

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

|                           |              |
|---------------------------|--------------|
| Complaint no. :           | 7799 of 2022 |
| Date of filing complaint: | 19.12.2022   |
| First date of hearing:    | 16.05.2023   |
| Date of decision :        | 30.05.2023   |

|  |                     |
|--|---------------------|
| 1. Smt. Rekha Bansal W/o Sh. Ravinder Bansal<br>2. Sh. Ravinder Bansal S/o Sh. Ruldu Ram<br><b>Both R/O:</b> D-116, Jal Vayu Tower, Sector 56,<br>Gurugram | <b>Complainants</b> |
| Versus   |                     |
| M/s Ashiana Dwellings Private Limited<br><b>Regd. office:</b> 3H, Plaza M6, Dist. Center Jasola, New<br>Delhi-110025                                       | <b>Respondent</b>   |

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| <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<br>(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 complainant, 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.    | Provisional allotment dated           | 19.06.2017<br>(As per page no. 29 of complaint)                                |
| 6.    | Unit no.                              | A-802 on 08 <sup>th</sup> floor, tower T1<br>(As per page no. 29 of complaint) |
| 7.    | Unit area admeasuring                 | 1730 sq. ft. (Super build-area)<br>(As per page no. 29 of complaint)           |
| 8.    | Date of apartment buyer agreement     | 19.06.2017   |



|    |                                 |   |
|----|---------------------------------|---|
|    |                                 | (As per page no. 35 of complaint)   |
| 9. | Possession clause               | <p><b>Clause 11.2 of agreement</b></p> <p><i>The company, based on its present plan and estimated and subject to force measure and all exceptions and conditions beyond control of the company and subject to the allottee making timely payments, endeavor to complete the construction work of the set apartment /building within <u>a period of 24 (twenty-four) months from the date of this agreement and a grace period of 6 months ("completion date")</u> and shall thereafter apply for grant of occupation certificate and on receipt of the same will offer position of the set apartment to the allottee.</i></p> |
| 10 | Due date of possession          | <p><b>19.12.2019</b></p> <p>(Calculated from date of agreement i.e. 19.06.2017 + 6 months grace period)</p> <p><b>Grace period of 6 months is allowed</b></p>   |
| 11 | Payment plan                    | Subvention linked payment plan (10:80:10)   |
| 12 | Total sale consideration        | Rs. 96,35,750/-<br>(As per page no. 29 of complaint)  |
| 13 | Amount paid by the complainants | Rs 94,08,615/-<br>(As per offer of possession on page 28 of reply)  |
| 14 | Occupation certificate          | 02.11.2022<br>(As per page no. 106-108 of reply)  |

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|----|-------------------------------------|--|
| 15 | Offer of possession                 | 03.11.2022<br>(As per page no. 105 of complaint) |
| 16 | Tripartite agreement dated          | 12.07.2017<br>(As per page no. 82 of complaint)  |
| 17 | Letter extending pre-EMI obligation | 20.08.2019<br>(As per page no. 104 of complaint) |

**B. Facts of the complaint:**

3. That the real estate project "Ashiana Mulberry" at Sector 2, 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 in order to lure the complainants offered the allotment under a subvention payment plan wherein it agreed to pay the Pre-EMI amount during specific period of time on the loan raised by the complainants as well as offered a monthly rental of Rs. 18,000/- per month till the offer of possession.
4. That the complainants vide letter dated 19.06.2017 were provisionally allotted apartment no. . A-802 in tower T1 (3 Bedroom + 3 Toilets) in the said project having super built-up area of 1730 sq. ft. for a total sale price of Rs. 96,35,750/- inclusive of several charges such as the club development charges, power backup installation charges, piped cooking gas installation charges, etc. In the said letter, the respondent had clearly specified that the possession would be offered in 24 months with grace period of 6 months from the date of apartment buyer agreement.

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5. That on 19.06.2017, the apartment buyer agreement was executed between the parties wherein clause 3.1 stated that the allottee has paid a sum of Rs. 9,78,941/- and shall pay the balance amount as per the payment plan. Further, as per clause 11.2, the respondent promised to deliver the possession of the apartment within 24 months from the date of the agreement and a grace period of 6 months, i.e., by 19.06.2019 and latest by 19.12.2019.
6. That on 14.07.2017, a tripartite agreement was executed between HDFC bank, respondent and the complainants. The said agreement was made to jointly raise a loan of Rs. 75,00,000/- by the complainants and the respondent. As per clause 3 of the tripartite agreement, the liability of payment of pre-EMI, i.e. payments from the date of first disbursement till 31.03.2019 ( liability period), was to be borne by the respondent. Further, the complainants vide letter dated 24.07.2017 informed HDFC Bank about the nature of the liability being joint, i.e., of both the complainants and the respondent and requested for the disbursement of the loan with part payment being adjusted upfront (in the nature of a set off) of a sum equivalent to the amount payable by the respondent on account of the scheme and the balance be paid directly to the respondent towards the cost of the unit. Hence, the complainants authorized deduction of the amount payable by the it, upfront from the loan amount due to the existence of the subvention scheme.

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7. That the parties agreed on the plan of 10:80:10, i.e., 10% payment to be made upfront, 80% under subvention plan and 10% at the time of offer of possession. In pursuance to this, and the issuance of the loan, they made the following payments at the time of the booking as well as on subsequent dates complying with all the demands raised by the respondent from time to time and the same were acknowledged by it vide receipts issued on the given dates.

| Date       | Receipt No.         | Instrument/Reason of Payment  | Amount in Rs. |
|------------|---------------------|---|---------------|
| 19.06.2017 | REC-AML/00521/17-18 | Cheque No. 00173 dated 15.06.2017 drawn on HDFC Bank, Punjab        | 1,78,941/-    |
| 19.06.2017 | REC-AML/00520/17-18 | Cheque No. 00170 dated 11.06.2017 drawn on HDFC Bank, Mansa, Punjab | 8,00,000/-    |
| 26.07.2017 | REC-AML/00552/17-18 | Cheque No. 081436 dated 26.07.2017 drawn on HDFC Bank, Mumbai       | 59,30,808/-   |
| 26.07.2017 | REC-AML/00553/17-18 | Subvention Charges  | 9,21,783/-    |
| 18.09.2017 | REC-AML/00570/17-18 | Cheque No. 153289 dated 14.09.2017 drawn on HDFC Bank, New Delhi    | 4,40,836/-    |
| 20.09.2017 | REC-AML/00576/17-18 | Subvention Charges  | 62,658/-      |
| 18.11.2017 | REC-AML/00634/17-18 | Cheque No. 155922 dated 09.11.2017 drawn on HDFC Bank, New Delhi    | 1,27,662/-    |
| 18.11.2017 | REC-AML/00635/17-18 | Subvention Charges  | 16,252/-      |
| 18.11.2017 | REC-AML/00636/      | Cheque No. 00195 dated 15.11.2017 drawn on                          | 2,71,195/-    |

|            |                     |  |            |
|------------|---------------------|--|------------|
|            | 17-18               | HDFC Bank, Mansa, Punjab   |            |
| 24.11.2017 | REC-AML/00651/17-18 | TDS Certificate  | 88,385/-   |
| 18.05.2018 | REC-AML/00849/18-19 | Cheque No. 000215 dated 16.05.2018 drawn on HDFC Bank, Mansa, Punjab | 4,98,459/- |
| 18.05.2018 | REC-AML/00850/18-19 | TDS Certificate  | 5,034.94/- |
| 14.12.2018 | REC-AML/01020/18-19 | Electronic Transfer no. 000207672864                                 | 15,414/-   |

8. That the complainants hoping that they would get the possession of the apartment in time waited till June 2019. However, near to the date of possession, not only did the respondent delayed the delivery of possession but also stopped paying the monthly rental amount of Rs, 18,000/- as well as the pre-EMI amount from May 2019. Despite several calls and other correspondences, it failed to give a satisfactory response to their queries and concerns. As late as August 2019, the respondent vide letter dated 20.08.2019, informed them that their subvention period had expired on March 2019, and even though they were able to refund the payment of pre-EMI interest for the month of April 2019, they would no longer be able to bear the said burden and asked them to pay the same. Further, the letter stated that the amount of Pre-EMI interest paid by them till the offer of possession would be adjusted against the last installment amount demanded. It was further informed that in case pre-EMI interest amount paid by the complainant exceeds the last installment amount due on possession, the

company shall refund the excess amount to the complainant at the time of possession. The letter also mentioned that the expected month of possession would be March 2020. Additionally, as a gesture of cooperation, it would waive the annual maintenance charges for a period of 2 years.

9. That the complainants being disappointed by the conduct of the respondent, but hopeful that the final offer of possession would contain the promised adjustments continued to make the pre-EMI payments. However, even in March 2020, the it failed to offer possession, thereby increasing the burden of the pre-EMI on them while not paying any monthly rental. Hence, the complainants paid a huge sum of Rs. 22,67,244/- towards the pre-EMI from May 2019 till October 2022. They also made efforts to contact the respondent about the status of the project and the payment of the pre-EMIs as promised at the time of allotment, however, it did not respond to the queries and kept delaying the date of offer of possession.
10. That after a delay of 3 years and 5 months, the respondent vide letter dated 03.11.2022 informed the complainants that it has received the occupation certificated dated 02.11.2022 from Directorate of Town & Country Planning, Chandigarh. To the utter shock and dismay of the complainants, it did not adjust the pre-EMI amounts or the monthly rental from May 2019 till October 2022. Instead raised several illegal demands under the following heads without making any adjustments towards the interest amount for delay and did not waive the maintenance charges as promised in email dated 12.07.2019, :



- (i) Electrical Substation Charges of Rs. 4,845/- (total being Rs. 86,500/-)
  - (ii) External Electrification Charges of Rs. 87,192/-
  - (iii) Electric Meter Connection Charges of Rs. 19,376/-
  - (iv) Power Backup Installation Charges of Rs. 1,12,000/-
  - (v) Fire Fighting Charges of Rs. 4,845/- (Total being Rs. 86,500/-)
  - (vi) Advance Common Area Maintenance & Management Charges for 24 months of Rs. 1,71,478/-
  - (vii) Advance towards Common Area Electricity [Grid Supply] charges for 24 Months of Rs. 24,000/-
  - (viii) Advance towards Common Area Electricity [Through DG Set] charges for 24 Months of Rs. 14,160/-
  - (ix) Portable Water Supply Charges of Rs. 70,800/-
  - (x) Legal Charges of Rs. 23,600/-
11. Hence, the above-mentioned offer of possession has not only been made after a huge delay but in violation of the Act of 2016. They even raised his grievances in detail via email dated 26.11.2022 regarding the additional charges in possession intimation cum demand letter and made request to make necessary adjustments as was promised at the time of signing of agreements executed between the parties and also through letter dated 20.08.2019 sent by respondent. The respondent failed to address the grievances of complainants which were raised time and again and hence committed deficiency in services:-
- (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 the pre-EMIs under the subvention scheme;
- (c) Deliberately committing breach on the promise of monthly returns of Rs. 18,000/- payable as per the payment plan;
- (d) Complete failure to keep the promised schedule of completion and delay without any valid justification;
- (e) Misrepresentation by selling the apartment on the basis of the super area.
12. 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 in view of *Varun Gupta & Ors. v. Emaar MGF Land Ltd., Complaint No. 4031 of 2019.*
13. That the respondent has made the offer of possession in complete breach of its prior assurances and promises in the payment plan of the agreement, as well as the letter dated 20.08.2019 wherein it had stated that it would be adjusting the amount of the pre-EMI amounting to Rs. 22,67,244/- as well as the monthly rental of Rs. 18,000/- amounting to Rs. 7,56,000/- for the period between May 2019 to October 2022.
14. 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 bear the liability for the payment of the pre-EMIs to the Complainants from the date of the first disbursement till the offer of possession. However, despite several requests and reminders, the respondent did not comply with this promise since May 2019 and the burden of payment of the EMIs fell on the complainants and they were forced to

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make the payment of the EMIs totally amounting to Rs. 22,67,244/- till October 2022. Further, the respondents also faltered on the payment of the monthly rental due of Rs. 7,56,000/-.

15. That the complainants were hoping that the amount of the payments made by them would be adjusted by the respondent in the final installment demand. However, to the complainant's utter dismay, the respondent did not make any such adjustments in the final offer of possession cum demand letter dated 03.11.2022, instead they raised several illegal demands as illustrated above. They were entitled to an amount of Rs. 22,67,244/- and Rs. 7,56,000/- as it breached its contractual obligation and the complainants realized it could have been a method to lure the complainants to invest in the project.
16. That the promoter is duty bound to disclose details of the super area component wise, in a simple manner as could be understood by a common man, as per the definition of super area provided in the builder buyer's agreement, ideally on its own but certainly when asked for/demanded by the allottee.
17. That the said project is delayed by a period of 3 years and 5 months from the due date of possession on 19.06.2019, and hence, the respondent company has violated Section 11 of Act of 2016. According to Sections 13(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 assurance which were

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made to them regarding completion of the project and therefore, are liable to pay an interest of MCLR+2% (per annum) till date of actual possession.

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

18. The complainant 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. 19.06.2019 till handing over of possession.
- iv. Direct the respondent to pay the pre-EMI amount or adjust the same with effect from May 2019 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. To initiate the appropriate penal proceedings against the erring respondent as the registration of the project has been lapsed and not renewed.
- viii. Direct the respondent to pay monthly rentals of Rs. 7,56,000 (Rs. 18,000 p.m.) for 42 months from May 2019 to Oct 2022.
- ix. Direct the respondent to pay litigation cost and expenses.

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19. 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:**

20. 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, with the ill intentions to enrich themselves wrongfully at the cost of the respondent, have failed to implead HDFC Bank as the respondent/necessary party, with whom a tripartite agreement dated 14.07.2017 which was executed between the complainants, bank and respondent. In the said agreement, it was decided that the respondent shall pay pre-EMI installment from the date of first disbursement of loan installment till 31.03.2019 and the said fact can be corroborated from clause 3 of the tripartite agreement. Hence,



the complainants have, in order to mislead this Hon'ble Authority of the true facts of the case, not impleaded HDFC Bank as a necessary party. In view thereof, the captioned complaint is bad for misjoinder of necessary parties and is liable to be dismissed at the threshold.

- c. That the complainants, out of their own free will and volition approached the respondent, applied for and booked a unit bearing number B-802, (hereinafter referred to as "unit") "Type A" on the 8<sup>th</sup> floor of tower-T1 having super built up area of 1730 sq. ft. in the respondent's project "Ashiana Mulberry Phase-I" situated at Sector-02, Sohna, Gurgaon, Haryana (hereinafter referred to as "Project"). An amount of Rs. 9,78,941/- was paid towards the booking amount as per clause 3 of the apartment buyer agreement. The complainants opted for subvention plan - pre-EMI in order to make the payments of all the instalments as mentioned in schedule-B of the apartment buyer agreement.
- d. That thereafter, on 19.06.2017, the unit was allotted to the complainants and the provisional allotment letter of even date was handed over to the complainants. Further, on 19.06.2017 only, the apartment buyer agreement dated 19.06.2017 (hereinafter referred to as "Agreement") was executed between the parties.
- e. That the said agreement also contained schedule B 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

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terms and conditions laid down in clause 3.2 and 3.4 of the said agreement, the complainants 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, which duly finds mention in clause 3.2 and 3.4 that delayed and defaulted payments shall attract adverse consequences.

- f. That as per clause 11.2 of the agreement, the respondent endeavoured to complete the construction of the project and handover the possession of unit by 18.12.2019 (24 months plus 6 months grace period).
- g. The total sale consideration of the said unit was Rs. 1,01,64,074/- (excluding delayed payment charges, legal charges, maintenance charges, deposits and holding charges etc.), out of which it has received a sum of 94,08,614.94/- (including taxes) towards consideration and thus, a sum of Rs. 7,55,459.06/- (excluding delayed payment charges, legal charges, maintenance charges, deposits and holding charges etc.) still remains outstanding as evinced in the possession letter dated 03.11.2022 sent by the respondent which the complainants have failed to pay qua the allotment of the said unit.
- h. That since the complainants opted for subvention plan in lieu of which the loan was advanced from HDFC Bank to implement the said subvention scheme, a tripartite agreement was executed between the complainants, bank and respondent on 14.07.2017 (hereinafter referred

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to as "Tripartite Agreement") wherein several terms and conditions qua the subvention scheme were laid down. Furthermore, a letter dated 24.07.2017 was also sent by the HDFC Bank titled as "Subvention Scheme Informatory" which mentions that pre-EMI shall be paid from the date of disbursement till 31.03.2019.

- i. That the complainants were under an obligation to adhere to the payment plan opted. Nevertheless, they have repeatedly and wretchedly delayed and defaulted to adhere to the payment plan. It is submitted that in schedule b of the agreement at page 43, it has been clearly mentioned that *"Other Charges such as Registration Expenses, Stamp Duty, Legal Charges, Court Fee, Documentation Charges, any other extra work, External Electrification Charges (EEC), Including Individual sub-meter connection and pre-paid payment system, Sewage and Water Connection etc. along with ancillary expenses shall become payable as and when demanded by the Company"*, therefore, they were liable to pay such balance dues. That despite receiving various reminders, invoices, demand letter(s), intimation letters through email and otherwise sent by it demanding the outstanding payments, they failed to adhere to the said payment plan opted and hence, have violated the clause 3.2 and 3.4 of the agreement. There is no iota of doubt that their said act is highly deplorable and amounts to breach of terms of the agreement. It is submitted that despite giving a specific undertaking to make the timely payment in terms of the agreement, the complainants have failed to abide by the same.

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- j. That even after sending innumerable final reminders and final demand letters, the complainants, for the reasons best known to them, failed to make timely payments of the outstanding installments towards total sale consideration.
- k. That as per clause 3 and 4 of the tripartite agreement, it was liable to pay all the pre-EMI for the subvention period as undertaken during the execution of apartment buyer agreement and tripartite agreement, which was duly and timely paid by the respondent. Hence, it duly discharged its obligation of payment of pre-EMI interest to the HDFC Bank. Notably, the subvention period commenced from the date of disbursement of first installment of loan till 31.03.2019. Thereafter, it was the obligation of the complainants. It is submitted that the bank has not even been made party in the captioned complaint which signifies that the compliant is bad for mis-joinder of necessary parties.
- l. That as per clause 11.2 of buyer agreement, the respondent never promised the complainant to handover the possession of the unit within 24 months plus grace period of 6 months from the date of execution of apartment buyer agreement. The said clause clearly states that the respondent company shall handover the possession subject to application made for grant of occupation certificate and on receipt of the same shall offer possession of the said unit. Further, clause 11.3 of the agreement enumerates the "force majeure" clause wherein it has been laid down that completion date would automatically be deemed to be

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extended if the delay in completion of construction of the project has occurred due to force majeure or circumstances beyond the control of the respondent-company.

- m. That there were certain factors like non-availability of construction materials, electric power slow down, scarcity of water etc., were 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 pertaining to the factors of poor air quality. It is pertinent to point out here that due to stoppage of construction work, it may take another month's time to remobilize the construction work at project site. Thus, the calculation of period of completion for which the construction work was stopped shall 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 10.03.2019 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 year 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. 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 disrupted the supply chain of the respondent, therefore, the delay if any, is not attributable to the respondent herein.

- n. 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 needs 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.
- o. That even after the delay caused by the various complainant in making the payments towards their respective units and various orders of the EPCA, HSPCB and the Apex Court, has finished the construction work of Phase-I of the said project and has received the occupation certificate on 02.11.2022 from the Director General, Town & Country Planning

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Department, Chandigarh bearing Memo No. ZP-1062/JD(RA)/2022/32955 (hereinafter referred to as the "Occupation Certificate").

- p. That the respondent has always kept him updated with respect to the development of surrounding area as well as of construction of the project and repetitively apprised the complainant of the factors which has a visible adverse impact on the real estate industry.
- q. That the money received from the complainants/allottees has 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 the Real Estate Sector. It is relevant to mention here that due to the current pandemic COVID-19 situation the construction at the site was slowed down.
- r. That the complainants are seeking refund, interest and compensation without placing on record substantial evidentiary proof. It is relevant to mention here that the Hon'ble Supreme court in a number of judgments has held that compensation for delay is to be the loss incurred by the customer and in the instant case the complainants have failed to provide proof for the same. On the contrary it is the respondent who has incurred loss due to the omissions on part of the complainants, for which the complainants are liable to pay an amount of Rs. 7,55,459.06/- (excluding delayed payment charges, legal charges, maintenance charges and deposits etc.) to it.

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- s. That the instant complaint is an afterthought and has been filed with the ulterior motive to avoid the contractual obligation and earn wrongfully from the respondent.
- t. That the jurisdiction of the Authority cannot be invoked as there is no cause of action which arose within the jurisdiction of the Authority. He has prayed for reliefs which otherwise have to be claimed in a suit for damages and recovery, after paying appropriate court fee. That in order to avoid the payment of court fee, he has raised a dispute of a civil nature, which requires elaborate evidence to be led and which cannot be adjudicated upon under the summary jurisdiction of the Authority. In this view of the matter, the complaint is liable to be dismissed with costs.
- u. That the law has been settled by the Apex Court that the power to grant compensation vests only with the Adjudicating Officer and therefore, the prayer seeking compensation by the complainant cannot be decided by the Authority.
- v. 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 complainant 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.

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21. Written submissions filed by respondent to substantiate their averments made in the pleadings as well as in the documents and the same were taken on record and have been perused.
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:

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**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 complainant at a later stage.

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

**F.I 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 her 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 buyer's agreement, it is revealed that the complainant is buyer 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 complainant are allottee 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.

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**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 11.2 of agreement which comes out to be 23.02.2021. 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 was already known to the respondent-builder. Further, grace period of six months as provided under clause 11.2 has been allowed to the respondent being unconditional and thus, no further grace period in this regard can be allowed to the respondent.
27. As far as plea w.r.t. COVID-19 is concerned, lockdown due to outbreak of such pandemic and shortage of labour on this account. The Authority put reliance judgment of Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I)*

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**(Comm.) no. 88/ 2020 and I.As 3696-3697/2020** dated 29.05.2020 which has observed that-

*"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."*

In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 19.12.2019. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason the said time period is not excluded while calculating the delay in handing over possession

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

28. The respondent-builder submitted that the complainant-allottee has failed to make timely payment towards consideration of allotted unit. Despite issuance of various demand notices & reminders, it never came forward to make payment towards due installments. The Authority observes that the subject unit was booked under subvention payment plan and they have already paid an amount of Rs. 94,08,615/- towards sale consideration of Rs. 96,35,750/- constituting more than 97% of total sale consideration. Thus, the

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plea of the respondent that the complainant is not coming forward in making payment towards consideration of allotted unit is not tenable.

**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.**

29. 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

- (i) Electrical Substation Charges of Rs. 4,845/- (total being Rs. 86,500/-)
- (ii) External Electrification Charges of Rs. 87,192/-
- (iii) Electric Meter Connection Charges of Rs. 19,376/-
- (iv) Power Backup Installation Charges of Rs. 1,12,000/-
- (v) Fire Fighting Charges of Rs. 4,845/- (Total being Rs. 86,500/-)
- (vi) Advance Common Area Maintenance & Management Charges for 24 months of Rs. 1,71,478/-
- (vii) Advance towards Common Area Electricity [Grid Supply] charges for 24 Months of Rs. 24,000/-
- (viii) Advance towards Common Area Electricity [Through DG Set] charges for 24 Months of Rs. 14,160/-
- (ix) Portable Water Supply Charges of Rs. 70,800/-
- (x) Legal Charges of Rs. 23,600/-

30. The Authority observes that as per offer of possession dated 03.11.2022 on page no. 105 of complaint, the respondent has raised various demands and the same are dealt by the Authority hereunder: -

a. Delay payment charges- As per Section 2(z) of Act, the rate of interest chargeable from the allottee 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 allottee, in case of default i.e., the delayed possession charges.

b. 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.

c. Electric Meter Connection Charges, Advance towards Common Area Electricity [Grid Supply & DG Set] charges, Power Backup Installation Charges, Electrical Substation Charges and Portable Water Supply Charges- The issue w.r.t electricity charges and water connection charges etc. are 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 allottee and allottee has 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 will 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 complainant viz-à-viz the total area of the particular project. The complainant/allottee will also be entitled to get proof of all such payment to the concerned department along with composite proportionate to his 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.

d. 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.

e. 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 was envisaged which can be charged by the promoter -developer for any such expenses which 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 buyer's agreement.

**G.III Direct the respondent to pay delayed possession charges from due date of possession i.e. 19.06.2020 till handing over of possession.**

31. In the present complaint, the complainant intends to continue with the project and is 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*

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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."*

32. Clause 11.2 of the buyer's agreement 19.06.2017 provides for handing over of possession and is reproduced below:

**"Clause 11.2**

*The company, based on its present plan and estimated and subject to force measure and all exceptions and conditions beyond control of the company and subject to the allottee making timely payments, endeavour to complete the construction work of the set apartment /building within a period of 24 (twenty-four) months from the date of this agreement and a grace period of 6 months ("completion date") and shall thereafter apply for grant of occupation certificate and on receipt of the same will offer possession of the set apartment to the allottee..."*

33. The Authority has gone through the possession clause of the agreement and observes that the respondent-developer proposes to handover the possession of the allotted unit within a period of twenty-four months from the date of execution of agreement and grace period of 6 months. The buyer's agreement inter-se parties was executed on 19.06.2017; as such the due date of handing over of possession without considering grace period comes out to be 19.06.2019.

34. **Admissibility of grace period:** As per clause 11.2 of buyer's agreement dated 19.06.2017, the respondent-promoter proposed to handover the possession of the said unit within a period of twenty-four months and 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.

Therefore, as per clause 11.2 of the buyer's agreement dated 19.06.2017, the due date of possession comes out to be 19.12.2019.

**35. 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.*

36. 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.

37. 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%.

*A* 38. The definition of term 'interest' as defined under section 2(za) 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;"*

39. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.70 % by the respondent/promoters which is the same as is being granted to them in case of delayed possession charges.
40. 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 are 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 11.2 of buyer's agreement executed between the parties on 19.06.2017, the possession of the subject apartment was to be delivered within a period of twenty-four months and six months grace period from date of execution of such agreement. The due date of possession is calculated from the date of execution of buyer's agreement i.e.; 19.06.2017, which comes out to be 19.12.2019. 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.

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41. 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 complainant 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 complainant keeping in mind that even after intimation of possession practically he 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. 19.12.2019 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 buyer's agreement dated 19.06.2017 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 allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 19.12.2019 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.

42. It is hereby clarified that the instant complainant "amount-paid" for consideration of payment of delay possession charges shall be "the amount component paid by the complainants from their own sources only" for the reason dealt in detail in later part of the order (*finding no. G.VIII*).

**G.IV Direct the respondent to pay the pre-EMI amount or adjust the same with effect from May 2019 till valid offer of possession.**

43. As per clause 3 of tri-partite agreement dated 12.07.2017, the builder was under obligation to make payment of pre-EMI till 31.03.2019. As per email dated 20.08.2019 on page 104 of complainant, the respondent undertook that pre-EMI paid by the complainant shall be adjusted at the time of possession and maintenance charges for first two years shall be waived of.

44. The complainant submitted that initially the respondent paid the pre-EMI but later defaulted in making payment towards pre-EMI from April 2019 and as a result the complainants have to bear a huge burden. Whereas the respondent on the other hand submitted that he has fully discharged his liability and paid pre-EMI till 31.03.2019.

45. The Authority observes as per letter dated 20.08.2019, the respondent itself submits as "*to honour the commitment of subvention till offer of possession, we under and confirm to adjust the amount of pre-EMI interest paid by you from May 2019 till offer of possession date against last installment payable by you.*" Hence, the said letter dated 20.08.2019 shall be read as part of tripartite agreement dated 12.07.2017, wherein the respondent has acknowledged his obligation to make payment of pre-EMI till offer of possession.

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46. Therefore, the respondent is directed to adjust the payment of pre-EMI interest for the time being borne by the complainant; as agreed between the parties as per letter dated 20.08.2019 of respondent.

**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.**

47. As per allotment letter dated 19.06.2017 on page no. 29 of complaint, details of carpet and super area along with applicable rates thereto are being already given. 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.**

48. Although the respondent has issued various demand letters and reminders but there is nothing on record that the respondent has acceded with the termination/cancellation of the subject unit. Moreover, the allottees have already paid more than 90% of consideration amount and offer of possession has already been made by the respondent-builder vide letter dated 03.11.2022. Hence, there is no ground for cancellation at this stage. 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.**

49. The aforesaid relief has not been pressed by the complainants during the course of proceeding. Hence, no direction to this effect are required to be issued.

**G.VIII Direct the respondent to pay monthly rentals of Rs. 7,56,000 (Rs. 18,000 p.m.) for 42 months from May 2019 to Oct 2022.**

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50. The complainants submitted that the subject unit was booked on assurance by representatives of respondent who offered a monthly rental of Rs. 18,000/- per month till the offer of possession and referred to amortization schedule dated 17.11.2022 on page no. 116 of complaint. The Authority observes that as per payment plan on page no. 74 of complaint, it provides heading as "*pre-EMI subvention plan and monthly rental (Rs. 18,000/-) till offer of possession*".
51. It is a rare case where respondent builder itself has agreed to make payment of pre-EMI under subvention scheme till offer of possession as well as it has been paying monthly rentals @ Rs. 18,000/- pm. Moreover, the complainants have also approached the Authority seeking delay possession charges under Section 18(1). To deal with the matrix of facts involved in the present complaint, it is relevant to bifurcate the amount paid by the complainants out of his own pocket and amount paid by the financier on behalf of the complainants. The subject unit detailed above was booked under 10:80:10 subvention linked payment plan. Thus, the delay possession charges shall be payable by the builder on the amount paid by the complainants from their own pockets only from due date of handing over of possession i.e. 19.12.2019 till offer of possession plus two months i.e. 03.01.2023. Further, as far as pre-EMI is concerned, the respondent shall pay pre-EMI to the financier on the amount disbursed from it as per tri-partite agreement dated 12.07.2017 and letter dated 20.08.2019; till offer of possession. Now, the issue left is of assured return/monthly rentals. The respondent shall pay assured return as per terms agreed between the parties till due date of handing over of

possession and thereafter, i.e. after due date of handing over of possession delay possession charges or assured return/monthly rentals; whichever is higher shall be borne by the respondent.

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

52. 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.

#### **H. Directions of the Authority**

53. 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 their own sources from due date of possession i.e.; 19.12.2019 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 adjust the payment of pre-EMI interest for the time being borne by the complainant on behalf of the respondent payable till offer of possession; as agreed between the parties as per tripartite agreement and respondent's letter dated 12.07.2017 and 20.08.2019 respectively.
- c. The respondent shall pay assured return/monthly rentals as per terms agreed between the parties till due date of handing over of possession and thereafter, i.e. after due date of handing over of possession delay possession charges or assured return/monthly rentals; whichever is higher shall be paid by it.
- d. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
- e. The rate of interest chargeable from the allottee 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 allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

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- f. The respondent/promoter is further directed to issue fresh statement of account after taking into consideration above directions of the Authority w.r.t charges, delay possession charges, pre-EMI and assured return as detailed above within 15 days from date of this order.
- g. The complainant is directed to pay outstanding dues, if any, after aforesaid adjustments 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.
- h. 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.
54. Complaint stands disposed of.
55. File be consigned to registry.

  
(Ashok Sangwan)  
Member

v.1 -   
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 30.05.2023