

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

Complaint no.:	543 of 2022
First date of hearing:	09.03.2022
Date of decision:	16.08.2023

Aruna Sharma

R/o PKT 21, house no. 115, Sector 24, Rohini, Delhi-  
110085

**Complainant**

Versus

M/s JMK Holding Pvt. Ltd.

**Office address:** 1302, 13<sup>th</sup> floor, Dr. Gopal Das Bhawan,  
28 Barakhamba Road, Cannought Place, New Delhi-  
110001.

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Mr. Jagdeep Kumar (Advocate)

Complainant

Mr. Mintu Kumar (AR of respondent)

Respondent

**ORDER**

1. The present complaint dated 25.05.2022 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed

that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

**A. Project and unit related details**

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

S.N.	Particulars	Details
1.	Name of the project	"Grand IVA", Sector 103, Gurugram
2.	Nature of project	Affordable Group Housing Colony
3.	Licensed area	9 acres
4.	DTPC License no.	157 of 2014 dated 11.09.2014 and valid up to 05.05.2021
	Name of licensee	JMK Holdings Pvt. Ltd.
5.	HARERA Registration no.	Registered
		13 of 2017 dated 03.07.2017 and valid up to 28.03.2021
6.	Unit no.	Unit no-5-501,1 BHK, Type-A [Annexure P2 at page no. 25 of the complaint]
7.	Carpet area	356.180 sq. ft.
		Balcony area- 69.840 sq. ft. [Annexure P2 at page no. 25 of the complaint]
8.	Date of allotment	22.08.2017

		[Annexure P2 at page no. 25 of the complaint]
9.	Date of buyer's agreement	BBA has not been executed
10.	Approval of building plans	11.05.2016 [As per the details provided by the planning branch of the authority]
11.	Environment clearance	29.09.2016 [As per the details provided by the planning branch of the authority]
12.	Possession Clause	In absence of execution of the agreement under Affordable housing project, the possession clause given under the Affordable housing policy 2013 would prevail. Section 1 (iv) of Affordable housing policy 2013 which provides as under: <b>Section 1 (iv)</b> All such projects shall be required to be necessarily completed <b>within 4 years from the approval of building plans or grant of environmental clearance, whichever is later.</b> This date shall be referred to as the date of commencement of project" for the purpose of this policy. The license shall not be renewed beyond the said 4 years period from the date of commencement of project. (Emphasis supplied)
13.	Due date of possession	29.03.2021 [Calculated from the date of environmental clearance + 6-month grace period as per RERA notification 3 of 2020 on account of COVID-19]
14.	Total sale consideration	Net Basic cost- Rs.15,04,963/- Rs. 16,63,863/- (cost with Tax)

		[As per customer ledger dated 14.10.2021 at page 85 of the complaint]
15.	Amount paid by the complainants	Rs. 16,12,900/- [As per customer ledger dated 14.10.2021 at page 85 of the complaint]
16.	Occupation certificate	20.04.2021 [Annexure R/9 at page 112 of the reply]
17.	Offer of possession	24.06.2021 [Annexure P6 at page no. 78 of the complaint]
18.	Cancellation notice	04.02.2022 [Annexure P7 at page no. 84 of the complaint]

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint: -
- a. That somewhere in the month of March 2017, the respondent issued an advertisement in leading newspapers for inviting applications from general public for booking of residential apartments in their project called GRAND IVA, sector 103, Gurugram. Respondent also approached the complainant through its business development associate with an offer to invest and buy a flat in the project of respondent, which was under construction since 2015, the project namely "GRAND IVA" in the sector-103, Gurugram (hereinafter referred to as "said project"). In march 2017 complainant had a meeting with respondent at the respondent's branch office at tower - a, signature tower, south city-1, Gurgaon 122001 where the respondent explain that the project "GRANDIVA" and highlighted that under project allotment of apartments shall be done through draw of

lots as per procedure defined under affordable housing policy 2013 notified vide no. Pf-27/48921 dated 19.08.2013, and payments towards consideration value will be made as per affordable housing policy i.e., 5% on booking, 20% on allotment and balance 75% of the amount in six equal monthly instalments over three years period. All payments are time bound and have no relation to the construction status of the project. Respondent represented to the complainant that the respondent is a very ethical business house in the field of construction of residential and commercial project and in case the complainant would invest in the project of respondent then they would deliver the possession of proposed flat on the assured delivery date as per the best quality assured by the respondent. The respondent had further assured to the complainant that the respondent has already processed the file for all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and the project "GRANDIVA" is under construction since after building plan approved on 15<sup>th</sup> Sep 2015 and project will be completed by Sep 2019. The complainant while relying upon those assurances and believing them to be true, complainant submit application with respondent for 1 BHK flat measuring carpet area 356.18 sq. ft. and balcony area 69.84 sq. ft. under draw of lots in the aforesaid project of the developer and made payment of application amount of ₹ 72,981/- vide cheque no. 105214 dated 14<sup>th</sup> April 2017.

- b. That in the said application form, the price of the said flat was agreed at the rate of ₹ 4,000/- per sq. ft. For carpet area and ₹ 500/- per sq. ft. for balcony area as mentioned in the said application form. At the time of execution of the said application form, it was agreed and promised by the respondent that there shall be no change, amendment or variation in the area or sale price of the said flat from the area or the price committed by the respondent in the said application form or agreed otherwise.
- c. That on 22.08.2017 the respondent issued a offer of allotment through letter dated 22.08.2017 in the name of complainant, respondent offered a residential unit no. 5-501 (carpet area 356.18 sq. ft. and balcony area 69.84 sq. ft.) "GRAND IVA" sector 103, Gurgaon, Haryana at price of ₹ 14,59,640/-. (exclusive of taxes) the said offer of respondent was accepted by complainant and made the requisite payment of ₹ 2,91,926/- (20% of consideration value) to respondent through cheque no. 105218 dated 05.09.2017.
- d. Respondent raise a demand of 50% of consideration value while issuing the allotment letter to complainant, which is contrary to the advertisement issued by respondent and also divergent from the payment plan specified under affordable housing policy 2013 notified vide no. Pf-27/48921 dated 19.08.2013. Complainant opposes the payment demands of the respondent. Complainant visited the office of respondent on 20.09.2017 to resolve the issue of unreasonable demand of payments in amicable manner. Respondent allow complainant to pay 20% of consideration value of flat as per the affordable housing policy 2013, but even after allowing complainant

verbally to pay in accordance to the payment terms specified under affordable housing policy 2013, respondent did not rectify the mistake of respondent's self-proclaim & arbitrary payment plan and taking advantage his own wrong, respondent keep on reminding complainant on delay payment interest which is a unfair and fraudulent trade practices.

- e. That building plan for the said project "grandiva" was approved by the office of DGTCP on 15<sup>th</sup> Sep 2015 and commencement of project was started from date of building plan approval i.e., 15<sup>th</sup> Sep 2015 as per the information provided by the respondent. That from the date of submitting application for allotment 14.04.2017 and till 24.06.2021, the respondent had raised various demands for the payment of instalments on complainant towards the sale consideration of said flat and the complainant have duly paid and satisfied all those demands as per the Haryana affordable housing policy 2013 without any default or delay on their part and have also fulfilled otherwise also their part of obligations as narrated in the unsigned flat buyers agreement. The complainant was and have always been ready and willing to fulfil their part of agreement, if any pending.
- f. That as per advertisement and application form, the sales consideration for said flat was ₹ 14,59,640/- (which includes the cost of providing the common facilities) exclusive of service tax and GST. Complainant wrote various emails and letters to respondent from dated 14<sup>th</sup> February 2018 to 18<sup>th</sup> February 2019 to rectify the mistake, which is done by respondent through implementing self-proclaim & arbitrary payment plan under the affordable housing project, and by

virtue of that divergent payment plan, respondent imposing arbitrary delay payment charges upon complainant at a very high rate of interest. Complainant strongly opposing the arbitrary payment plan of respondent, but respondent never pay any heed to it till 24<sup>th</sup> July 2019, on 24<sup>th</sup> July 2019 respondent reply to complainant and quote a notification no. Pf-27/15922 issued by Haryana government town and country planning department on 5<sup>th</sup> July 2019. Complainant inform respondent that the notification issued by concern department will be applicable from the day its notified by the department and all transactions done by complainant are in accordance with the affordable housing policy and complainant will abide by all the changes, which are made under the affordable housing policy, similarly respondent should also abide by the policy rules and regulations.

- g. That the complainant has paid the entire sale consideration along with applicable taxes to the respondent for the said flat. The complainant has already paid ₹ 16,12,900/- towards total sale consideration and applicable taxes as on today to the respondent, as demanded time to time.
- h. That on 18.12.2019 the respondent invited complainant to its corporate office for signing of dual copy of buyer's agreement which consisting very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature, because every clause of agreement is drafting in a one-sided way and a single breach of unilateral terms of flat buyers agreement by complainant, will cost him forfeiting of earnest money and about the delay payment



charges of 15% they said this is standard rule of company and company will also compensate at the rate of ₹ 5/- per sq. ft. per month in case of delay in possession of flat by company. Complainant opposed these illegal, arbitrary, unilateral and discriminatory terms of flat buyers' agreement and did not sign the flat buyer agreement in pretext of illegal and unilateral terms of buyer agreement. Complainant repeatedly requested respondent to prepare buyer agreement as per the terms and condition mention under the Haryana affordable policy 2013 & RERA Act 2016, but respondent did not pay any heed despite repeated requests of complainant.

- i. That on the date agreed for the delivery of possession of said unit as per advertisement and later on according to the Haryana affordable housing policy 2013 is 15.09.2019, the complainant had approached the respondent and its officers for inquiring the status of delivery of possession, but none had bothered to provide any satisfactory answer to the complainant about the completion and delivery said flat. The complainant thereafter kept running from pillar to post asking for the delivery of his flat but could not succeed in getting any reliable answer.
- j. The time limit prescribed under the affordable housing policy has already expired and over. It appears from the conduct of the respondent that he is not intended to deliver the possession of the said flat/ unit to the complainant/ flat buyer in near future as the construction work is still going in the project, even the unit of the complainant is without any fixers, fittings, doors or the pipeline of the water and without paint or polish. The unit/ flat is in dilapidated condition and not habitable in any respect. The promises at the time

of sale were just to sell the flat with view to defraud and induce the complainant by making false and flimsy promises. The respondent is duty bound to complete the project as well as unit/ flat within the prescribed time limit of four years under the provisions of affordable housing policy 2013 which the respondent never intended to fulfill and resorted to all kind of unfair trade practice and tactics while transacting with the complainant.

- k. That the respondent has acted in a very deficient, unfair, wrongful, fraudulent manner by not delivering the said flat situated at the project "GRAND IVA" sector-103, Gurugram within the timelines agreed in the flat buyer's agreement and otherwise. That on 10<sup>th</sup> august 2021 complainant received an courier through which the respondent have sent an intimation regarding offer of possession letter dt 24.06.2021, the offer of possession by the respondent was a invalid offer of possession because as the respondent sent offer of possession letter without completing the construction work at site, and the said offer of possession letter also accompanied with unreasonable additional demands which are unilateral, arbitrary and contrary to the guidelines and policy terms & conditions of Haryana affordable policy 2013. Respondent did not even credit a single penny for delay possession charges as per RERA Act 2016. Respondent forcing complainant to execute affidavit cum undertaking to get possession of flat, through the execution of affidavit cum undertaking respondent want himself immune from any liability of delay possession interest payable under RERA Act 2016. Respondent raised a demand of administrative charges ₹17,700/-, external electrification

charges ₹ 11,512/-, IFSD( interest free security deposit) of ₹10,000/-, meter connection charges ₹ 4,544/-, water connection charges( area based) ₹ 3,207/-, and user charges for operational cost of utility services of ₹ 14,318/- and ₹ 2,578/- for GST thereof while the maintenance is free for five years under affordable housing policy 2013 and GST is not applicable. The demand of the said maintenance and GST is illegal which is created by the respondent /promoter through Skyfull Maintenance Services Pvt Ltd, a promoter's group company. The promoter is trying to extort hard earned money of the low-income group flat buyer including complainant, by making such illegal and unjust demands. The promoter and the said group company are liable for prosecution. The said demands are illegal & contrary to the provisions of Affordable Housing Policy 2013 and clear violations. As per the policy and assurance made by the promoter/respondent, one two-wheeler scooter parking site shall be earmarked with size of 0.8m × 2.5 m to the complainant, which the promoter has not earmarked hence denied.

1. That on 16.08.2021 complainant inform the office of secretary HRERA – authority on the malpractice adopted by of respondent to squeeze more and more money from innocent homebuyers by implementing self-proclaim & arbitrary payment plan and taking advantage his own wrong, respondent keep on imposing delay payment interest without any delay from complainant, which is a unfair and fraudulent trade practices. Complainant also inform to secretary hrera – authority, that lots of work is still pending on the project and construction is not yet completed at the project "GRANDIVA" sector 103, Gurugram, Haryana.

- m. That on 14.10.2021 complainant inform the office of DTCP – Gurugram on the malpractice adopted by of respondent to squeeze more and more money from innocent homebuyers by implementing self-proclaim & arbitrary payment plan under affordable housing policy and taking advantage his own wrong, respondent keep on imposing delay payment interest without any delay from complainant, which is a unfair and fraudulent trade practices. Complainant also inform that lots of work is still pending on the project and construction is not yet completed at the project "GRAND IVA" sector 103, Gurugram, Haryana.
- n. That on 14.10.2021 complainant delivers a letter at office of respondent to oppose the unreasonable demand of late payment charges ₹ 1,50,572/- imposed by respondent. Complainant repeatedly requesting respondent to correct the mistake done by them and follow the payment plan specified under the Haryana affordable housing policy 2013. Complainant opposing the unreasonable additional demand of administrative charges ₹ 17,700/-, external electrification charges ₹ 18,906/-, IFSD (interest free security deposit) ₹ 15,000/-, meter connection charges ₹ 4,544/-, water connection charges (area based) ₹3,207/- and user charge for operational cost of utility ₹ 16,896/- raised by the respondent. Complainant also narrates the relevant clauses of Affordable Housing Policy 2013 to aware respondent to reverse unreasonable additional demand and also urge to fulfil the obligation of crediting the delay possession interest with the letter of possession.
- o. That complainant received an email dated 05.02.2022, sent by the respondent, through which the respondent unilaterally issued pre

cancellation notice dated 04.02.2022 to compel, mount pressure and extort money from the complainant and fulfil additional illegal demands. Complainant already paid the entire consideration value of the said unit on 17.12.2019, as determined under the affordable housing policy 2013. Now respondent mounting pressure on complainant through issuing cancellation letters even after paying full consideration value, respondent doing this to extort unilateral demands and obtain the affidavit cum undertaking from complainant, which is unilateral and arbitrary. Now respondent closes all the doors to resolve the issue amicably, respondent compelled the complainant to approach the hon'ble authority to get the issue redressed.

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

4. The complainant has sought following relief(s)
  - a. Restrain the respondent to cancel the unit.
  - b. Direct the respondent to pay DPC till date of delivery of possession.
  - c. Restrain the respondent from implementing a self-proclaim & arbitrary payment plan specified under policy, 2013 and also restrain the respondent from imposing any interest on complainant for paying instalments as per policy, 2013 & protesting against the arbitrary payment demands formulated under a self-proclaim & arbitrary payment plan of the respondent.
  - d. Restrain the respondent to charge external electrification charges of ₹ 11,512/-.
  - e. Restrain the respondent to charge water connection charges of ₹ 3,207/-.

- f. Restrain the respondent to charge meter connection charges of ₹ 4,544/-.
  - g. Restrain the respondent to charge for maintenance or operational cost of utility services of ₹ 16,896/-.
  - h. Restrain the respondent to charge for interest free security deposit of ₹10,000/- & also restrain the respondent to charge any holding charges.
  - i. Direct the respondent to earmarked two-wheeler parking in the project.
  - j. Direct the respondent to earmarked balance available parking space, if any, beyond the allocated two-wheeler parking as free visitor car parking space.
  - k. Direct the respondent to construct community sites as per guidelines of policy, 2013.
  - l. Direct the respondent to provide flat buyers agreement as per RERA, Rules, 2017.
  - m. Direct the respondent to update the status of construction and completion certificate of the project.
  - n. Cost of litigation-₹ 55,000/-.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

6. The respondent has contested the complaint on the following grounds.
  - a. That "GRAND IVA" is the subject matter of present complaint, rest of the contents not denied. It is submitted that the present complaint has

not been filed against "GRAND IVA" project as alleged. Further, no occasion whatsoever ever arose to file the present complaint.

- b. It is categorically and vehemently denied, amongst the other allegations that complainant visited the office of respondent on 20.09.2017 or that there was any unreasonable demand of payments or that there was any mistake of respondent or that there was any arbitrary payment plan as alleged/projected. Demand was made as per the agreed terms and principle of possession given in the Affordable Housing Policy 2013. It is submitted that Affordable Housing Policy 2013 mandates developer/colonizer to offer possession of flats within the validity period of 4 years of such sanction/ clearance irrespective of fact that whether allottee is of the main draw i.e., 1st draw or re-draw. Accordingly, a developer/colonizer is under obligation to offer possession of unit at same time to both type of allottees i.e., initial allottees and as well as to subsequent allottees (allottee of the re-draw) irrespective of their different date of allotment.
- c. Even SPIO—cum District Town Planner (HQ) O/o Director, Town & Country Planning Haryana, Chandigarh has also confirmed/justified the same in a response to an RTI query as under:

*"Since the balance amount after deducting Rs. 25,000 / as per present policy is to be refunded therefore, equity demands that the subsequent allotted has to follow the same conditions as applicable to the original allottee. Further, the rates are pre defined and the construction has to be completed in time bound manner. Hence, subsequent allottee at the time of allotment should pay the amount equivalent to the amount payable by others allottees in the project at that stage."*

- d. Aforesaid principle has been clarified/confirmed by the government by issuing a clarification to the Affordable Housing Policy which says:

*"In case of re-allotment resulting after surrender of flats as well as allotment of left over flats, the maximum amount recoverable at the time of such allotment shall be equivalent to the amount payable by other allottees in the project at that stage, installments were demanded."*

- e. It is categorically and vehemently denied, amongst the other allegations that proposed possession date as per Haryana Affordable Housing Policy 2013 was due on 15.09.2019 as alleged. It is categorically and specifically informed to the complainant that possession of flat shall be offered within a period of four years from the date of approval of building plans or grant of environmental clearance, whichever is later and within such extended time (if any) as may be allowed by competent authorities. Further of environmental clearance has been granted on 29 September 2016. Accordingly, respondent was supposed to offer the possession, of the apartment in question up to 30<sup>th</sup> of September 2020. However, the said period would have been applicable provided no disturbance/hindrance had been caused either due to force majeure circumstances or on account of intervention by statutory authorities etc.
- f. That prior to the expiry of said period the deadly and contagious Covid-19 pandemic had struck. The same had resulted in unavoidable delay in delivery of physical possession of the apartment. In fact, Covid 19 Pandemic was an admitted force majeure event which was beyond the power and control of the respondent.
- g. That in fact, almost the entire world had struggled in its grapple with the coronavirus menace. The novel coronavirus had been declared as



a pandemic by World Health Organization. In fact, on 14<sup>th</sup> of March 2020 the Central Government had declared the pandemic as a "notified disaster" under the Disaster Management Act, 2005. The same had been recognized as a disaster threatening the country, leading to the invocation of The Disaster Management Act, 2005 for the first time on a national level. The 21-day national lockdown imposed by the Central Government to combat the spread of first wave of Covid-19, was the first time provisions of the National Disaster Management Act, 2005, had been invoked on pan India basis after the year 2004 when Tsunami had hit the eastern coast of India killing about 10,000 people.

- h. That for all registered real estate projects, where completion date, revised completion date or extended completion date was to expire on or after 15<sup>th</sup> of March 2020, the period of validity for registration of such projects had been ordered to be extended by Haryana Real Estate Regulatory Authority vide order dated 27<sup>th</sup> of March 2020. The Haryana Real Estate Regulatory Authority, Gurugram had issued order/direction dated 26<sup>th</sup> of May 2020 whereby the Hon'ble Authority had been pleased to extend the registration and completion date of Real Estate Projects by 6 months, due to outbreak of Covid-19.
- i. It is categorically and vehemently denied, amongst the other allegations that the sales consideration for said flat was ₹ 14,59,640/— (which includes the cost of providing the common facilities) as alleged. Balance sales consideration has been mentioned in the final demand notice.

- j. Moreover, it is pertinent to mention that the agreement of sale notified under the Haryana Real Estate (Regulation and Development) Rules, 2017 categorically excludes any delay due to "force majeure", court orders, Government policy/ guidelines, decisions affecting the regular development of the real estate project. That in addition to the aforesaid period of 9 months, the following period also deserves to be excluded for the purpose of computation of period available to the respondent to deliver physical possession of the apartment to the complainant as permitted under the Haryana Real Estate (Regulation and Development) Rules, 2017:
- i. Order dated 8th of November 2016 passed by National Green Tribunal completely prohibiting the carrying on of construction by any person, private or government authority in the entire NCR till the next date of hearing.
  - ii. Haryana State Pollution Control Board, Panchkula had passed the order dated 29<sup>th</sup> of October 2018 in furtherance of directions of Environment Pollution (Prevention and Control) Authority dated 27<sup>th</sup> of October 2018 all construction activities involving excavation, civil construction (excluding internal finishing/work where no construction material was used) were directed to remain closed in Delhi and other NCR Districts from 1<sup>st</sup> to 10<sup>th</sup> November 2018.
  - iii. Commissioner, Municipal Corporation, Gurugram had passed order dated 11<sup>th</sup> of October 2019 whereby construction activity had been prohibited from 11<sup>th</sup> of October 2019 to 31<sup>st</sup> of December 2019.

k. It is categorically and vehemently denied, amongst the other allegations, that there was any invalid offer of possession or that offer of possession letter was without completing the construction work at site or that said offer of possession letter was accompanied with unreasonable additional demands which are unilateral, arbitrary and contrary to the guidelines and policy terms & conditions of Haryana Affordable Policy 2013 or that there is any illegal demand or that there is any delay in offering possession or that parking space has not been earmarked. In response thereto, it is submitted that offer of possession letter was sent immediately after receipt of occupation certificate vide memo bearing number ZP-1069/AD(RA)/2021/10241 dated 20.04.2021 issued by Directorate of Town & Country Planning, Haryana, Chandigarh and the same was also received by the complainant. Complainant has failed to place on record any document evidencing the offer of possession letter was received on 10.08.2021 as alleged. Further, below is the explanation/justification of the charges demanded from the complainant:

- i. **Administrative Charges :-** has been provisioned in terms of Office Order 3295 dated 02.04.2018 passed by then District Town Planner, cum- Member Secretary, Allottee Grievances Redressal Forum, Gurugram reserving Rs.15,000/- as miscellaneous/administrative charges for execution of conveyance deed unless percentage /amount of administrative charges are not mentioned in the buyer agreement.

- ii. **IFSD:** This one time deposit has been provisioned in order to secure due performance by the user in prompt payment of the operating and running cost charges and other charges/bills. This has been explained the Grand IVA owner manual in detail.
- iii. **Meter connection charges:** It is being charged/ demanded in accordance with the sales circular no. D-29/2016 of Dakshin Haryana Bijli Vitran Nigam.
- iv. **Water connection charges:** It has been provisioned against water connection. Amount is being demanded proportionately.
- v. **User charges for operational cost of utility services:** Details of free maintenance services and utility services/ day-to-day operational activities/services has already been given in GRAND IVA owner manual in furtherance of the transparency policy. Amount is being demanded proportionately. In furtherance of the transparency policy, service operating agency shall get its accounts audited at the end of each financial year and the expenses incurred would form basis of estimate for billing in the subsequent financial year.
- l. That company shall maintain and upkeep all roads, open spaces, public parks and public health services for the period of five years from the date of issue of the completion certificate unless earlier relieved of this responsibility and thereupon to transfer all such roads, open spaces, public parks and public health services free of cost to the Govt. or the local authority, as the case may be in accordance with provisions of Section 3(3) (a) (iii) of the Haryana Development and Regulation of Urban Areas Act, 1975.

- m. The reasoning advanced hereinabove is also substantiated by the view of State of Haryana after considering the intricacies of matter at length. The view of the Government of Haryana referred to above is reflected in office noting obtained under Right to Information Act. It has been held by State of Haryana that only the services mentioned in Section 3 (3)(iii) of Haryana Development and Regulation of Urban Areas Act, 1975 are to be maintained free of cost by the developer for a period of five years from the date of issuance of occupation certificate. The State Government was of clear opinion that the said free maintenance of services mentioned in Section 3 (3)(iii) of the aforesaid statute was to be done from 4% commercial component allowed in the Affordable Housing Project.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
- E. Jurisdiction of the authority**
8. The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.
- E.1 Territorial jurisdiction**
9. 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**

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

**Section 11**

.....

(4) *The promoter shall-*

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

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

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

11. 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 the relief sought by the complainants.**

**F.I. Restrain the respondent to cancel the unit.**

**F.II. Direct the respondent to pay DPC till date of delivery of possession.**

12. The above mentioned two reliefs are being taken up together as the finding upon one relief depends upon the other. In the present complaint, the

complainants intend to continue with the project and is seeking delay possession charges interest on the amount paid. 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:

***"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. -*

*(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

***he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:***

*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."*

*(Emphasis supplied)*

13. As per affordable housing policy, 2013:

*"In absence of execution of the agreement under Affordable housing project, the possession clause given under the Affordable Housing Policy 2013 would prevail. Section 1 (iv) of Affordable housing policy 2013 which provides as under:*

*Section 1 (iv)*

***All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the date of commencement of project" for the purpose of this policy. The license shall not be renewed beyond the said 4 years period from the date of commencement of project."***

14. The complainant was allotted a unit in the project of respondent namely "Grand IV" situated in sector- 103, Gurugram vide letter dated 22.08.2017 for a total sum of ₹ 16,12,900 /-. Though no BBA was executed between the parties, but the complainant started paying the amount due against the allotted unit and paid a total sum of ₹ 16,12,900/- in instalments. The complainant did not pay the remaining amount of ₹ 50,963/- only as per the demands of the respondent, which led to issuance of notice of cancellation by the respondent/builder on 04.02.2022 attached at page 84 of complaint. In line with the aforesaid facts, the written submission filed by the parties and documents placed on record, the main question which arises before the authority for the purpose of adjudication is that "whether the said cancellation is valid in the eyes of law?"
15. Clause 5(i) of the Affordable Group Housing Policy, 2013 talks about the cancellation. The relevant part of the clause is reproduced below: -  
*"If any successful applicant fails to deposit the instalments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due instalments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs 25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list".*
16. Since the present matter relates to affordable group housing therefore the allotment as well as the cancellation is to be in accordance with the affordable housing policy, 2013 only. The authority while going by the facts of the case and the documents placed on record finds that the respondent company neither issued reminder letters nor published a list of defaulters





of payments in the daily Hindi newspaper before issuing the cancellation letter. Accordingly, any cancellation letter issued not complying by the proper terms and procedure of the policy, 2013 cannot be said to be valid. Therefore, the authority hereby sets aside the said cancellation letter and restores the said unit of the complainant and entitles the complainant for delayed possession charges.

17. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said flat within a period of 4 years from the date of approval of building plans (11.05.2016) or grant of environment clearance, (29.09.2016) (hereinafter referred to as the "Commencement Date"), whichever is later. The period of 4 years is calculated from environment clearance i.e., 29.09.2016 being later. The period of 4 years expired on 29.09.2020. The respondent has sought further extension of a period of 6 months on account of Covid-19 (after the expiry of the said time period of 4 year) but there is no provision in relation to grace period in Affordable Group Housing Policy, 2013. Since the period of 4 years expires on 29.09.2020 the authority after considering the facts and circumstances of the case and acting under its notification no. 9/3-2020 HARERA/GGM(Admn) dated 26.05.2020 hereby allows the 6 months grace period over and above the 4 years. Therefore, the due date of handing over possession is 29.03.2021.
18. **Admissibility of delay possession charges along with prescribed rate of interest:** The complainants are seeking delay possession charges for the delay in handing over the possession at the prescribed rate of interest. However, the allottees intend to continue with the project and are seeking delay possession charges in respect of the subject unit with interest at

prescribed rate as provided 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.*

19. 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.
20. 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., **16.08.2023** is **8.75%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.
21. 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 affordable housing policy, 2013, the possession of the subject apartment was to be delivered within 4 years from date of building plan approval or environment clearance whichever is later. The period of 4 years is calculated from environment clearance i.e., 29.09.2016 being later. The period of 4 years expired on 29.09.2020. As far as grace

period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 29.03.2021. 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., 29.03.2021 till the date of offer of possession i.e., 26.06.2021 plus two months which comes out to be 26.08.2021, at prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

**F.III. Restrain the respondent from implementing a self-proclaim & arbitrary payment plan specified under policy, 2013 and also restrain the respondent from imposing any interest on complainant for paying instalments as per policy, 2013 & protesting against the arbitrary payment demands formulated under a self-proclaim & arbitrary payment plan of the respondent.**

22. The complainant in its pleading stated that the respondent allotted the unit on 22.08.2017 along with the demand of ₹ 7,44,421/- which is almost 50 % of the total cost of the unit which is also evident from the allotment letter at pg. 81 of complaint. The respondent whereas, states in its reply that SPIO-cum District Town Planner (HQ) O/o DTCP, Haryana also confirmed in response to an RTI query that in case of re-allotment resulting after surrender as well as allotment of left over flats, the maximum amount recoverable at the time of such allotment shall be equivalent to the amount payable by other allottee in the project at that stage, the instalment was demanded. However, no such copy of the reply to RTI is annexed with reply moreover, the said provision is part of amendment policy, 2019 which became applicable in the year 2019 itself and the complainant was allotted

the unit back in 2017. The authority is of the view that the respondent is obligated under policy, 2013 to raise the demands as per the payment plan mentioned in the policy of 2013 and accordingly the demands raised by the respondent were arbitrary and the interest on delay payments is hereby quashed by the authority.

**F.IV. Restrain the respondent to charge external electrification charges of ₹ 11,512/-.**

23. The authority has already deliberated the said issue in complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that, if the allottee has already paid these charges, then it would be unjust for him to pay further charges under the head "electrification charges" despite there being a condition for payment of these charges in the builder buyer's agreement, the allottee should not be made or compelled to pay amount towards electrification charges. Therefore, if the promoter in fact requires further money for meeting expenses to provide these basic infrastructures to the allottees in the project, the promoter should always give a break-up of these expenses to the allottee very transparently with each and every detail.

**F.V. Restrain the respondent to charge water connection charges of ₹ 3,207/-.**

24. The authority has already deliberated the said issue in complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that the promoter would be entitled to recover the actual charges paid to the concerned departments from the complainant/allottee on pro-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the flat allotted to the complainant vis-à-vis the



area of all the flats in this particular project. The complainant would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads.

**F.VI. Restrain the respondent to charge meter connection charges of ₹ 4,544/-.**

25. The respondent also demands a sum of ₹ 4,544/- besides taxes as meter connection charges and the demand has been challenged by the allottee being illegal. However, while deliberating this issue in complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** the authority has held that the promoter would be entitled to recover the actual charges paid to the concerned departments from the complainant/allottee(s) on pro-rata basis on account of electricity connection. However, the complainant(s) would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid heads. The model of the digital meters installed in the complex be shared with allottee(s) so that they could verify the rates in the market and the coloniser.

**F.VII. Restrain the respondent to charge for maintenance or operational cost of utility services of ₹ 16,896/-.**

26. The respondent in the present matter has charged operational cost of utility of ₹ 16,896/- for 12 months these are under the head of maintenance charges only. Moreover clause 4(v) of the policy, 2013 talks about maintenance of colony after completion of project: A commercial component of 4% is being allowed in the project to enable the coloniser to maintain the colony free-of-cost for a period of five years from the date of

grant of occupation certificate, after which the colony shall stand transferred to the "association of apartment owners" constituted under the Haryana Apartment Ownership Act 1983, for maintenance. The coloniser shall not be allowed to retain the maintenance of the colony either directly or indirectly (through any of its agencies) after the end of the said five years period. Engaging any agency for such maintenance works shall be at the sole discretion and terms and conditions finalised by the "association of apartment owners" constituted under the Apartment Ownership Act 1983. Moreover, the authority on 11.04.2022 requested DTCP, Haryana to give clarification upon the issue of maintenance but the clarification with respect to the said issue is still awaited. Accordingly, as of now according to policy, 2013 the respondent cannot charge maintenance charges from the complainant.

**F.VIII. Restrain the respondent to charge for interest free security deposit of ₹10,000/-.**

27. The complainant has pleaded that the respondent is demanding Rs. 10,000/- as IFSD. The authority has already decided the above issue in complaint bearing no. *CR/4068/2021 titled as Pradeep Kumar through his attorney Suresh Kumar V/S Pareena Infrastructure Private Limited*, wherein it was held that the promoter may be allowed to collect a reasonable amount from the allottees under the head "IFSD". However, the authority directs and passes an order that the promoter must keep the amount collected under that head in a separate bank account and shall maintain the account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFSD amount and the interest accrued thereon, it must

provide details to them. It is further clarified that out of this IFMS/IFSD account, no amount can be spent by the promoter for the expenditure for which he is liable to incur/discharge the liability under section 14 of the Act.

**F.IX. Direct the respondent to earmarked two-wheeler parking in the project.**

28. Clause 4(iii)(b) of the affordable policy, 2013 states that only one two-wheeler parking site shall be earmarked for each flat, which shall be allotted only to the flat owners. The parking bay of two-wheelers shall be 0.8m x 2.5m unless otherwise specified in the zoning plan. Accordingly, the respondent is directed to earmark one two-wheeler parking space to the complainant in the project.

**F.X. Direct the respondent to earmarked balance available parking space, if any, beyond the allocated two-wheeler parking as free visitor car parking space.**

29. The counsel for the complainant has neither pressed the said issue in the pleadings nor during the arguments accordingly, the authority shall not deliberate upon the said relief.

**F.XI. Direct the respondent to construct community sites as per guidelines of policy, 2013.**

30. The DTCP, Haryana inspects whether the said project is constructed as per the building plans and thereafter, the occupation certificate is issued. Since in the present matter the respondent has received an occupation certificate of the community building w.r.t. the said project on 20.04.2021 therefore, the complainants may approach the department for any grievance if the said sites are not constructed as per the approved layout plans.

**F.XII. Direct the respondent to provide flat buyers agreement as per RERA, Rules, 2017.**

31. Since in the present matter the buyer's agreement has not been executed between the parties and the complainant has already paid an amount of ₹ 16,12,900/- towards consideration of allotted unit i.e., ₹ 16,63,863/- constituting approx. 95% of total consideration. As per section 13(1) of Act of 2016, the respondent was under an obligation to get the buyer's agreement executed between the parties before demanding or accepting further demand beyond 10% of sale consideration. There In view of aforesaid circumstances it is observed that there is gross negligence on part of the respondent-builder and thus as per section 13(1) of Act of 2016, the respondent was under obligation to get the buyer's agreement executed between the parties before demanding or accepting any further demand beyond 10% of sale consideration. The respondent has violated the provisions of section 13(1) of Act of 2016. The respondent is directed to get the buyer's agreement executed in favor of the complainant within 30 days of date of this order as per RERA Rules, 2017.

**F.XIII. Direct the respondent to update the status of construction and completion certificate of the project.**

32. As per section 11(4)(b) of the Act, 2016 the respondent is under obligation to obtain the completion certificate with respect to the project accordingly, the respondent is directed to obtain the completion certificate from the competent authority after completion of internal development works as required by the approved layout plans.

**F.XIV. Cost of litigation-₹ 55,000/-**

33. The complainant is claiming compensation in the above-mentioned reliefs. The authority is of the view that it is important to understand that the Act



has clearly provided interest and compensation as separate entitlement /rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

**G. Directions of the authority**

34. 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 is directed to hand over the actual physical possession of the unit to the complainants within 2 months from the date of this order and pay interest at the prescribed rate of 10.75% p.a. for every month of delay from due date of possession i.e., 29.03.2021 till the date of offer of possession i.e., 26.06.2021 plus two months which comes out to be 26.08.2021.
  - b. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoter which is the same rate of interest which the promoters 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.
  - c. The respondent shall not charge anything from the complainants which is not the part of the agreement. However, holding charges shall not be

charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.

35. The complaint stands disposed of.

36. File be consigned to registry.

**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.08.2023



**HARERA**  
GURUGRAM