

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

Complaint no. :	7695 of 2022
Date of filing complaint:	19.12.2022
First date of hearing:	16.05.2023
Date of decision :	30.05.2023

1. Smt. Sadhna Sharma W/o Sh. Kamal Kumar Gaur 2. Sh. Kamal Kumar Gaur S/o Sh. Narender Kumar Sharma <b>Both R/O:</b> W-96, GF, Uppal Southend, Sohna Road, Gurgaon	<b>Complainants</b>
Versus	
M/s Ashiana Dwellings Private Limited <b>Regd. office:</b> 3H, Plaza M6, Dist. Center Jasola, New Delhi-110025	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Deepak proxy counsel of Ms. Aditi Mishra (Advocate)	Complainants
Sh. Deeptanshu Jain (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 29 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 allottees 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.	Particulars	Details
1.	Name of the project	Ashiana Mulberry, Sector-2, Gurgaon
2.	Project type	Group Housing Project
3.	<b>RERA registered/not registered</b>	Registered vide registration no. 44 of 2017 dated 11.08.2017
	Validity status	30.06.2020
4.	<b>DTPC License no.</b>	16 of 2014 dated 10.06.2014
	Validity status	09.06.2014
	Licensed area	10.25 acres
	Name of licensee	Ashiana Dwellings Private Limited
5.	Application form dated	01.06.2020 (As per page no. 42 of complaint)
6.	Unit no.	A-212 on 02 <sup>nd</sup> floor, tower T3 (As per page no. 42 of complaint)
7.	Unit area admeasuring	1730 sq. ft. (Super-area) (As per page no. 43 of complaint)
8.	Date of agreement for sale	02.07.2020

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		(As per page no. 37 of complaint)
9.	Possession clause	<p><b>Clause 7.1 of agreement</b></p> <p><i>Subject to receipt of Occupation certificate within 60 Days from the date of application, the promoter assures to handover the possession of the Apartment along with parking (if applicable) <u>by December 2020 plus a grace period of 6 months as per agreed terms and conditions unless there is delay due to "force majeure, Court orders, Government policy/ guidelines, decisions affecting the regular development of the real estate project. If, the completion of the Project is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Apartment. The Promoter shall be deemed to have completed the construction as per agreed scheduled if application for grant of Occupancy Certificate is filed within the schedule given above.</u></i></p>
10.	Due date of possession	<p><b>30.06.2021</b></p> <p>(Calculated from December 2020 + 6 months grace period)</p> <p><b>Grace period of 6 months is allowed</b></p> <p><i>(Inadvertently, mentioned as June 2021 in proceedings dated 30.05.2023; ref in this regard be made to para 32 of this order)</i></p>
11.	Payment plan	70:30

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12.	Total sale consideration	Rs. 73,47,310/- (BSP) (As per page no. 43 of complaint)
13.	Amount paid by the complainants	Rs 57,60,291/- (As per applicant ledger dated 26.12.2022 on page 23 of reply)
14.	Occupation certificate	02.11.2022 (As per page no. 102 of reply)
15.	Offer of possession	03.11.2022 (As per page no. 95 of reply)
16.	Reminder dated	29.04.2023 (As per page no. 105 of reply)

**B. Facts of the complaint:**

3. That the real estate project "Ashiana Mulberry" at Sector 2, Sohna, Gurugram, Haryana (hereinafter referred to as "Project") was launched in the year 2014 and came to the knowledge of the complainants, through the authorized representative of the respondent. The respondent on its website advertised a special offer wherein booking a flat under 70:30 payment plan would yield 9% return till offer of possession and lured them for booking a flat in the said project of the respondent.
4. That the complainants submitted an application form for booking in the project and paid booking amount of Rs.7,71,468/- by issuing a cheque bearing no. 057500 dated 06.06.2020 drawn on IDBI Bank in its favour. The application form stated that the complainants having opted for direct booking and agreeing to pay 70% of the booking

amount would be entitled to 9% interest till offer of possession and also that the possession would be delivered by December 2020.

5. That the receipt of the booking amount and updated payment plan of the applicants was informed to the complainants vide correspondence dated 16.06.2020.
6. That they further paid a sum of Rs. 46,28,805/- in line with the updated payment plan towards the sale price by issuing a cheque bearing no. 050511 dated 29.06.2020 drawn on IDBI Bank in its favour.
7. That the complainants were allotted flat no. A-212 in tower 3, (3 BHK +3 Toilets), having a carpet area of 994.16 sq. ft. for a total sale price of Rs. 73,47,310/- i.e., Rs. 7,390.47/- per sq. ft. Further, an agreement for sale was executed on 02.07.2020. It is pertinent to note that it has received a sum of Rs. 54,00,273/- being more than 70% of the total sale price in contravention of Section 13 of the Haryana Real Estate (Regulation and Development) Act.
8. That the respondent at the time of the execution of the agreement promised to deliver the possession of the unit by December 2020 but it has failed in fulfilling its obligation of offering possession on time and a valid offer of possession has not been made till date.
9. That the complainants with a hope of receiving returns as promised while opting for 70:30 payment plan, did not get any returns. They enquired about the same from time to time and vide email dated

23.07.2020, it was confirmed that they would be entitled to 9% p.a. interest till possession for their flat in the project.

10. That the complainants sought information on the statement of accounts of the interest on 70% amount paid to the company and the date of commencement of calculation of interest vide email dated 04.11.2020. In response to the said email, the respondent vide email dated 05.11.2020 stated that the interest calculation would start from 1st July 2020 till offer of possession.
11. That the respondent however missed the completion timeline and did not commit towards the handing over of possession while keeping the complainants in lurk over the payment of 9% p.a. interest and did not update them about any development in the project. On further enquiry on 10.11.2021, vide Whatsapp communication, they were informed by the authorized representative of the respondent that the interest of 9% p.a. would be adjusted at the time of possession only and that would start in January 2022..
12. That after a delay of 1 years and 11 months, the respondent vide letter dated 03.11.2022 informed the complainants that it has received the occupation certificate dated 02.11.2022 from Directorate of Town & Country Planning, Chandigarh. Further, the Respondent raised several illegal demands under the following heads without making any adjustments towards the interest amount of 9% p.a. as promised in the Application Form and in subsequent correspondences :
  - a. Electric Meter Connection Charges of Rs. 19,376/-

- b. External Electrification Charges of Rs. 87,192/-
- c. Legal charges of Rs. 23,600/-
- d. Advance Common Area Maintenance & Management Charges for 24 months of Rs. 1,71,478/-
- e. Advance towards Common Area Electricity [Grid Supply] charges for 24 Months of Rs. 24,000/-
- f. Advance towards Common Area Electricity [Through DG Set] charges for 24 Months of Rs. 14,600/-
- g. Portable Water Supply Charges of Rs. 70,800/-

13. Hence, the above-mentioned offer of possession has not only been made after a delay but in violation of the Act of 2016. It has deliberately and with a mischievous intent tricked the complainants through false promises and representations. The said dishonest intent of the respondent is amply evident from the entire conduct and its omissions is set out hereinafter:-

- (a) Offer of possession subject to illegal demands for additional expenses in violation of the Real Estate (Regulation and Development) Act, 2016;
- (b) Deliberately committing an absolute breach of the promise to pay interest at 9% p.a. from 1 July 2020 till the offer of possession;
- (c) Complete failure to keep the promised schedule of completion and delay without any valid justification;

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- (d) Misrepresentation by selling the apartment on super area per sq. ft. price and then, increasing the per sq. ft. cost to meet carpet area requirements.

14. That the respondent has made the offer of possession subject to illegal demands on the heads of certain electricity, electrification, and maintenance charges which are not justified. The offer of possession by the respondent on payment of charges which the buyer is not contractually bound to pay and are unreasonable as per the law laid down, cannot be considered to be a valid offer of possession.
15. That the respondent in its advertisement for the sale of the flat, and in the application form and through subsequent correspondences through its authorized agents promised that it would pay a return of 9% p.a. interest to them from the commencement of the agreement of sale, i.e. July 2020 till the offer of possession. However, despite several requests and reminders, it has not complied with this promise. Thereafter, vide correspondence dated 10.11.2021, its authorized representative assured that the said amount of return would be adjusted in the final statement of accounts, i.e., at the time of the offer of possession. To their utter dismay, it has not made any such adjustment in the final offer of possession cum demand letter dated 03.11.2022. Instead, they raised several illegal demands as illustrated above. Thus, they are entitled to an amount of Rs. 11,74,560/- i.e., Rs. 40,502/- per month till valid offer of possession, as it has breached its



contractual obligation and they realized it could have been a method to lure the complainants to invest in the project.

16. That the respondent in the application form had charged an amount of Rs. 4,247/- per sq. ft. and the total sale price was calculated on the basis of the super area of the flat. However, the cost per sq. ft. was increased to Rs. 7,390.47/- per sq. ft. at the time of the signing of the agreement for sale without any prior intimation to the buyers. That indicates that the amount, initially charged as per super area, was merely increased to suit the carpet area specifications and no other reason. The respondent with the deliberate intent of exploiting the complainants increased the cost per sq. ft. instead of revising the total sale price of the apartment in an ethical manner.
17. That as per the Haryana Real Estate Regulatory Authority, Gurugram (Sale of Apartments/Floors in a Real Estate Project on the basis of Carpet Area) Regulations, 2021, any agreement for sale on any other basis except on carpet area shall amount to indulgence in unfair trade practice/fraudulent practice by the promoter. Hence, the initial booking was made at a lesser price per sq. ft. on the basis of the super area and then the cost of residential unit was changed to carpet area specifications and the price per sq. ft. was increased without effecting any change in the total sale price of the apartment. This evidences that the respondent indulged in such unfair practice in order to cheat the complainants and over-charge them.

18. That the respondent company has violated Section 11 of Act of 2016. According to Sections 18(1) and 19(3) of the Act read with Rule 15 of Rules, 2017, it was liable to pay the allottee interest for delaying the possession in violation of the terms of the agreement. It has failed to adhere to promises and assurances made to them regarding completion of the project and therefore, is liable to pay an interest of MCLR+2% (per annum) till date of actual possession.

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

19. The complainants have sought following relief(s):

- i. To set aside the offer of possession dated 03.11.2022 and withdraw any demands which are not covered under the agreement or are illegal as per law and waive off maintenance charges.
- ii. Direct the respondent to offer a valid offer of possession and handover actual vacant and physical possession of the above said flat.
- iii. Direct the respondent to pay delayed possession charges from due date of possession i.e. December 2020 till handing over of possession.
- iv. Direct the respondent to pay the return of 9% interest p.a. with effect from 01.07.2020 till valid offer of possession.
- v. To revise the rate of total sale price as per the carpet area and furnish detailed break-up of the amount to the complainants.
- vi. Direct the respondent not to take any coercive steps against the complainants such as cancellation of allotment.
- vii. Direct the respondent to pay litigation cost and expenses.

20. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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 respondent:**

21. The respondent by way of written reply made the following submissions: -

- a. That the averments made in the complaint under reply may be considered to have been replied to and all the allegations contained therein may be considered to have been specifically denied and controverted, unless specifically admitted hereinafter. The complaint is liable to be dismissed in view of the preliminary objections set out hereinafter. It is only after deciding the question relating to maintainability of the complaint that the matter is to be proceeded further.
- b. That the complainants out of their own free will and volition approached the respondent, applied for booking of unit detailed earlier by making a payment of Rs. 8,22,899/- as per Clause 1.10 laid down in the agreement for sale. Thereafter, the complainants opted for down payment plan in order to make the payments of all the instalments as mentioned in schedule-C of the agreement for sale.

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- c. That thereafter, on 02.07.2020, the unit was allotted to the complainants and the agreement for sale was executed between the parties.
- d. That the said agreement also contained the schedule- C pertaining to payment plan, and they were under the strict obligation to adhere to the said payment plan. There is no shying away from the fact that as per the terms and conditions laid down in clause 1.4 and 5.2 of the said agreement, they were liable to make timely payment of the outstanding installments of the total sale consideration in order to obtain possession of the said unit. They were fully aware of the fact that timely payment of the installments and outstanding dues is the essence of the contract, duly finds mention in clause 1.4 and 5.2 that delayed and defaulted payments would attract adverse consequences.
- e. That as per clause 7.1 of the agreement, it never promised to handover the possession by December 2020 (plus grace period of 6 months). Actually, clause 7.1 (ii) of the agreement states that the promoter shall handover the possession of the unit by December 2020 (plus grace period of 6 months), subject to receipt of occupancy certificate within 60 days from date of application which was in turn conditional upon the "force majeure".



- f. That the total sale consideration of the said unit was Rs. 83,35,556/- (excluding legal charges, maintenance charges and deposits etc.) out of which the respondent received a sum of Rs. 57,60,291/- towards total sale consideration and a sum of Rs. 25,75,265/- (excluding delayed payment charges, legal charges, maintenance charges, deposits and holding charges etc.) still remains outstanding which they have failed to pay.
- g. That the complainants were under an obligation to adhere to the payment plan opted as laid down in schedule - C and pages 7-9 of the agreement, which enlists the charges apart from the total sale consideration. Therefore, they were liable to pay such balance dues. It would not be amiss to state that they for the reasons best known, failed to make timely payments of the outstanding installments towards total sale consideration.
- h. That there were certain factors like non-availability of construction material, electric power slow down, scarcity of water etc., the substantial reasons which led to the delay in completing the construction of the project. Additionally, the construction of the project was stopped by Hon'ble National Green Tribunal due to poor air quality. It is pertinent to point out here that due to stoppage of construction work, it may took another months' time to remobilize the construction work at

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project site. Thus, the calculation of period of completion for which the construction work was stopped should be treated as zero period. Pursuant thereto, as per the terms of the apartment buyer agreement and the RERA registration, subject to timely payment by the allottee as well as subject to force majeure, the construction of the unit was to be completed by December 2020 plus 6 months grace period unless there is delay due to "force majeure", court order etc. It is pertinent to mention herein that the construction of the project was stopped several times during the years 2017, 2018, 2019 and 2020 by the order of EPCA, HSPCB, NGT and the Hon'ble Supreme Court of India. It is most respectfully submitted that due to the increase in the level of pollution in the NCR region, the Hon'ble Supreme Court vide its order dated 14.11.2019 passed in the matter of ***MC Mehta Vs Union of India & Others*** bearing Writ Petition (c) No. ***13029/1985*** imposed complete ban on construction and excavation work across the National Capital Region from 04.11.2019, which was ultimately lifted on 14.02.2020. The ban on construction caused irreparable damage to the delivery timelines and the real estate developers' finances as it was unable to undertake any construction work during the aforesaid period and the same was beyond its control. Furthermore, the impact of Covid-19 pandemic has been felt throughout the globe and more particularly by real estate industry. The pandemic completely

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disrupted the supply chain of the respondent. Therefore, the delay if any, is not attributable to the respondent herein.

- i. That in order to curb down the air pollution, the Environment & Pollution (Prevention & Control) Authority, for National Capital Region, has reviewed the urgent action that needed to be taken for the implementation of the Graded Response Action Plan (GRAP) vide it's notification dated EPCA-R/2020/L-38 dated 08.10.2020 and has imposed ban on the use of diesel generator set with effect from 15.10.2020, which has further led to delay in the construction being raised.
- j. That even after the delay caused by the various allottees in making the payments towards their respective units and various orders of the EPCA, HSPCB and the Apex Court, the respondent finished the construction work of Phase-I of the said project and received the occupation certificate on 02.11.2022 from the Director General, Town & Country Planning Department, Chandigarh bearing Memo No. ZP-1062/JD(RA)/2022/32955.
- k. That the respondent is ready and willing to give the possession of the units to other allottees in respect of which it has also sent a letter dated 03.11.2022 calling upon them to make payment of outstanding dues and take possession of the unit. The said notice dated 03.11.2022 was followed by a reminder letter dated 29.04.2023. However, they have never come forward either to clear the outstanding dues or to take the possession even till date.



Therefore, the possession of the unit could not be handed over to the complainants.

- l. That the respondent has always kept them updated with respect to the development of surrounding area as well as of construction of the project and repetitively apprised them of the factors which had a visible adverse impact on the real estate industry.
- m. That the instant complaint is an afterthought and has been filed with the ulterior motive to avoid the contractual obligations and earn wrongfully from the respondent.
- n. That the money received from the complainants have been utilized towards the construction of the project/unit. It is further pertinent to mention here that during the last three years, Real Estate Sector has seen several events which severely impacted it. It is relevant to mention here that due to the current Pandemic COVID-19, the situation the construction at the site was slowed down. On the contrary, it is the respondent who has incurred loss due to the omissions on part of the complainants, for which they are liable to pay an amount of Rs. 25,75,265/- (excluding delayed payment charges, legal charges, maintenance charges, deposits and holding charges etc.) to it.
- o. That the dispute between the parties involves complicated questions of facts and law, which necessarily entail the leading of





copious evidence. The issues raised by the complainants cannot be addressed in a complaint before the Authority which follows a summary procedure. In this view of the matter, the complaint is liable to be dismissed on this ground alone.

22. Copies of all the relevant documents have been filed and placed on 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:**

23. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

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.1 Objection regarding the complainants being investor.**

24. It is pleaded on behalf of respondent that complainants are investors and not consumers. So, they are not entitled to any protection under the Act and the complaint filed by them 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 he 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 agreement for sale, it is revealed that the complainants are buyers and paid considerable amount towards purchase of subject unit. At this stage, it is important to stress upon the definition of the 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."*

25. In view of above-mentioned definition of allottee as well as the terms and conditions of the apartment buyer's agreement executed between the parties, it is crystal clear that the complainants are allottees as the subject unit allotted to them 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 investors are not entitled to protection of this Act also stands rejected.

**F.II Objection regarding delay due to force majeure circumstances**

26. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority and delay in completion of project due to Covid-19 pandemic. Since, there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. But the plea taken in this regard is not tenable. The due date for completion of project is calculated as per clause 7.1 of agreement which comes out to be 30.06.2021. Though there have been various orders issued by various competent authorities to curb the environment pollution, but these were for a short period of time and the fact that such type of orders are passed by the various competent Authorities from time to time were already known to the respondent-builder. Further, as far as relaxation on ground of Covid-19 is concerned, grace period of six months as provided under clause 7.1 has been allowed to the respondent being unconditional and thus, no further grace period in this regard can be allowed to the respondent.

**F.III Objection regarding non-payment by the complainants.**

27. The respondent-builder submitted that the complainant-allottees has failed to make timely payment towards consideration of allotted unit. Despite issuance of various demand notices & reminders, they never came forward to make payment towards due installments. The Authority observes that the subject unit was booked under 70-30 payment plan and the complainants have already paid an amount of Rs. 57,60,291/- towards basic sale consideration of Rs. 73,47,310/- constituting more than 78% of total sale consideration and remaining 30% was payable at the time of offer of possession only. Thus, the plea of the respondent that the complainants are not coming forward in making payment towards consideration of allotted unit is not tenable and devoid of merits.

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

**Relief sought by the complainants:**

**G.I To set aside the offer of possession dated 03.11.2022 and withdraw any demands which are not covered under the agreement or are illegal as per law and waive off maintenance charges.**

**G.II Direct the respondent to offer a valid offer of possession and handover actual vacant and physical possession of the above said flat.**

28. The complainants submitted that for a valid offer of possession the same must not be accompanied with illegal demands. However, as per offer of possession, it has charged various illegal charges on pretext of electricity, electrification and maintenance charges such as

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- (i) Electric Meter Connection Charges of Rs. 19,376/-
  - (ii) External Electrification Charges of Rs. 87,192/-
  - (iii) Legal charges of Rs. 23,600/-

- (iv) Advance Common Area Maintenance & Management Charges for 24 months of Rs. 1,71,478/-
- (v) Advance towards Common Area Electricity [Grid Supply] charges for 24 Months of Rs. 24,000/-
- (vi) Advance towards Common Area Electricity [Through DG Set] charges for 24 Months of Rs. 14,600/-
- (vii) Portable Water Supply Charges of Rs. 70,800/-

29. The Authority observes that as per offer of possession dated 03.11.2022 on page no. 95 of reply, the respondent has raised various demands and the same are dealt by the Authority hereunder: -

a. External Electrification charges- External electrification charges shall not be charged by the respondent-builder as the same are part of external development charges only and thus, are not be burdened twice on the allottee. Further, it is very clear after coming in to force of Act of 2016, that the unit shall be sold on basis of "total sale consideration" detailing all the charges/expenses being added and charges from the allottee.

b. Electric Meter Connection Charges, Advance towards Common Area Electricity [Grid Supply/DG Set] charges, and Portable Water Supply Charges- The issue w.r.t electricity charges and water connection charges etc. were dealt under **Complaint No. 4031 of 2019 titled as Varun Gupta & Ors. v. Emaar MGF Land Ltd.** These connections are applied on behalf of the allottees and they have to make payment to the concerned department on actual basis. In case instead of paying individually for the unit if the builder has paid composite payment in respect of the abovesaid connections including security deposit provided to the units, then the promoters would be entitled to recover

the actual charges paid to the concerned department from the allottee on pro-rata basis i.e. depending upon the area of the flat allotted to the complainants viz-à-viz the total area of the particular project. The complainant/allottees would also be entitled to get proof of all such payment to the concerned department along with composite proportionate to them unit before making payment under the relevant head.

It is also clarified that there shall not be any loading or additional charges for such connection in the name of incidental charges and sometime under the name and style of informal charges which is an illegal charge.

c. Advance Common Area Maintenance & Management Charges- The respondent shall not demand the advance maintenance charges for more than one (1) year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than one (1) year.

d. Legal charges- The issue w.r.t legal charges has been dealt under *Complaint No. 4031 of 2019 titled as Varun Gupta & Ors. v. Emaar MGF Land Ltd.* and as per same there has been a cap of Rs. 15,000/- as nominal amount envisaged which can be charged by the promoter - developer for any such expenses, it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard.

Further, it is a settled principle of law that the respondent shall not charge anything which is not part of agreement for sale.

**G.III Direct the respondent to pay delayed possession charges from due date of possession i.e. December 2020 till handing over of possession.**

30. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec 18(1) proviso reads as under.

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

.....

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

31. Clause 7.1 of the agreement for sale dated 02.07.2020 provides for handing over of possession and is reproduced below:

***"Clause 7.1***

*Subject to receipt of Occupation certificate within 60 Days from the date of application, the promoter assures to handover the possession of the Apartment along with parking (if applicable) **by December 2020 plus a grace period of 6 months** as per agreed terms and conditions unless there is delay due to "force majeure, Court orders, Government policy/ guidelines, decisions affecting the regular development of the real estate project. If, the completion of the Project is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Apartment. The Promoter shall be deemed to have completed the construction as per agreed scheduled if application for grant of Occupancy Certificate is filed within the schedule given above...."*

32. The Authority has gone through the possession clause of the agreement and observes that the respondent-developer proposed to handover the possession of the allotted unit by December 2020 along with grace period of 6 months. The Authority observes that the respondent has provided a tenure of complete month instead of proving a concrete date for handing over of possession. The agreement



is a vital document that provided rights and obligations of both the parties signing the agreement. Thus, it must not be ambiguous leaving any space for interpretation on end of either of the parties. Therefore, for the instant complaint, the due date of handing over of possession as per agreement for sale dated 02.07.2020; without considering grace period comes out to be 31.12.2020 (instead of December 2020).

33. **Admissibility of grace period:** As per clause 7.1 of agreement for sale dated 02.07.2020, the respondent-promoter proposed to handover the possession of the said unit by December 2020 (31.12.2020) along with six months' grace period. The Authority is of view that the said grace period of six months shall be allowed to the respondent being unconditional and on account of certain circumstances such as Covid-19 restrictions which were beyond the control of the respondent. Therefore, as per clause 7.1 of the agreement for sale dated 02.07.2020, the due date of possession comes out to be 30.06.2021.
34. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

*Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]*

*(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed"*



*shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

35. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
36. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 30.05.2023 is @ 8.70 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
37. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

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38. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.70 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
39. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 7.1 of agreement for sale executed between the parties on 02.07.2020, the possession of the subject apartment was to be delivered by December 2020 and six months grace period and the same comes out to be 30.06.2021. The respondent has offered the possession of the allotted unit on 03.11.2022 after obtaining occupation certificate from competent Authority on 02.11.2022.
40. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate has been obtained from the competent Authority on 02.11.2022 and it has also offered the possession of the allotted unit on 03.11.2022. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is to be given to the complainants keeping in mind that even after intimation of possession practically one has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession

charges shall be payable from the due date of possession i.e. 30.06.2021 till the expiry of two months from the date of offer of possession or till actual handing over of possession, whichever is earlier. The respondent-builder has already offered the possession of the allotted unit on 03.11.2022. Thus, delay possession charges shall be payable till offer of possession plus two months i.e. 03.01.2023.

Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement for sale dated 02.07.2020 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottees, shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 30.06.2021 till offer of possession plus two months i.e. 03.01.2023; at the prescribed rate i.e., 10.70 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

**G.IV Direct the respondent to pay the return of 9% interest p.a. with effect from 01.07.2020 till valid offer of possession.**

41. The complainants submitted that as per webpage/advertisement of project, there was a special offer on 70:30 payment scheme which provides 9% return till offer of possession. The complainants further submitted that as per communication dated 10.11.2021 (WhatsApp), it was submitted by a representative of respondent that interest would be adjusted at the time of possession.
42. The Authority observes that as per application form on page no. 31 of complaint, it provides that interest @9% shall be payable till offer of possession and the same was further assured by the respondent vide

email dated 23.07.2020 on page no. 84 of complaint. Further, vide email dated 05.11.2020, the respondent stated that the calculation of same would start from 01.07.2020. (pg. 85 of complaint).

43. Such assured rentals were payable from date of such agreement for sale (02.07.2020) till offer of possession. There is no ambiguity that such rentals @ 9% shall be paid from date of such agreement for sale i.e. 02.07.2020 till due date of handing over of possession i.e. 30.06.2021. However, for the period thereafter, i.e. from due date of possession till offer of possession, higher amount these i.e. rentals @ 9% or delay possession charger, whichever is higher shall be paid to the complainants.
44. Therefore, the Authority is of considered view that the respondent is directed to make payment of rentals (assured rentals) @9% as agreed between the parties from date of agreement (02.07.2020) till due date of handing over of possession i.e. 30.06.2021. Thereafter, delay possession charges shall be paid at the prescribed rates from due date of possession (30.06.2021) till offer of possession (03.11.2022) as described above shall be paid to the complainants, being higher.

**G.V To revise the rate of total sale price as per the carpet area and furnish detailed break-up of the amount to the complainants.**

45. As per agreement for sale dated 02.07.2020 on page no. 43 of complaint, details of carpet and super area given along with applicable rates applicable thereto. Hence, no direction to this effect.

**G.VI Direct the respondent not to take any coercive steps against the complainants such as cancellation of allotment.**

46. Although the respondent issued various demand letters and reminders but there is nothing on record that it issued termination/cancellation of the subject unit. Hence, no direction to this effect.

**G.VII To initiate the appropriate penal proceedings against the erring respondent as the registration of the project has been lapsed and not renewed.**

47. The aforesaid relief was not pressed by the complainant during the course of proceedings. Hence, no direction to this effect is being given.

**G. VIII Direct the respondent to pay litigation cost and expenses.**

48. The complainants are seeking relief w.r.t. compensation in the above-mentioned reliefs. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors., has held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

**A H. Directions of the authority**

49. 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 function entrusted to the authority under section 34(f):

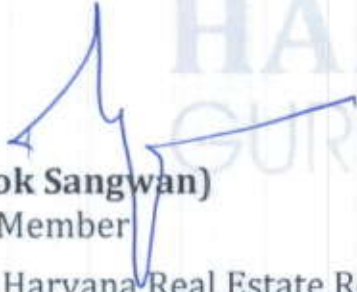
- a. The respondent shall pay interest at the prescribed rate i.e. 10.70 % per annum for every month of delay on the amount paid by the complainants from due date of possession i.e.; 30.06.2021 till the date of offer of possession (03.11.2022) plus two months i.e. 03.01.2023; as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- b. The respondent is directed to make payment of rentals @9% as agreed between the parties from date of agreement (02.07.2020) till due date of handing over of possession i.e. 30.06.2021.
- c. The respondent shall not charge anything from the complainants which is not the part of the agreement for sale.
- d. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70 % by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- e. The respondent/promoter is further directed to issue fresh statement of account after taking into consideration finding of the

Authority w.r.t charges, rentals @9% and delay possession charges at G.I, G.II, G.III and G.IV respectively within four weeks from date of this order.

- f. The complainants are directed to pay outstanding dues, if any, in next one months and the respondent shall handover the possession of the allotted unit complete in all aspects as per specifications of buyer's agreement within next 15 days and if no dues remains outstanding, the possession shall be handed over within four weeks from date of this order.
- g. The respondent is directed to pay arrears of interest accrued, if any, after adjustment in statement of account; within 90 days from the date of this order as per rule 16(2) of the rules.

50. Complaint stands disposed of.

51. File be consigned to registry.

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 30.05.2023**