

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

Complaint no.:	4551 of 2021
First date of hearing:	27.01.2022
Date of decision:	16.08.2023

Rohit Sharma

R/o 98, Ras Vihar Apartments, Patparganj, Delhi-110092

Complainant

Versus

M/s JMK Holding Pvt. Ltd.

Office address: 1302, 13th 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 30.11.2021 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	"Grandiva", 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.	Flat no. 3-715, 2BHK (Type B), 7 th floor. [Annexure P2 at page no. 35 of the complaint]
7.	Carpet area	584.94 sq. ft. Balcony area- 94.45 sq. ft. [Annexure P2 at page no. 35 of the complaint]
8.	Date of allotment	30.05.2016 [Annexure P2 at page no. 35 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: 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. (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.23,86,985/- Rs. 25,48,109/- (cost with Tax) [As per customer ledger dated 14.06.2021 at page 39 of the complaint]
15.	Amount paid by the complainants	Rs. 25,43,573/- [As per customer ledger dated 14.06.2021 at page 39 of the complaint]
16.	Occupation certificate	20.04.2021 [Annexure R/9 at page 64 of the reply]

		License no. mentioned in sample BBA is different from license no. in the copy of occupation certificate attached by the respondent
17.	Offer of possession	26.06.2021 [Annexure P6 at page no. 56 of the complaint]
18.	Pre cancellation	26.10.2021 [Annexure P8 at page no. 62 of the complaint]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
- a. That somewhere in the end of March 2015, the respondent through its business development associate approached the complainant with an offer to invest and buy a flat in the proposed project of respondent, which the respondent was going to launch the project namely "GRAND IVA" in the Sector-103, Gurugram. On 14.12.2015 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 the project "GRAND IVA" and highlighted that under project (GRAND IVA) 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, 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 specification. The complainant while relying upon those assurances and believing them to be true, complainant submit application with respondent for 2 BHK flat measuring carpet area 584.94 sq. ft. and balcony area 94.45 sq. ft. under draw of lots in the aforesaid project of the developer and made payment of application amount of ₹ 1,19,350/- vide cheque no 000034 dated 16 November 2015.

- 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 30.05.2016 the respondent issued an offer of allotment through letter dated 30.05.2016 in the name of complainant, respondent offered a residential unit no. 715, Tower -3 "Grand IVA" Sector 103, Gurgaon, Haryana at price of ₹ 23,86,997/-. The said offer of respondent was accepted by complainant and made the requisite payment of ₹ 5,04,250/- to respondent through cheque no. 00001 dated 14.06.2016.
- d. That on 25.08.2016 the respondent invited complainant to its corp. 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 Housing Policy 2013, but respondent did not pay any heed despite repeated requests of complainant.

- e. That from the date of submitting application for allotment 14.12.2015 and till 26.06.2021, 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 has always been ready and willing to fulfil their part of agreement, if any pending.

- f. That as per clause 4 of buyer's agreement the sales consideration for said flat was ₹ 23,86,997/- (which includes the cost of providing the common facilities) exclusive of service tax and GST.
- 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 ₹ 25,57,324/- towards total sale consideration and applicable taxes as on today to the respondent, as demanded time to time.
- h. That on the date agreed for the delivery of possession of said unit as per date of booking and later on according to the Haryana Affordable Housing Policy 2013 is 30.05.2020, 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.
- i. 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.
- j. That on 08.07.2019 complainant sent a letter to respondent to enquire the quantum and status of Input tax credit on GST for the respective flat of complainant, and in reply, respondent assures complainant through email dated 10.10.2019 that matter is subjudice with anti-profiteering authority and post receipt of order, respondent will be able to pass the final credit, but respondent didn't honour his

commitment. However, the respondent before the anti-profiteering authority made an undertaking to avoid penal action, to pass & deliver input tax benefit to eligible flat buyer but not passed/credited the same, till date. The respondent had not complied the terms of an undertaking and misguided the flat buyers and other concerned that the matter is subjudice, while upon an undertaking to deliver the ITC benefit to flat buyers, remedy to file revision and an appeal does not lie.

- k. That on 25.08.2021 complainant received a courier through which the respondent has sent an intimation regarding offer of possession letter dated 26.06.2021. The offer of possession by the respondent was an 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 and conditions of Haryana Affordable Policy 2013. Respondent raised a demand of administrative charges ₹ 17,700/-, external electrification charges ₹ 18,906/-, IFSD of ₹ 15,000/-, meter connection charges ₹ 4,544/-, water connection charges ₹ 3,207/-, and user charges for operational cost of utility services of ₹ 23,515/- and ₹ 4,232/- 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 and further threatened to cancel the flat of the complainant by issuing pre cancellation notice dated 26.10.2021 posted on 29.10.2021. 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 8m×2.5 m to the complainant, which the promoter has not earmarked hence denied.

- l. That on 24.09.2021 complainant sent an e-mail to respondent, opposing the unreasonable additional demand of administrative charges ₹ 17,700/-, external electrification charges ₹ 18,906/-, IFSD ₹15 000/-, meter connection charges ₹ 4,544/-, water connection charges (area based) ₹ 3,207/- and user charge for operational cost of utility ₹ 27,747/- 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.
- m. That on 7.10.2021 respondent replied to complainant's email 24.09.2021 email in a very vague manner and didn't reply on the issue of unreason ability of demand, issue of crediting input tax credit as per order dated 26.12.2019 of Hon'ble National Anti-Profiteering Authority and issue of delay possession charges.

- n. That complainant received a speed post letter dated 26.10.2021, posted on 29.10.2021 and received on 02.11.2021 (as per track report) sent by the respondent, through which the respondent unilaterally issued pre cancellation notice dated 26.10.2021 to compel, mount pressure and extort money from the complainant and fulfil additional illegal demands. The said letter was duly replied by the complainant through email dated 09.11.2021 to oppose pre cancellation notice, such illegal demands and to draw attention of the respondent towards incomplete and the pending construction work of the project and the unit, which is without fixers, fittings, paint or polish even without doors and the same is in dilapidated conditions and attached photographs in support. The complainant demanded credit of input tax credit, interest for delayed period and demand to withdraw such demands and pre cancellation notice as well and fulfil the obligation of providing and earmarked two-wheeler scooter parking of the space prescribed in policy. As on 17.11.2021 the respondent did not complete the construction activities at project site. Complainant visited the site and found that till date, the doors are not placed in the flat, including main entrance gate, sanitary connection were not done, floor tills and plastering work is still not completed in the flat. Complainant also identified that respondent did not make the arrangements of two-wheeler parking, instead respondent create extra flats in the place of two wheeler parking area, which is a gross violation of Haryana Affordable Housing Policy 2013.
- o. That the cause of action accrued in favour of the complainant and against the respondent on 14.12.2015 when the complainant had

submitted an application for the said flat and it further arose when respondent failed /neglected to deliver the said flat on proposed delivery date. The cause of action is continuing and is still subsisting on day-to-day basis.

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 to charge external electrification charges of ₹ 18,906 /-.
 - d. Restrain the respondent to charge water connection charges of ₹ 3,207/-.
 - e. Restrain the respondent to charge meter connection charges of ₹ 4,544/-.
 - f. Restrain the respondent to charge for maintenance or operational cost of utility services of ₹ 27,747/-.
 - g. Restrain the respondent to charge for interest free security deposit of ₹15,000/- & also restrain the respondent to charge any holding charges.
 - h. Direct the respondent to earmarked two-wheeler parking in the project.
 - i. Direct the respondent to earmarked balance available parking space, if any, beyond the allocated two-wheeler parking as free visitor car parking space.
 - j. Direct the respondent to construct community sites as per guidelines of policy, 2013.

- k. Direct the respondent to provide flat buyers agreement as per RERA, Rules, 2017.
 - l. Direct the respondent to update the status of construction and completion certificate of the project.
 - m. 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 project GRAND IVA is the subject matter of the present complaint. It is submitted that no issue whatsoever has been raised in the present complaint with regard to the GRAND IVA project. However, complainant is raised false and frivolous issue with regard to final demands.
 - b. It is categorically denied that respondent has ever provided information to the complainant that 30.05.16 is the commencement date of the project as alleged. Complainant may be put to place on record the documentary evidence as alleged. "Date of commencement of project" would be the date of approval of building plans or grant of environmental clearance, whichever is later as per the Affordable Housing Policy 2013.
 - c. It is submitted that earnest money and rate of interest were provisioned in BBA as mandated at relevant point of time in the Affordable Housing Policy 2013. There was no compensation clause of Rs.₹ 5/- per sq. ft per month as alleged because the same was not

provided in the Affordable Housing Policy 2013. BBA contained the fair and reasonable clauses well within permissible limit of applicable law including Affordable Housing Policy 2013. It is the complainant who intentionally opted not to execute BBA. Complainant neither ever requested to make adequate changes in BBA nor any occasion whatsoever arose for the same because BBA contained the fair and reasonable clauses well within permissible limit of applicable law including Affordable Housing Policy 2013. Complainant may be asked to place on record the draft copy of BBA. Assertion of the complainant at Para under reply emerges to be an afterthought which has been put forth with malafide intention entirely to prejudice this Hon'ble Authority against the respondent.

- d. It is wrong and denied that respondent agreed and promised to complete the construction and delivered the possession on or before 29.09.2020 or that proposed possession date as per Affordable Housing Policy 2013 was 30.05.2020 as alleged. No such promise was made by the respondent. However, respondent promised "*Subject to Force Majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of installments of the other charges as per the payment plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance,*

(hereinafter referred to as the "Commencement Date"), whichever is later." Assertion of the complainant at para under reply emerges to be an afterthought which has been put forth with malafide intention entirely to prejudice this Hon'ble Authority against the respondent.

- e. That as per the complaint respondent was supposed to offer possession of the apartment in question up to 30th 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 14th 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 15th 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 27th of March 2020. The Haryana Real Estate Regulatory Authority, Gurugram had issued order/direction dated 26th 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. 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 9th of November 2017 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 29th of October 2018 in furtherance of directions of Environment Pollution (Prevention and Control) Authority dated 27th 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 1st to 10th November 2018.
- iii. Commissioner, Municipal Corporation, Gurugram had passed order dated 11th of October 2019 whereby construction activity had been prohibited from 11th of October 2019 to 31st of December 2019.
- j. **IFSD:** has been provisioned in order to secure due performance by the user with regard to prompt payment of the operating and running cost charges and other charges/bills raised by the Service Operating Agency. It is for this reason that the user agrees to deposit, an Interest Free Operating Cost Security Deposit. Infact, the Interest Free Operating Cost Security Deposit has to be paid as onetime payment at the time of taking over the possession of the Apartment. In case of failure of the user to pay any running cost bill and other charges on or before the due date, the Service Operating Agency is entitled to adjust the said amount of unpaid running cost bill from Interest Free Operating Cost Security Deposit.
- k. **Meter connection charges:** It is being charged/ demanded in accordance with the sales circular no. D-29/2016 of Dakshin Haryana Bijli Vitran Nigam.

- l. **Water connection charges:** have been legally and fairly demanded by the Respondent from the Complainant on ad-hoc basis.
 - m. 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.
 - n. 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. I 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.

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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

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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. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such

mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

15. **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.
16. **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.

17. 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.
18. 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%**.
19. 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 to charge external electrification charges of ₹ 18,906/-.

20. 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.IV. Restrain the respondent to charge water connection charges of ₹ 3,207/-.

21. 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.V. Restrain the respondent to charge meter connection charges of ₹ 4,544/-.

22. 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.VI. Restrain the respondent to charge for maintenance or operational cost of utility services of ₹ 27,747/-.

23. The respondent in the present matter has charged operational cost of utility of ₹ 27,747/- 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.VII. Restrain the respondent to charge for interest free security deposit of ₹15,000/-.

24. The complainant has pleaded that the respondent is demanding Rs. 15,000/- 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.

25. 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.

26. 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.

27. 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.

28. 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 ₹ 25,43,573/- towards consideration of allotted unit i.e., ₹ 25,48,109/- 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.

29. 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/-

30. 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

31. 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.

32. The complaint stands disposed of.
33. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.08.2023



HARERA
GURUGRAM