submission of learned counsel for the appellant regarding delay in possession of the flat by the respondent. It is open for the appellant to raise the issue before the appropriate forum if so advised.

13. In the present case, the issue is only regarding the enhancement of cost of the flat due to increase in the area. On examination of the pleadings and materials on record, we are of the considered view that there is no illegality or infirmity in asking the price for the enhanced area. Opposite party no. 2 has neither violated any provision of the Terms and Conditions of the allotment letter dated 01.03.2014 nor the terms and conditions of the Registration Booklet/Brochure of the project. The

Regulatory Authority examined in depth and found that the action of respondent no. 2 is correct, while rejecting the complaint of the appellant vide impugned order dated 26.06.2019.

13.1 The judgments relied by learned counsel for the appellant in the case of ***(i) Fortune Infrastructure (Now known as M/s Hicon Infrastructure) and Another Vs. Tervor D'Lima and others (2018) 5 SCC 442 (ii) Civil Appeal No. 6051/2002 (Ghaziabad Development Authority Vs. Shakuntala Rohtagi) and (iii) Judgment and order dated 20.04.2007 passed by National Consumer Disputes Redressal Commission in First Appeal No. 683/2003 (M/s DLF Universal Ltd. Vs. Brig. (Retd.) Kamal Sood)*** are not applicable in the present facts and circumstances of the case.

14. In our considered view, there is no illegality or infirmity in the order of Regulatory Authority dated 26.06.2019, and the same is upheld. Accordingly, the **appeal is dismissed.**

15. No order as to costs.

Date: 22.11.2021 **(Rajiv Misra)** **(D.K. Arora)**
Tanveer/-