



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

Complaint no. :	5020/2021
Date of filing complaint:	23.12.2021
First date of hearing:	22.02.2022
Date of decision :	09.03.2023

Mr. Abhinay Jhamb Mrs. Tuhi Jhamb R/O: B-16/12 1 <sup>st</sup> Floor Double Story, Ramesh Nagar, New Delhi 110015	<b>Complainants</b>
Versus	
M/s Dream Home Infrastructure Pvt. Ltd. R/o: 10 <sup>th</sup> Floor, Tower-D, Global Business Park, MG Road Gurugram 122001	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Shri Karan Bhardwaj Advocate	Complainants
Shri Kanwar Pal Singh and Pragalb Bhardwaj Advocate	Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, 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 obligations, responsibilities and functions under the provisions of

the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Heritage Max" Sector 102, Gurugram, Haryana
2.	Project area	1.579 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP License	104 of 2011 dated 11.12.2011, valid up to 10.12.2019
5.	Name of the licensee	Mahagori Estates Pvt Ltd
6.	RERA Registered/ not registered	GGM/276/2018/08 Dated 23.07.2018 up to December 2020
7.	Unit location	2004 Tower A 19 <sup>th</sup> Floor (Page no. 40 of complaint)
8.	Unit measuring (carpet area)	192.84 sq. mt. (2075 Sq ft.) (Page no. 40 of complaint)
9.	Date of execution of Builder buyer agreement	19.02.2013 (Page No. 39 of complaint)
10.	Possession clause	<b>18</b> That the construction of the Building/Tower where the said apartment is situated is likely to be completed <b>within 42 months from the date of start of construction of the building in which the said apartment is said to be located or from the date of</b>





		<b>execution of this agreement, whichever is later, followed by a grace period of Six months, subject to force majeure circumstances &amp; on receipt of all payments punctually as per agreed terms and on receipt of complete payment of the basic sale price and other charges due and payable up to last payment according to the schedule of payments applicable to him as per annexure V attached herewith the agreement.</b> (Page no. 55 of complaint)
11.	Due date of possession	19.02.2017 (Calculated from date of execution of this agreement i.e. 19.02.2013 being later plus 6 Months) Note: Grace period allowed, it being unqualified and unconditional)
12.	Total sale consideration	<b>Rs. 1,38,62,688/-</b> (Page no. 91 of complaint)
13.	Total amount paid by the complainants	<b>Rs. 1,33,62,237/-</b> (Page 91 of complaint)
14.	Occupation Certificate	03.04.2017 (Page 38 of Reply)
15.	Offer of possession	15.04.2017 (Final call letter for taking possession by clearing the dues) (Annexure P-2 page 82 of complaint)

**B. Facts of the complaint:**

3. That the complainants submitted an application dated 06.08.2012 to the respondent in its project for booking an apartment at "Heritage Max" in Sector-102, Gurgaon, (Haryana). The booking was accepted vide letter dated 16.08.2012 and an apartment/unit

no. A-2004 was reserved for allotment by respondent company for the complainants.

4. Then, on 19.02.2013 a buyer agreement was executed between the parties for apartment No. 2004 in Tower -A on the 19<sup>th</sup> Floor, having super area of approximately 192.84 Sq. Mt. (2075.00 Sq. Ft.), subsequently increased to 199.65 Sq. Mt. (2149.00 Sq. Ft.) in the final call letter and cost was increased accordingly. The complainants have paid the entire amount well in time and strictly as per schedule mentioned in the buyer's agreement.
5. That in addition to the same, the complainants have been regularly paying monthly maintenance charges for the apartment w.e.f. June 2019 even though the possession is still with the company and have not been occupied by them. Since then, they have paid a total amount of Rs. 2,60,292/- on account of maintenance charges till October, 2021 and nothing is due.
6. The respondent issued final demand letter dated 15.04.2017. No intimation with regard to occupancy certificate/completion certificate was issued. The complainants vide email dated 05.05.2017 raised issues with regard to completion of project and conveyed that in its absence thereof how can an owner be expected to take possession. The said concerns with regard to completion of project were not addressed and final demand was reiterated vide email dated 10.05.2017.
7. That the respondent sent an email dated 07.02.2019 asking the complainants to complete the handing over of possession formalities and conveyed that "Maintenance Charges" and "Holding charges" were accruing. The complainants vide email dated





28.03.2019 requested the respondent for a list of documents to complete the formalities regarding the unit. The respondent sent the list of documents vide email dated 01.04.2019. Thereafter, the respondent vide email dated 18.04.2019 asked the complainants to submit an NOC from a service provider i.e. "John Lang Lasalle". The complainants specifically replied vide email dated 18.04.2019 stating therein that they disagree with the respondent about point of not hearing them. They further stated that it is their intent to take possession as well, having paid the entire sale consideration and other expenses timely as and when paid. They further stated that their travel to India was planned at short notice and he could not gather necessary documents like NOC from "John Lang Lasalle". The respondent, vide email dated 20.04.2019 acknowledged that the complainant are in constant touch with their representative.

8. That complainants received an email on 23.04.2020 asking them the details of their profession, organization and designation. The complainants vide their email dated 08.05.2020 replied to the various requirements. On 22.05.2020, they sent an email to respondent's executive Kanika asking her that when can they expect Haryana VAT refund and for a confirmation that there was no outstanding charges with regard to unit allotted to them. Kanika Sood, Manager- CRM did not reply to the query with regard to the confirmation that there were no outstanding charges and only conveyed that she cannot share the timeline with regard to the completion of assessment and consequent refund of Haryana VAT. The complainants vide email dated 28.05.2020 especially pointed out that they were looking for a confirmation of zero outstanding charges but that confirmation that nothing was outstanding





remained unanswered. Subsequently, emails dated 01.06.2021, 05.06.2021, 30.06.2021 and 02.07.2021 were exchanged between complainant and aforesaid employee of respondent namely Kanika Sood with regard to Haryana VAT refund issue. However, the issue of final settlement of an amount of Rs. 1,24,800/- is still pending and complainants did not receive any satisfactory response. Moreover, the respondent made the complainants deposit an amount of Rs. 2,91,199/- in HDFC bank in 2017 itself at a branch of their choice to pay for the purposes of HVAT and having a lien on the same. Despite repeated reminders, the respondent failed to submit the calculations with regards to HVAT.

9. That meanwhile, complainants received a letter dated 03.08.2021 at their India address, alleging therein that payment of installment towards sale consideration was not paid by them. It was further stated that they were required to pay interest on delayed payments and holding charges. It was further alleged that handing over formality is still pending, and that in the event of non-payment of the aforesaid dues within 7 days of receipt of that letter, the allotment of complainant would be terminated.
10. That it deserves a mention that the letter dated 03.08.2021 was deliberately sent at India address of complainants despite the fact that at the same time the respondent was communicating with them through emails with regard to HVAT issue. The sole purpose was to ensure delay or no communication to complainant.
11. That it is evident that impugned letter dated 03.08.2021 was sent to complainants without going through the account statement. The complainants have already paid the entire amount as per the timeline and schedule appended to buyers' agreement dated



19.02.2013. The payment of installments was made on time. There was no contractual obligation which has not been fulfilled by complainants. When there are no delayed payments there is no question of any interest on the same. It was wrongly mentioned that the payment of installments towards sale consideration has not been paid by complainant. Rather, in letter dated 15.04.2017 sent by respondents it was admitted that an amount of Rs. 1,33,62,237/- was already paid by complainant on account of basic sale price, edc/idc, plc, car parking, service tax and haryana VAT and that all dues were cleared as per schedule in the year 2017 itself. Rather, the respondent was under an obligation to pay the Haryana VAT refund which has been delayed at its end on the pretext that the assessment of the year 2017-18 is still pending and further the assessment order with regard to financial year 2016-17 has not been received by it as yet. Further, as stated above, the complainants are paying monthly maintenance charges regularly. Even the demand of "Holding Charges" by respondent was totally illegal. Accordingly, complainant replied to respondent's letter dated 03.08.2021 through counsel vide letter dated 01.09.2021 and especially gave all the details with regard to payment made and requested it to withdraw the demand of Holding Charges.

12. That the reply dated 01.09.2021 was duly received by respondent. However, on 02.09.2021 the complainants received another letter claiming holding charges to the tune of Rs. 10,60,532/-. That the complainant immediately responded to respondent vide their response dated 06.09.2021. That the petitioner never received any response to the reply dated 01.09.2021 and 06.09.2021 for a substantial period. Accordingly, the complainant submitted an



application for pre-litigation mediation center of Punjab and Haryana High Court. The application was numbered as Pre-Litigation Mediation No. 87/ 2021 and both the parties were issued intimation about mediation proceedings vide letter dated 30.09.2021 which was fixed for 03.11.2021. On 03.11.2021, the respondent appeared in mediation centre through counsel Sh. Charanpreet Singh, who requested for adjournment to seek instructions from his client/ respondent. The matter was adjourned to 25.11.2021.

13. That while the complainant were expecting peaceful resolution of dispute, the respondent sent two responses, both dated 07.10.2021, received by them counsels on 09.10.2021 wherein it flatly refused to withdraw the demand of holding charges and asked them to pay the holding charges.
14. That the demand of "Holding Charges" of Rs. 10,60,532/- is totally illegal. It is worth mentioning that after payment of entire sale consideration along with various ancillary charges and taxes, the complainants are more than eager in taking possession etc., than the respondent company.
15. That this issue is to be seen in the light of buyer's agreement dated 19.02.2013. Clause 12 deals with sale deed/ conveyance deed and clause 18 deals with possession. The co-joint reading of both these clauses makes it imperative for the company to take "occupancy certificate". The process of execution of sale deed/ conveyance deed and possession can be initiated only once the occupation certificate is granted by the competent authority.





16. That unfortunately the complainants have not been provided with the copy of occupancy certificate, and it is a statutory right to see whether "occupancy certificate" has been issued to the project "Heritage Max" by the competent authority or not. While no such communication was sent to complainant wherein details of occupancy certificate like its date of issuance etc., were mentioned, no such details are available on the official website of the company or on the website of RERA-Gurugram, Haryana.
17. That even in letter dated 15.04.2017 i.e. final call letter, there is no mention of issuance of occupancy certificate. The same is the case with email dated 10.05.2017 sent by respondent company . Thereafter, the complainants repeatedly contacted the respondent to enquire about issuance of occupancy certificate, but no satisfactory reply was given.
18. That in these circumstances, and having spent substantial amount on the unit in question, the complainants had no other option but to check the details of the project on the official website of the company. Despite the fact that as per RERA Act, 2016 there is a statutory obligation on the builder to share the details of the project and various approvals etc., nothing was and is mentioned on the official website of the company. The website of respondent company i.e. conscient.in/ heritage max/construction-updates.html# reflects that the project is still far from completion. The last project updates were given in the month of January, 2017. The photographs of main approach, main gates, service road and Tower-A all reflects sorry state of affairs and are apparently far from completion even at the time while the reply was being sent.



19. That in these circumstances the last resort for complainants to get an update about the project was to visit the website of Haryana Real Estate Regulatory Authority, Gurugram. The website of the authority led complainant to various startling revelations about the project. That the project "Heritage Max" was registered with authority on 23.07.2018. On 18.11.2019 the Haryana Real Estate Regulatory Authority, initiated a complaint bearing no. RERA-GRG-5638-2019 dated 18.11.2019 against "M/s Dreamhome Infrastructure Private Limited" with regard to its project Heritage Max. The perusal of the contents of proceedings dated 18.11.2019 reflects that what to talk of updating the project details on its website, the respondent company failed to provide online information in REP-1 (Part-A to Part-H) even to RERA, Gurugram. That respondent company was required to upload its quarterly progress report in respect of the project till the project is completed and "occupancy certificate/ completion certificate" is obtained from the competent authority. The same was not provided and accordingly the complaint was initiated against the company by RERA, Gurugram. The operative part of para-4 of order dated 18.11.2019 is reproduced here below: -

*"As per Regulations No. 12/RERA GGM Regulations 2018, dated 21.05.2019 notified by this authority, the quarterly progress report in respect of your project is to be up-loaded every quarter ending on 31st March, 30th June, 30th September and 31st December of every year separately till the project is completed and "Occupation Certificate and Completion Certificate" is obtained from the competent authority."*

20. The perusal of this para in specific and the entire order in general reflects that the project is not completed and "occupancy



certificate/ completion certificate" has not been obtained from the competent authority. When in case these details are available with the company then nothing prevents the company from sharing it with its allottees.

21. That as per Section 4 of the Real Estate (Regulation and Development) Act, 2016 and Rule 14 (1)(b)(ii) and (d) of Haryana Real Estate (Regulation and Development) Rules, 2017, the details with regard to approvals, occupancy certificate etc. are required to be mentioned on the website of the company. However, nothing is mentioned on the website even today.

22. That Haryana Real Estate Regulatory Authority in its order dated 18.11.2019 especially underlined the importance of publishing the information on the website. The operative part is as under: -

*"Your attention is further invited to section 34 of the Real Estate (Regulation and Development) Act, 2016 where the authority is mandate to ensure that the information mentioned there under has been made available on the website in respect of each project registered under the Act. This is essential to publish the requisite information on the website for public viewing for all real estate projects so that the information remains in public domain and allottee or any interested person may take informed decision."*

23. That complaint no. RERA-GRG-5638-2019 was further listed on 23.12.2019 and was last listed on 15.07.2020 and is still pending as per the updates available on the website of RERA, Gurugram.

24. That it deserves the mention that before raising a demand of holding charges no specific information was given to complainant with regards to issuance of occupancy certificate as per the



procedure prescribed in RERA Act, 2016. The clause with regard to holding charges cannot be validly and legally enforced against complainant.

25. That after taking the entire amount in the year 2017 itself and even after taking regular maintenance charges from complainants, the company never deemed it appropriate to fulfil its contractual and statutory obligation to share with complainant the copy of occupancy certificate. On 03.08.2021, the company suddenly sends a letter under reference to complainant at their India address, despite the fact that all other communications were addressed on their email i.e., abhinay.jhamb@gmail.com and threatened them to pay the holding charges. That letter too was equally evasive as their previous communications. A set format with change of name and address is seemed to have been sent to complainants without proper application of mind. There was no communication prior to 03.08.2021 wherein complainants have been asked to take possession and communicated that occupancy certificate has been issued. It is only after repeated requests by complainants and exchange of several telephoning requests, in addition to emails and whatsapp messages that a letter issued by "Town and Country Planning Department, Haryana" was shared with complainants on 31.08.2021. There was no occasion for the company to conceal that letter like a "State Secret", especially when the law of the land makes its obligatory to share it with complainant and all allottees.
26. That another aspect with regard to holding charges is that the same forms part of clause 18. The proper construction of clause 18 and its various sub clauses, if allottee has paid entire dues and is also paying the maintenance charges, then he is deemed to have taken



possession and in that eventuality no holding charges can be demanded from him. Thus, in other words the only apparent purpose of incorporating the clause of holding charges is that the allottee must pay the maintenance charges, which complainant are regularly paying. Thus, the demand of holding charges from them is totally illegal and unlawful.

27. That, furthermore, the issue with regard to demand of holding charges has already been settled by this Hon'ble vide judgment dated 03.03.2021 in "United Air Products Pvt Ltd. Versus M/s Emaar MGF Land Limited" wherein the demand of holding charges by developer has been set aside while relying on the judgement passed by Hon'ble Supreme Court of India in Civil Appeal No. 3864-3889 of 2020.
28. Thus, the ratio of the aforesaid judgment is that the very concept of holding charges is fallacious since the developer having received the sale consideration has nothing to lose by holding possession of the unit except that it would be require to maintain the apartment. Therefore, the holding charges will not be payable to the developer. The present case is squarely covered with the mandate of the aforesaid judgment. The complainant have already paid the total sale consideration of Rs. 1,33,62,237/- and also paid regular maintenance charges amounting to Rs. 2,60,292/- commencing from June 2019 to till date and nothing is due on account of it . In these circumstances, the builder cannot demand holding charges of Rs. 10,60,532/- from the complainant.
29. Once the complainant paid total sale consideration and also paid regular maintenance charges, there is no occasion for them to not to complete possession formalities. It is only that the occupancy



certificate was never shared with the complainants. The complainants were admittedly in touch with respondent. Firstly, the requisite information was not provided and then after the Covid-19 pandemic completely restricted international traveller. Since, the complainants are staying in Singapore they could not come to take possession but the demand of Holding charges is totally illegal.

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

30. The complainants have sought the following relief(s):
- I. The respondent be directed to not to levy holding charges of Rs. 10,60,532/- as demanded vide letter dated 03.08.2021 and 02.09.2021.
  - II. Direct the respondent to withdraw letter dated 03.08.2021 and 02.09.2021 or in the alternative letter dated 03.08.2021 and 02.09.2021 vide which the holding charges have been demanded be set aside so that the complainant can take possession of the said unit after completion of necessary documentation.

**D. Reply by the respondent**

31. That in the year 2012, the complainants were desirous of purchasing a dwelling in Gurugram and upon conducting extensive due diligence in relation to project including but not limited to the location, affordable cost, premium facilities etc., arrived at a holistic decision to book a unit in the project. In terms thereof, the Complainants booked an apartment, being A-2004 bearing super area of 2076 sq. ft. situated at 19<sup>th</sup> floor in Tower A of the project, the allotment of which unit was confirmed, vide letter dated



16.08.2012. The parties, in compliance of their contractual obligations, entered into a Buyer's Agreement on 19.02.2013 (hereinafter referred to as "Buyer's Agreement").

32. That till date, the complainants have paid an amount of Rs. 1,32,56,641/- towards the unit, including taxes and Fixed Deposit towards HVAT and has also paid a sum of Rs. 1,05,596/- as advance maintenance charges. It is stated that the respondent, in terms of the buyer's agreement executed between the parties, completed the construction of Tower A well within time in the year 2016, being the tower within which the Unit is located, and applied for the occupation certificate of the aforesaid Tower on 03.10.2016 and received the same on 03.04.2017.
33. That upon the receipt of the occupation certificate and in furtherance of its contractual obligations, the respondent, vide final call letter dated 15.04.2017 called upon the complainants to clear their outstanding dues under the buyer's agreement and take possession of the unit, however, the complainants, for reasons best known to them failed to come forth and take possession of the unit upon payment of their outstanding dues.
34. That the complainants have failed to come forth to take possession of the said unit from the issuance of the final call Letter dated 15.04.2017 till the filing of the present complaint, which evidently is a breach of the buyer's agreement.
35. That clause 18(a) of the buyer's agreement, duly signed and executed by the complainants, empowers the respondent to levy holding charges upon the failure of the complainants to take



possession of the unit, which clause is being reproduced hereinbelow for the ready reference of this Hon'ble Authority:

36. That though the complainants cleared the outstanding dues as detailed in the final call Letter dated 15.04.2017, they for reasons best known to them, failed to come forth to take the possession of the Unit in terms of the final call letter dated 15.04.2017 and execute the conveyance deed qua the unit and therefore, the respondent was constrained to issue reminder Letter dated 04.07.2018 upon them complainants to take over the physical possession of the Unit, to avoid Holding Charges as per the terms of the buyer's agreement dated 19.02.2013. It is pertinent to highlight that the complainants, vide the abovementioned reminder letter were duly informed that Holding Charges had begun to accrue on the unit and they were called upon to come forth and execute the necessary documents for taking over the possession of the unit.
37. That despite the issuance of the final call letter dated 15.04.2017 and the reminder letter dated 04.07.2018, the complainants failed to come forth and take possession of the unit and the respondent was constrained to issue another email on 07.02.2019, informing them that the offer of possession was made way back in 2017 and the non-completion of the possession/ handing over formalities of the Unit by the complainants was leading to the accrual of holding charges. s
38. That since the complainants once again failed to come forth to complete the possession formalities qua the unit despite repeated reminders and requests by the respondent, it once again issued emails dated 01.04.2019 and 18.04.2019 calling upon them to clear the dues, as detailed in the said emails and in turn, complete the



necessary formalities for taking possession of the unit. In response, an email dated 18.04.2019 was received, wherein, his interest to take possession of the unit was shown, however it was, admitted that they were he was unable to gather the necessary documents, as travel to India was planned at a short notice.

39. That the respondent again issued an email dated 20.04.2019 to the apprising about the necessary documentation required to take the physical possession of the unit and requested to clear the outstanding dues and avoid the accumulation of holding charges, which were being levied due to the failure of the complainants to take the possession of the Unit.
40. That on 04.01.2020, since the complainants failed to come forth to execute the necessary possession/handing over formalities, the respondent issued a final notice bringing to the attention of the latter that there was an outstanding with respect to the holding charges and other charges and the formalities of seeking possession of the unit were still pending. It was also intimated vide the said final notice that the delay in taking possession of the Unit was also attracting holding charges in terms of the buyer's agreement. The same was again intimated by the respondent, vide email dated 02.04.2021 to the complainants.
41. That the respondent vide email dated 17.05.2021 called upon the complainants to pay an amount of Rs. 1,24,800/- towards the Haryana Value Added Tax (HVAT) liability for the period 01.04.2014 to 30.06.2017. Needless to state, the demand towards the HVAT raised by the respondent was in consonance with the applicable law. It is stated that the respondent had specified in the email dated 17.05.2021 that the payment of Rs. 1,24,800/- could



either be paid vide demand draft/RTGS in favour of the respondent or would be deducted/ withdrawn by it out of the fixed deposit already provided by the complainants for the liability towards HVAT under the Haryana Tax compliance up to the period ending on 03.06.2017. The said email also informed the complainants that the balance amount of FD would continue as it was without a lien in favour of the respondent. In view of the same, the complainants were given option to discharge the liability towards HVAT, however, the liability has not been discharged till date and on the contrary, the complainants are seeking refund for the same. As a goodwill gesture, till date, the respondent has not withdrawn the fixed deposit, provided by the complainants.

42. That upon due inquiry by the complainants in relation to HVAT, the respondent duly clarified the details of the same via email dated 01.06.2021. The complainants, vide email dated 05.06.2021, again sought details in relation to HVAT being levied by the respondent, which details were provided without demure.
43. That admittedly, the complainants have failed to come forth, for more than 4 years, to clear their outstanding dues and execute the possession documents for the Unit. It is under such circumstances, the respondent was constrained to issue final reminder letter dated 29.07.2021 intimating to clear the outstanding dues and complete the necessary handing over/ taking over formalities, failing which, it would be constrained to terminate the allotment of the Unit within 7 days, pursuant to which, they would have no right, title or interest of any nature in the unit.
44. That upon receipt of the letter dated 29.07.2021, the complainant no. 1 contacted the officials of the respondent and consequently,



issued an email dated 03.08.2021, wherein, he stated that he would apprise the respondent about the timeline within which he would register or sell the Unit by 18.08.2021. It is stated that once again, the complainant No. 1 had failed to provide any concrete response in relation to the timeline and again, vide email dated 27.08.2021, sought time from the respondent.

45. That as a counterblast to letter dated 29.07.2021, the complainants, through their advocate, issued a legal notice dated 01.09.2021 raising false and frivolous allegations against the respondent and *inter alia*, sought the following:

- a. All necessary approvals and permissions be shared with the complainants or be uploaded on the website of the respondent or on the website of RERA.
- b. The holding charges be withdrawn with immediate effect.

46. That the complainant no. 1 was communicating with the representatives of the respondent in relation to seeking a waiver of the holding charges imposed by it due to sole default of the complainants to take the possession of the unit. In pursuant to such communication, the respondent issued another email dated 02.09.2021 calling upon the complainants to complete the necessary formalities, however, to no avail. It is pertinent to state that vide the email dated 02.09.2021, the respondent in-fact informed the complainants that the possession formalities could also be completed on behalf of the complainants by a Power Attorney holder. It is stated that the respondent extended all



possible cooperation to the complainants, including providing alternatives for them for the completion of the handing over/possession formalities, in case they were unable to travel to India.

47. That in response to the email dated 02.09.2021, the complainants, through their advocate, issued another legal notice dated 06.09.2021 calling upon the respondent to withdraw the demand of Rs. 10,60,532/-. The respondent, through its advocate, issued reply dated 07.10.2021 to the legal notice dated 01.09.2021 and reply dated 07.10.2021 to the legal notice dated 06.09.2021, rebutting the false and frivolous allegations raised by the complainants and placing the true and correct chain of facts on record.
48. That the offer for possession of the unit was issued to the complainants way back on 15.04.2017 vide the final call letter of even date and they, despite the lapse of more than 5 years, for reasons best known to them, have failed to come forth and execute the handing over/possession formalities. Furthermore, the complainants were time and again informed by the respondent that the failure to complete the handing over/possession formalities, in terms of the executed buyer's agreement was leading to the accrual of the holding charges. It is stated that the complainants, despite being aware of the same, having duly read over and signed the buyer's agreement and having been repeatedly informed by the respondents qua the levying of holding charges, are now proceeding to renege from their contractual obligations under the buyer's agreement. It is pertinent to state that the buyer's agreement duly contained the terms and conditions of the



allotment, including the levying of holding charges and the complainants were fully aware of the same at all times. It is also pertinent to mention that the respondent was under no contractual obligation to send demand letters and reminders to the complainants as they were already aware of all the terms and conditions of the allotment. However, the respondent, as a gesture of goodwill sent numerous demand letters and reminders. But despite the same, the complainants failed to come forth and clear their outstanding dues and take possession of the unit.

49. That the respondent has extended all possible cooperation to the complainants qua the unit, having repeatedly followed up with them, for more than 4 years, calling upon them to clear their outstanding dues and executing the necessary possession documents for the unit. Evidently, the complainants delayed in taking the possession of the unit despite the final call letter was issued on 15.04.2017, when clearly there was no presence of the COVID-19 Pandemic. Despite the final call letter having been issued way back in 2017, the complainants failed to come forth to clear their outstanding dues and execute the necessary possession documents.

**E. Jurisdiction of the authority:**

50. The plea 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**



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**

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)(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.

51. 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 complainant at a later stage.

### **F. Findings on the relief sought by the complainants:**



**F.1 Direct the respondent to not to levy holding charges of Rs. 10,60,532/- as demanded vide letter dated 03.08.2021 and 02.09.2021.**

**F.II Direct the respondent to withdraw letter dated 03.08.2021 and 02.09.2021 or in the alternative letter dated 03.08.2021 and 02.09.2021 vide which the holding charges have been demanded be set aside so that the complainants can take possession of the said unit after completion of necessary documentation.**

52. Since both the above-mentioned reliefs being sought are connected, they are being dealt with together.
53. It is interesting to note that the term holding charges has not been clearly defined in the builder buyer's agreement and or any other relevant document submitted by the respondent. Therefore, it is firstly important to understand the meaning of holding charges which is generally used in common parlance. The term holding charges or also synonymously referred to as non-occupancy charges become payable or applicable to be paid if the possession has been offered by the builder to the owner/allottee and physical possession of the unit not taken over by allottee but the flat/unit is lying vacant even when it is in a ready-to-move condition. Therefore, it can be inferred that holding charges is something which an allottee has to pay for his own unit for which he has already paid the consideration just because he has not physically occupied or moved in the said unit.
54. The next thing that pops up for consideration is as to what are the maintenance charges being taken by the developer/RWA. The maintenance charges are the charges, either annually or monthly,



applicable to be paid by the owner/allottee once he/she has taken possession of the property/unit. These charges are paid for the general maintenance and upkeep of the building and/or society. A person purchases a flat for his own residential usage/or for letting it out further as per his own discretion and requirement. He is bound as per law to pay the maintenance charges for his flat/unit whether he is personally residing or even if the flat is kept locked and being unused. The member has to pay the full maintenance charges without any concession and in most cases pays advance maintenance charges as well. Maintenance charges are applicable right from the time possession of a flat/unit is taken over by any prospective buyer/allottee. However, payment of maintenance charges is carried out on a monthly basis for the upkeep of the entire building and project. Therefore, simply understood, the flat closed/locked/vacant/not occupied for any period is equal to self-occupied, which is further equal to regular full maintenance charges and non-occupancy charges/holding charges should not be levied.

55. The Hon'ble NCDRC in its order dated 03.01.2020 in case titled as Capital Greens Flat Buyer Association and Ors. Vs. DLF Universal Ltd., Consumer case no. 351 of 2015 held as under:

*"36. It transpired during the course of arguments that the OP has demanded holding charges and maintenance charges from the allottees. As far as maintenance charges are concerned, the same should be paid by the allottee from the date the possession is offered to him unless he was prevented from taking possession solely on account of the OP insisting upon execution of the Indemnity-cum Undertaking in the*



*format prescribed by it for the purpose. If maintenance charges for a particular period have been waived by the developer, the allottee shall also be entitled to such a waiver. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed."*

*(Emphasis supplied)*

56. The said judgment of Hon'ble NCDRC was also upheld by the Hon'ble Supreme Court vide its judgement dated 14.12.2020 passed in the civil appeal filed by DLF against the order of Hon'ble NCDRC (supra). The authority earlier, in view of the provisions of the rules in a lot of complaints decided in favour of promoters that holding charges are payable by the allottee. However, in the light of the recent judgement of the Hon'ble NCDRC and Hon'ble Apex Court (supra), the authority concurring with the view taken therein decides that a developer/ promoter/ builder cannot levy holding charges on a homebuyer/ allottee as it does not suffer any loss on account of the allottee taking possession at a later date even due to an ongoing court case.

57. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding



possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the respondent. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.

58. The council for the complaints stated at bar towards HVAT already stands paid in excess and the allottee shall pay the stamp duty charges as applicable rates.

**G. Directions issued the Authority:**

59. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

- i. The respondent is not entitled to claim any holding charges against the unit from the complainants at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3899/2020 decided on 14.12.2020.
- ii. The respondent is further directed to issue a fresh statement of account to the complainants against their unit of the amount due if any after deleting holding charges within a period of 15 days.



- iii. The complainants are thereafter directed to take possession of the subject unit within one month from the date of this order and to pay outstanding maintenance charges if any remained to be paid.
- iv. The respondent is further directed to execute conveyance deed of the subject unit in favour of the complainants on payment of the requisite stamp duty and other charges.

60. Complaint stands disposed of.

61. File be consigned to the Registry.



*V.I - 3*  
(Vijay Kumar Goyal)  
Member

**Haryana Real Estate Regulatory Authority, Gurugram**

**Dated: 09.03.2023**

**HARERA**  
**GURUGRAM**



