

Corrected vide order dated 09.05.2023

*[Signature]*  
9.5.2023



**HARERA**  
**GURUGRAM**

Complaint no. 4366 of 2021 and  
4367 of 2021

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

**Date of decision: 17.01.2023**

NAME OF THE BUILDER		JUBILANT MALLS PVT. LTD.
PROJECT NAME		ILD ENGRACIA
S. No.	Case No.	Case title
1.	CR/4366/2021	VIRENDER CHHABRA V/s JUBILANT MALLS PVT. LTD.
2.	CR/4367/2021	SAVITA & RAKHI DHAIYA V/s JUBILANT MALLS PVT. LTD.

**APPEARANCE:**

Shri Abhay Jain (Advocate)  
Shri Rahul Bhardwaj (Advocate)

**Complainants**  
**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal  
Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Member**  
**Member**  
**Member**

**ORDER**

1. This order shall dispose of both the complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be

responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "ILD Engracia" being developed by the same respondent/promoter i.e., M/s Jubilant Malls Pvt. Ltd. The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of ~~refund the entire amount~~ <sup>delay possession charges along with</sup> interest and the compensation. 8/10
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	<b>JUBILANT MALLS PVT. LTD. "ILD ENGRACIA" Sector-37D, GURUGRAM.</b>
<b>Possession clause: - 5. POSSESSION OF PLOT</b>	
<p><i>"5.1. Subject to clause 5.2 and subject to the buyer making timely payment, the company shall endeavor to complete the development of infrastructural facilities for the <b>plot within 30 months, with an additional grace period of 6 (six) months (without liability for payment of any penalty/ damages/ delay charges) from the date of the execution of this agreement</b> provided that all amounts due and payable by the buyer have been paid to the company in timely manner. The company shall be entitled to reasonable extension of time for the possession of the plot in the event of any default or negligence attributable to the buyer's fulfilment of terms &amp; conditions of this agreement."</i></p> <p style="text-align: right;"><b>(Emphasis supplied)</b></p>	
<b>Completion certificate: - 22.07.2022</b>	
<b>Due date of possession</b>	Calculated as 30 months from date of signing of agreement plus 6 months of grace period as the same is allowed being unqualified .



<b>Complaint No.</b>	<b>CR/4366/2021 (DOF: 15.11.2021)</b>	<b>CR/4367/2021 (DOF: 15.11.2021)</b>
<b>Date of execution of agreement</b>	26.05.2018	09.10.2018
<b>Unit no. and area admeasuring</b>	Plot no. B-26 admeasuring 266 sq. yds	Plot no. 16 admeasuring 456 sq. yds.
<b>Due date of possession</b>	26.05.2021	31.08.2019
<b>Date of offer of possession</b>	02.08.2022	02.08.2022
<b>Total Sale consideration (TSC) and amount paid (AP)</b>	<b>TSC: ₹ 65,74,988/-</b> <b>AP: ₹ 64,84,174/-</b> [As per SOA dated 19.10.2022]	<b>TSC: ₹ 1,33,41,192/-</b> <b>AP: ₹ 1,19,79,538/-</b> [As per SOA dated 15.10.2022]

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the apartment buyer's agreement executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of delay possession charges along with interest.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/4366/2021 Virender Chhabra V/S Jubillant Malls Pvt. Ltd.** are being

taken into consideration for determining the rights of the allottee(s) qua possession of the allotted units alongwith delay possession charges along with interest.

**A. Project and unit related details**

7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over of the possession, delay period, if any, have been detailed in the following tabular form:

***CR/4366/2021 Virender Chhabra V/S Jubillant Malls Pvt. Ltd.***

S.N.	Particulars	Details
1.	Name of the project	ILD Engracia, Sector 37D, Gurugram
2.	Unit no.	Plot no. B-26 [As per page no. 33 of the complaint]
3.	Super area	266 sq. yd. [As per page no. 33 of the complaint]
4.	Date of allotment	25.05.2018 [As per page no. 26 of the complaint]
5.	Date of builder buyer agreement	26.05.2018 [As per page no. 30 of the complaint]
6.	Possession clause	<b>5. POSSESSION OF PLOT</b>  <b>5.1.</b> Subject to Clause 5.2 and subject to the Buyer making timely payment, the Company shall endeavor to complete the development of infrastructural facilities for the Plot within 30 months, with an additional grace period of 6 (six) months (without liability for payment of any penalty/ damages/ delay charges) from the date of the execution of this Agreement provided that all amounts due and payable



		by the Buyer have been paid to the Company in timely manner. The Company shall be entitled to reasonable extension of time for the possession of the Plot in the event of any default or negligence attributable to the Buyer's fulfilment of terms & conditions of this Agreement.
7.	Due date of possession	26.05.2021  [Calculated as 30 months from execution of buyer's agreement i.e., 26.05.2018 plus 6 months of grace period as the same is unqualified]
8.	Total sale consideration	₹ 65,74,988/-  [As per SOA dated 19.10.2022 as given during proceedings dated 17.01.2023]
9.	Amount paid by the complainant	₹ 64,84,174/-  [As per SOA dated 19.10.2022 as given during proceedings dated 17.01.2023]
10.	Completion certificate	22.07.2022  [As annexed in enclosure 4 of application dated 11.10.2022]
11.	Offer of possession	02.08.2022  [As annexed in enclosure 5 of application dated 11.10.2022]
12.	Revised Statement of Account in accordance with direction of Authority	19.10.2022  [As submitted by complainant during proceedings dated 17.01.2023]

**B. Facts of the complaint**

8. The complainant has made the following submissions in the complaint: -
- That the respondent published a very attractive brochure, highlighting the residential plotted colony called '**ILD Engracia**' situated at village



Basai, Sector – 37D, Gurugram, Haryana. The respondent claimed to be one of the best and finest in construction and the leading real estate developer of the country in order to lure the prospective customers including the complainant to buy plots in the project. There were fraudulent representations, incorrect and false statements in the brochure.

- b. That the complainant was approached by the sale representatives of the respondent, who made tall claims about the project '**ILD Engracia**' as the world class project. The complainant was invited to the sales office and was lavishly entertained, and promises were made to him that the possession of the plot would be handed over in time including that of parking, horticulture, club and other common areas. The complainant was impressed by their oral statements and representations and ultimately lured to pay a total of ₹20,00,000/- (Rupees Twenty Lakh) as the booking amount of the plot to the respondent. The respondent issued letter dated 25 May 2018 to the complainant for allotment of plot no. B-26 admeasuring 266 square yards in the project. A welcome letter dated 25 May 2018 was also issued by the respondent to the complainant for the plot. The respondent acknowledged the receipt of ₹20,00,000/- as booking amount and issued a receipt dated 28 May 2018 to the complainant.
- c. That a buyer's agreement was executed between the parties on 26 May, 2018 towards purchase of plot no. B-26 admeasuring 266 square yards at a total consideration of ₹66,50,000/- inclusive of EDC/ IDC at the rate of ₹4,660/-per square yard, Interest Free Maintenance Charges (IFMS)



at the rate of ₹50/- per square yards and Club membership amounting ₹75,012/- in the project. The date of handing over the possession of the units, as per clause 5.1 of the plot buyer agreement, was fixed to be 26 November, 2020, to be calculated thirty (30) months from the date of execution of the said agreement.

- d. That the complainant, in total, paid a sum of ₹39,90,050/- way back till 24 July 2019, to the respondent as and when demanded but the respondent still failed to timely handover the possession of the unit to the complainant till date, even after a delay of more than eleven months.
- e. That the complainant approached the respondent and pleaded for delivery of possession of his plot as per the buyer's agreement on various occasions. The respondent did not reply to his letters, emails, personal visits, telephone calls, seeking information about the status of the project and delivery of possession of his plot and thereby it violated section 19 of the Act, 2016.
- f. That by delaying possession, the respondent has unjustly enriched itself by taking complete payable amount and additional charges from the complainant and thereafter utilizing that huge money on other projects and left the complainant high and dry at his own fate. This conduct and behaviour of the respondent is deplorable and constitutes an unfair trade practices & deficiency in services and cheating. The respondent, having collected huge amount from the complainant and other such buyers, did not utilise the said funds for the development of the plot on time as promised at the time of booking in the year 2018. If the respondent had followed the payment plan in its letter and spirit, the

plotted colony would have been completed and the delay would not have occurred. This constitutes an unfair trade practice.

- g. That the complainant does not intend to withdraw from the project. The complainant being aggrieved person has filed a complaint under section 31 of the Act, 2016 read with rule 28 of the Rules, 2017 at HRERA, Gurugram for violation or contravention of provisions of the Act and Rules as mentioned therein.

**C. Relief sought by the complainant: -**

9. The complainant has sought following relief(s)
- Direct the respondent to complete the development of the project along with all facilities and amenities.
  - Direct the respondent to handover the legal and rightful possession of the plot to the complainant, after receiving the completion certificate.
  - Direct the respondent to pay interest for every month of delay in handing over of possession of the plot.
  - Direct the respondent to provide a definite and fixed date of delivery of possession, as the complainant cannot be made to wait till eternity.
  - Direct the respondent not to charge anything beyond the charges stipulated in the plot buyer's agreement.
  - Direct the respondent to follow the schedule of payments as mentioned in plot buyer's agreement.
  - Litigation expenses.
10. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.



**D. Reply by the respondent.**

11. The respondent has contested the complaint on the following grounds:

- a. At the outset, the complainant has erred gravely in filing the present complaint and misconstrued the provisions of the RERA Act. It is imperative to bring the attention of the hon'ble authority that the Real Estate Regulatory Act, (RERA), 2016 was passed with the sole intention of regularisation of real estate projects, promoters and the dispute resolution between builders and buyers. The same can be perused from the objective of the said Act as published in the Official Gazette. That it is an admitted fact that by no stretch of imagination it can be concluded that the complainant herein is an "Allottee/Consumer". It is a matter of fact, that the complainant is simply an investor who approached the respondent for investment opportunities and for a steady rental income and, the same was duly agreed between the parties in the said builder buyer agreement.
- b. It was submitted that the complainant learnt about the project titled as '**ILD ENGRACIA**' (herein referred to as '**Project**') situated at Sector 37 D, Gurgaon and approached the respondent repeatedly to know the details of the said project after having keen interest in the project constructed by the respondent. He decided to invest on 25.05.2018, booked a plot in the said project upon own judgement and investigation and paid an amount of ₹ 20,00,000/- for further registration. It is imperative to



mention herein that the complainant was aware of the exact status of the project in question and decided to book the plot upon own investigation without any protest or demur.

- c. It was submitted that the respondent is in the process of developing a residential plotted colony known as "ILD Engracia" on the land admeasuring 3.93 acres (approx.) comprised in khasra no. 226/2 and 227/2 situated in revenue village of Basai, Sector-37D, Gurugram, Haryana. It was submitted that the respondent has availed the facility of the syndicated term loan from the Reliance Homes Finance Limited (*herein referred to as 'RHFL'*) for the sum of ₹ 19,50,00,000/- and the same was sanctioned vide sanction letter dated 28.02.2018. As per the terms and conditions of the loan facility, the RHFL has financed the said project whereby the residential plotted colony is being developed with saleable area of 148628 sq. ft. at khasra no. 226/2, 1081/225 and 227/2 in the revenue estate of village Basai, Sector - 37D, Gurugram Haryana and the same project/property has been kept as a security in lieu of the finance facility availed by the respondent.
- d. That during regular operations of the loan account, the respondent approached RHFL to recast/reschedule the loan account so outstanding instalments be paid, but despite the said request and representation and having deposited the part amount, the RHFL was determined upon enforcement of security tendered by the respondent. It was submitted



that the respondent since starting was ready and willing to settle the account with the RHFL in an amicably manner so that the interest of all the allottees of the said project could be protected. However, the RHFL is adamant to take over the possession of the said project/land.

- e. That subsequently, the RHFL revised the repayment schedule of the loan facility vide letter dated 16.07.2019 and further withhold the disbursement of the undrawn amount of ₹ 4,39,52,010/- and which hampered the development and completion of the project. It is a matter of fact that the respondent was regular in terms of the repayment for the credit facility availed from the RHFL since the time of sanctioning the credit facility as the same is clear from the statement of account maintained by the RHFL in respect to the loan of the respondent. So far, the respondent has made the payment of ₹ 5,42,15,643/- to the RHFL. The respondent also sent various settlement proposals to the RHFL and for showing his bonafide intention made the payment of ₹ 88,09,768/- during 01.10.2019 till 31.12.2019 and ₹ 1,09,53,544/- during 01.01.2020 to 15.04.2020. However, even after making the payment, the RHFL went back from the rescheduled plan and initiated the proceedings to take over the possession of the project.
- f. That in blatant disregard to the proposal made by the respondent, RHFL under a malafide intention on 13.12.2019; classified the account of the respondent as NPA and thereafter, invoked the statutory provisions of

the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act" and issued a notice under Section 13(2) the SARFESI Act on 17.12.2019.

- g. Further, acting upon the vindictive proceedings initiated by the RHFL against the respondent under SARFESI Act, the notice of possession dated 26.02.2020 was served to the respondent for taking illegal possession of the mortgaged premises in breach of the terms agreed between the parties in the loan agreement dt. 03.03.3018. The RHFL had further moved an application before the District Magistrate, Gurugram for taking action in terms of section 14 of the SARFAESI Act. The District Magistrate, Gurugram vide order dated 10.11.2020 appointed the Naib-Tehsildar-cum-Executive Magistrate, Kadipur as receiver to take possession of the secured asset. The Duty Magistrate(receiver), Kadipur had issued notice to the respondent dated 01.12.2020 and per the said notice the receiver was to come on 28.12.2020 at 11.30 am to take possession of the secured asset from the respondent.
- h. However, it is pertinent to mention here that the Ld. Authority in the interest and for protecting the rights of all the allottees of the project on 23.12.2020; put a stay on the scheduled action of taking over of secured asset as the RHFL has violated various provisions of the Act including



the circular no. 01/RERA GGM Circular 2020 dt. 29.06.2020; issued by the Ld. Authority.

- i. That the respondent herein intends to resolve the dispute with the RHFL and has also issued a notice of invocation of arbitration dated 17.11.2020. However, the RHFL vide its reply dated 25.11.2020 denied all the averments of the notice dated 17.11.2020 and stated that there is no subsisting dispute which is arbitral and therefore, refused to appoint the arbitrator.
- j. That the possession to the allottee of the unit is being delayed in the said project due to the reasons mentioned hereinabove occurred due to the wrongful acts and conducts of the RHFL and other reasons beyond the control of the respondent. It is most humbly submitted before the Ld. Authority that in case the RHFL takes over the possession of the said project/land and sell it out for the recovery of outstanding dues, the interest of the allottees of entire project would severely suffer.
- k. The on 26.05.2018, a plot buyer agreement (*herein referred to as 'agreement'*) was executed between the parties for the aforesaid unit and a plot bearing no. B-26 admeasuring to 266 Sq. Yd. was allotted to the complainant for a basic sale consideration of ₹ 66,50,000/- in the said project of the respondent.
- l. It was submitted that the complainant was aware of terms and conditions under the aforesaid agreement and post being satisfied with



every clause of the agreement and also with the payment plan and total sale consideration agreed to sign upon the same with free will and without any protest or demur. The complainant being the habitual defaulter in terms of payment failed to adhere to the payment plan and violated the terms and conditions embodied under clause 4.6 of agreement.

- m. It was submitted that since beginning, the respondent made every effort to complete the project within time and offered the possession of the said plot in question as per the proposed date. However, the construction of said unit was subject to certain circumstances beyond the control of the respondent. The complainant agreed that the respondent would not be liable for not performing any obligation. In case, such obligations are delayed due to any event falling under the category of 'force majeure'.
- n. It was further submitted that the respondent was committed to complete the development of the project and deliver the units of the allottees as per the terms and conditions of the BBA. The developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent company i.e., the impact of Good and Services Act, 2017 [hereinafter referred to as 'GST'] which came into force after the effect of demonetisation in last quarter of 2016 that adversely affected various industrial, construction businesses even in



the year 2019. The respondent also had to undergo huge obstacles due to the effect of demonetization and implementation of the GST.

- o. It was submitted that in past few years, the construction activities have also been hit by repeated bans by the Courts/Tribunals/Authorities to curb pollution in Delhi-NCR region. In the recent past, the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activities in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019, which was later on converted to a complete ban from 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.
- p. That the Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "*MC Mehta vs. Union of India*" completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted vide its order dated 14.02.2020. These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labour in the NCR region. Due to the said shortage the construction activities could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.

- q. It was further submitted that even before the normalcy could resume the world was hit by the Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the aforesaid period should not be added.
- r. That, it is evident that the entire case of the complainant is nothing but a web of lies, false and frivolous allegations made against the respondent. The complainants have not approached the Id. authority with clean hands, and hence the present complaint deserves to be dismissed with heavy costs. That it is brought to the knowledge of the authority that the complainant is guilty of placing untrue facts and is attempting to hide the true colour of his intention. Hence, the complaint is liable to be dismissed with cost for wasting the precious time and resources of the Ld. Authority. Thus, the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
12. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

13. The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has



territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I. Territorial jurisdiction**

14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E. II. Subject matter jurisdiction**

15. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11**

.....

*(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 to 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;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

16. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of

obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on objections raised by the respondent:**

**F.I. Objection regarding complaint being investor.**

17. It was pleaded on behalf of respondent that complainant is an investor and not consumer. So, he is not entitled to any protection under the Act and the complaint filed under Section 31 of the Act, 2016 is not maintainable. It is pleaded that the preamble of the Act, states that the Act is enacted to protect the interest of consumers of the real estate sector. The Authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states the main aims and objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if it contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainant is a buyer and paid considerable amount towards purchase of subject unit. At this stage, it is important to stress upon the definition of term allottee under the Act, and the same is reproduced below for ready reference:

*"Z(d) 'allottee' in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold(whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said*

*allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent"*

18. In view of above-mentioned definition of allottee as well as the terms and conditions of the <sup>Plot</sup> ~~flat~~ buyer's agreement executed between the parties, it is crystal clear that the complainant is an allottee as the subject unit allotted to him by the respondent/promoter. The concept of investor is not defined or referred in the Act of 2016. As per definition under section 2 of the Act, there will be 'promoter' and 'allottee' and there cannot be a party having a status of 'investor'. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal No.0006000000010557 titled as *M/s Srushti Sangam Developers Pvt Ltd. Vs Sarvapriya Leasing (P) Ltd. and anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

**F.II. Objection regarding delay in completion of project due to force majeure conditions**

19. A grace period of six months has already been allowed to the respondent and hence, no findings regarding the objection so raised can be given. With regard to dispute with the financier, the Authority observes that the complainant-allottee cannot be made to suffer on account of any dispute arising out of a contract to which it is not a party. Hence, this plea is also devoid of merit.

**G. Findings on the relief sought by the complainants.**

- G.I. Direct the respondent to complete the development of the plot along with all facilities and amenities.**

**G.II. Direct the respondent to handover the legal and rightful possession of the plot to the complainant, after receiving the completion certificate (CC).**

**G.III. Direct the respondent to provide a definite and fixed date of delivery of possession, as the complainant cannot be made to wait till eternity.**

20. Both these issues being interconnected are taken up together. During the course of proceedings, it was stated by the counsel of both the parties that the respondent-promoter has already ~~handed over~~ <sup>gave the</sup> possession of the unit on 02.08.2022 after obtaining completion certificate dated 22.07.2022.

**G.IV. Direct the respondents to pay interest for every month of delay in handing over of possession of the plot.**

21. The respondent-promoter, during the course of proceedings, issued a statement of account dated 19.10.2022 wherein the delayed possession charges to be paid to the complainant has already been adjusted against the amount due on part of the complainant. On adjustment of the delayed possession charges, the balance outstanding amount has been shown as zero and thus, no other amount remains to be paid except for the stamp duty charges fixed by administration. Hence, no direction regarding payment of delayed possession charges can be given at this stage. Since no outstanding dues are pending on part of both the parties therefore, the promoter is directed to hand over the physical possession at site within one week and to execute the conveyance deed within 2 weeks after submissions of stamp papers/stamp duty by the complainant to the promoter. The legal expenses/advocate fees required for execution of conveyance deed can be charged by the promoter subject to a ceiling ₹15,000/-as fixed by the administration.

**G.V. Direct the respondent to not charge anything beyond the charges stipulated in the plot buyer agreement.**

22. The authority has decided this in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that the respondent is not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020. Therefore, in light of the above, the respondent shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.

**G.VI. Direct the respondent to follow the schedule of payments as mentioned in plot buyer agreement.**

23. Vide statement of account dated 19.10.2022, it has been brought on record that no amount is due on part of the complainant, hence, the present relief becomes infructuous.

**G.VII. Compensation & litigation expenses.**


24. The complainant in the aforesaid head is seeking relief w.r.t compensation. Hon'ble Supreme Court of India, in case titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & O<sup>२</sup>** (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

**H. Directions of the authority**

25. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
- The respondent-promoter is directed to hand over the physical possession of the unit <sup>within one week</sup> and to execute the conveyance deed within 2 weeks after submissions of stamp papers/stamp duty by the complainant to the promoter.
  - The complainant-allottee is directed to bear the legal expenses/ advocate fees required for execution of conveyance deed as charged by the promoter subject to a ceiling ₹15,000/-as fixed by the administration.
  - The respondent-promoter is directed not to levy/recover any amount which has not been stipulated in the buyer's agreement.
26. This decision shall mutatis mutandis apply to both the cases mentioned in para 3 of this order.
27. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
28. Files be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.01.2023